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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN95

Prevailing Rate Systems; Redefinition of the Little Rock, Arkansas, and Tulsa, Oklahoma, Appropriated Fund Federal Wage System Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to redefine the geographic boundaries of the Little Rock, Arkansas, and Tulsa, Oklahoma, appropriated fund Federal Wage System (FWS) wage areas. The final rule will redefine the Fort Chaffee portion of Franklin County, AR, to the Tulsa wage area. This change is based on a consensus recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC).

DATES:

Effective date: June 26, 2020.

Applicability date: This change applies on the first day of the first applicable pay period beginning on or after July 27, 2020.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On February 13, 2020, OPM issued a proposed rule (85 FR 8205) to redefine the Fort Chaffee portion of Franklin County, AR, from the Little Rock, AR, wage area to the Tulsa, OK, wage area.

FPRAC, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and recommended these changes by consensus.

The 30-day comment period ended on March 16, 2020. OPM received one comment supporting the move of the Fort Chaffee portion of Franklin County to the Tulsa wage area and asking OPM to define Monroe County, PA, from the Scranton-Wilkes-Barre, PA, wage area to the New York, NY, wage area. The wage area definition of Monroe County is beyond the scope of this rule.

Regulatory Impact Analysis

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011).

Reducing Regulation and Controlling Regulatory Costs

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

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

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

■ 2. In Appendix C to subpart B amend the table by revising the wage area listings for the States of Arkansas and Oklahoma to read as follows:

Definitions of Wage Areas and Wage Area Survey Areas

* * * * *

ARKANSAS

Little Rock

Survey Area

Arkansas:
Jefferson
Pulaski
Saline

Area of Application. Survey area plus:

Arkansas:
Arkansas
Ashley
Baxter
Boone
Bradley
Calhoun
Chicot
Clay

Clark
Cleburne
Cleveland
Conway
Dallas
Desha
Drew
Faulkner
Franklin (Does not include the Fort Chaffee portion)
Fulton
Garland
Grant
Greene
Hot Spring
Independence
Izard
Jackson
Johnson
Lawrence
Lincoln
Logan
Lonoke
Marion
Monroe
Montgomery
Newton
Ouachita
Perry
Phillips
Pike
Polk
Pope
Prairie
Randolph
Scott
Searcy
Sharp
Stone
Union
Van Buren
White
Woodruff
Yell

* * * * *

OKLAHOMA

Oklahoma City

Survey Area

Oklahoma:
Canadian
Cleveland
McClain
Oklahoma
Pottawatomie

Area of Application. Survey area plus:

Oklahoma:
Alfalfa
Atoka
Beckham
Blaine
Bryan
Caddo
Carter
Coal
Custer
Dewey
Ellis
Garfield
Garvin
Grady
Grant
Harper
Hughes
Johnston
Kingfisher
Lincoln
Logan
Love
Major
Marshall
Murray
Noble
Payne
Pontotoc
Roger Mills
Seminole
Washita
Woods
Woodward

Tulsa

Survey Area

Oklahoma:
Creek
Mayes
Muskogee
Osage
Pittsburg
Rogers
Tulsa
Wagoner

Area of Application. Survey area plus:

Arkansas:
Benton
Carroll
Crawford
Franklin (Only includes the Fort Chaffee portion)
Madison
Sebastian
Washington
Missouri:
McDonald
Oklahoma:
Adair
Cherokee
Choctaw
Craig
Delaware
Haskell
Kay
Latimer
LeFlore
McCurtain
McIntosh
Nowata
Okfuskee
Okmulgee
Ottawa
Pawnee
Pushmataha
Sequoyah
Washington

* * * * *

[FR Doc. 2020–12805 Filed 6–25–20; 8:45 am]

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209–AA44

Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The U.S. Office of Government Ethics (OGE) is issuing this final rule to revise the component designations of three agencies for purposes of the one-year post-employment conflict of interest restriction for senior employees. Specifically, based on the recommendations of the agencies concerned, OGE is designating two new components in appendix B to 5 CFR part 2641, and correcting an inadvertent error in the current appendix B listing of a previously-designated component.

DATES: This rule is effective June 26, 2020.

FOR FURTHER INFORMATION CONTACT: Kimberly L. Sikora Panza, Associate Counsel, Telephone: (202) 482–9300.

SUPPLEMENTARY INFORMATION:

I. Background

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c), the one-year post-employment conflict of interest restriction for senior employees. Under 18 U.S.C. 207(h)(2), component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). Component designations are listed in appendix B to 5 CFR part 2641.

The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate component of that department or agency.

Pursuant to the procedures prescribed in 5 CFR 2641.302(e), three agencies forwarded written requests to OGE to amend their listings in appendix B to part 2641, and on February 7, 2020, OGE published a proposed rule in the **Federal Register** that proposed to revise the component designations of those agencies (85 FR 7252). The proposed rule provided a 30-day comment period, which ended on March 9, 2020. OGE

did not receive any comments. The rationale for the proposed rule, which OGE is now adopting as final, is explained in the proposed rule preamble at 85 FR 7252 (Feb. 7, 2020).

For the reasons stated in the preamble to the proposed rule, OGE is: (1) Granting the request of the Department of Labor and amending the agency's listing to designate the Veterans' Employment and Training Service as a distinct and separate component of the Department of Labor for purposes of 18 U.S.C. 207(c); (2) granting the request of the Department of Commerce to designate the Bureau of Economic Analysis as a distinct and separate component of the Department of Commerce for purposes of 18 U.S.C. 207(c); and (3) granting the request of the Department of the Treasury to update the component listed as ''Financial Crimes Enforcement Center (FinCEN)'' to reflect the component's proper name, ''Financial Crimes Enforcement Network (FinCEN)'', thereby correcting an inadvertent error in the appendix B listing of this long-designated component.

As indicated in 5 CFR 2641.302(f), a designation ''shall be effective on the date the rule creating the designation is published in the **Federal Register** and shall be effective as to individuals who terminated senior service either before, on or after that date.'' Initial designations in appendix B to part 2641 were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designations made in this rule for the Veterans' Employment and Training Service and the Bureau of Economic Analysis are effective on the date the final rule is published in the **Federal Register**; the component designation of FinCEN remains in effect as of the original designation date, January 30, 2003.

II. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this final rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The final rule is not a major rule as defined in 5 U.S.C. chapter 8, Congressional Review of Agency Rulemaking.

Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Orders 12866 and 13563. This rule has not been reviewed by the Office of Management and Budget under Executive Order 12866 because it is not a ''significant'' regulatory action for the purposes of that order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: May 19, 2020.

Emory Rounds,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics amends 5 CFR part 2641, as follows:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

■ 1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. app. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Appendix B to part 2641 is amended by revising the listings for the Department of Commerce, the Department of Labor, and the Department of the Treasury to read as follows:

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Commerce

Components:
- Bureau of the Census.
- Bureau of Economic Analysis (effective June 26, 2020).
- Bureau of Industry and Security (formerly Bureau of Export Administration) (effective January 28, 1992).
- Economic Development Administration.
- International Trade Administration.
- Minority Business Development Agency (formerly listed as Minority Business Development Administration).
- National Institute of Standards and Technology (effective March 6, 2008).
- National Oceanic and Atmospheric Administration.
- National Technical Information Service (effective March 6, 2008).
- National Telecommunications and Information Administration.
- United States Patent and Trademark Office (formerly Patent and Trademark Office).

* * * * *

Parent: Department of Labor

Components:
- Bureau of Labor Statistics.
- Employee Benefits Security Administration (formerly Pension and Welfare Benefits Administration) (effective May 16, 1997).
- Employment and Training Administration.
- Mine Safety and Health Administration.
- Occupational Safety and Health Administration.
- Office of Disability Employment Policy (effective January 30, 2003).
- Office of Federal Contract Compliance Programs (effective December 29, 2016).
- Office of Labor Management Standards (effective December 29, 2016).
- Office of Workers' Compensation Programs (effective December 29, 2016).
- Pension Benefit Guaranty Corporation (effective May 25, 2011).
- Veterans' Employment and Training Service (effective June 26, 2020).
- Wage and Hour Division (effective December 29, 2016).

* * * * *

Parent: Department of the Treasury

Components:
Alcohol and Tobacco Tax and Trade Bureau (effective November 23, 2004).
Bureau of Engraving and Printing.
Bureau of the Fiscal Service (effective December 4, 2014).
Comptroller of the Currency.
Financial Crimes Enforcement Network (FinCEN) (effective January 30, 2003).
Internal Revenue Service.
United States Mint (formerly listed as Bureau of the Mint).

[FR Doc. 2020–12356 Filed 6–25–20; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket ID FCIC–20–0004]

RIN 0563–AC68

Common Crop Insurance Regulations; Dry Pea Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Dry Pea Crop Insurance Provisions (Crop Provisions). The intended effect of this action is to update crop insurance policy provisions and definitions to better reflect current agricultural practices. The changes are to be effective for the 2021 and succeeding crop years.

DATES:

Effective date: This rule is effective June 30, 2020.

Comment date: We will consider comments that we receive by August 25, 2020. We may conduct additional rulemaking based on the comments.

ADDRESSES: We invite you to submit comments on this rule. In your comments, include the date, volume, and page number of this issue of the **Federal Register**, and the title of rule. You may submit comments by any of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID FCIC–20–0004. Follow the online instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, U.S. Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change and publicly available on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Francie Tolle, telephone (816) 926–7829, email *francie.tolle@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

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

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV.

FCIC amends the Common Crop Insurance Regulations by revising 7 CFR 457.140, Dry Pea Crop Insurance Provisions, to be effective for the 2021 and succeeding crop years. The intended effect of this action is to update existing policy provisions and definitions to better reflect current agricultural practices.

The changes to 7 CFR 457.140, Dry Pea Crop Insurance Provisions are as follows:

FCIC is revising the definition of ''combining'' to add the word ''dry'' before the word ''peas'' in both places because ''dry peas'' is defined in the policy.

FCIC is revising the name and definition of ''contract seed peas'' to ''contract seed types'' to allow FCIC to include specific other categories of dry peas to be included as a contract seed type in the Special Provisions. Currently, the definition of ''contract seed peas'' only includes the category of Peas (*Pisum sativum* L.) in the definition. This change will allow FCIC to add other categories (for example, Lentils (*Lens culinaris* Medik.), Chickpeas (*Cicer arietinum* L.), and Fava or Faba beans, (*Vicia faba L.*)) in the future. FCIC is revising any reference to ''contract seed peas'' to ''contract seed types'' throughout the Dry Pea Crop Provisions. FCIC is making conforming changes to revise any reference to ''contract seed peas'' to ''contract seed types'' throughout the regulation.

FCIC is revising the definition of ''dry peas'' to include Fava or Faba beans and other types of dry peas insured by written agreement. The current definition of ''dry peas'' does not recognize Fava or Faba beans as insurable under the Dry Pea Crop Provisions. Currently, Fava or Faba beans are insured by written agreement under the Dry Bean Crop Provisions. However, Fava or Faba beans are a cool season crop, which more closely matches dry peas, whereas dry beans are a warm season crop. In addition, the cultural and agronomic practices to grow Fava or Faba beans are more similar to dry peas than dry beans. Therefore, adding Fava or Faba beans (*Vicia faba L.*) to the definition of ''dry peas'' will allow this type of bean to be insured under the Dry Pea Crop Provisions.

FCIC is adding a definition of ''latest final planting date'' to specify the final planting date for those counties that have only spring-planted acreage, only fall-planted acreage, or both spring-planted and fall-planted acreage. This change is consistent with other crop provisions that allow spring-planted and fall-planted acreage.

FCIC is revising the definition of ''local market price'' to clarify moisture content not associated with grading under the U.S. Standards will not be considered in establishing the local market price. This revision is necessary because FCIC is adding a moisture adjustment to gross production in section 13 of the Dry Pea Crop Provisions as described below. FCIC is also revising the definition to include ''Beans (Chickpeas and Fava or Faba beans)'' in the list of U.S. Standards. The definition currently includes factors not associated with grading under the U.S. Standards for Whole Dry Peas, Split Peas, and Lentils. However, the standards for chickpeas and Fava or Faba beans can be found in U.S. Standards for Beans. Therefore, ''Beans (Chickpeas and Fava or Faba beans)''

should be added to the list as chickpeas and Fava or Faba beans are defined as dry peas in these Crop Provisions.

FCIC is revising the definition of ''practical to replant'' for clarity and removing paragraph (c) from the definition. That paragraph of the definition is not necessary because the Common Crop Insurance Policy, Basic Provisions (Basic Provisions), already includes the information that was in paragraph (c).

FCIC is adding a definition of ''prevented planting'' to specify it is the same definition found in the Basic Provisions except references to ''final planting date'' contained in the definition in the Basic Provisions are replaced with ''latest final planting date.'' This change is consistent with other crop provisions that allow spring-planted and fall-planted acreage.

FCIC is revising the definition of ''type'' to allow other types to be insured by written agreement. This change is consistent with the changes being made to the definition of ''dry peas.'' FCIC is making conforming changes to remove references to types being found in the Special Provisions throughout the regulation because the definition of ''type'' contains a reference to the Special Provisions.

FCIC is replacing the phrase ''Special Provisions'' with ''actuarial documents in sections 3(b)(1) and (2) because this section is referring to where price elections can be found. Price elections can be found in the actuarial documents.

FCIC is revising section 4 to add an additional contract change date of June 30 preceding the cancellation date for counties with an October 31 cancellation date to allow for expansion into California and specific counties in Arizona. For the same reason, FCIC is revising section 5 to add a cancellation and termination date of October 31.

FCIC is redesignating section 7(a)(3)(iv) as section 7(a)(4) and revising it to disallow written agreements on acreage that is planted with the intent to plow down, graze, harvest as hay, or otherwise not harvest as a mature dry pea crop. In those situations, the producer is not trying to harvest the dry pea crop and a written agreement should not be allowed on the acreage.

FCIC is revising the introductory text in section 8(c) to state the provisions of 8(c) are applicable when the Special Provisions designate both fall and spring planted types and the Winter Coverage Option is not in force for the acreage. Prior to this rule, the introductory text stated it is applicable if the Special Provisions designate both fall and spring final planting dates but section 8(c)(3) stated if the Winter Coverage Option is elected, insurance is in accordance with the option. The revisions combine the provisions in the introductory text to section 8(c) and section 8(c)(3). FCIC is removing section 8(c)(3) as the section is not necessary with the revision to the introductory text to section 8(c).

FCIC is revising section 8(c)(1) to remove the phrase ''fall-planted dry peas'' and replacing it with the phrase ''fall-planted dry pea acreage'' for clarity. FCIC is also revising the section to make it clear these provisions are applicable for the replanted type to obtain insurance after it has been replanted.

FCIC is adding a new section 8(d) to clarify when the Special Provisions designate both fall and spring-planted types, and the Winter Coverage Option is in force for the acreage, insurance will be in accordance with the Winter Coverage Option. This text was previously in section 8(c)(3), but conflicted with the introductory text to section 8(c), which was discussed above.

FCIC is redesignating section 8(d) as section 8(e) and revising it to remove the phrase ''spring final planting date'' and replacing it with ''spring-planted type'' for clarity. FCIC is making the same clarification throughout the policy by removing references to fall or spring final planting dates and changing it to reference fall or spring-planted types, where appropriate. Some counties list both spring and fall types in the Special Provisions but the final planting date for fall types is not listed. A fall final planting date is only listed if the Winter Coverage Option is elected. Therefore, there was confusion as to whether certain provisions were applicable when they referred to a fall final planting date if the Winter Coverage Option was not elected because no fall final planting date is listed. FCIC is also removing the phrase ''agree in writing'' as this could be misinterpreted to mean a written agreement, which is not the intent of the language, and could result in providing insurance via written agreement when it was not intended, nor appropriate. FCIC is also revising this language to clarify the AIP must inspect and determine the acreage has an adequate stand. These clarifications will reduce the likelihood of fraud, waste and abuse.

FCIC is rearranging and clarifying section 9(a). Prior to this rule, section 9(a) was not clear if a spring inspection is required nor did it address whether the insured must insure fall-planted acreage if it meets the criteria of section 8, Insurable Acreage. In a county with fall and spring types, fall types must be reported by the spring sales closing date. If there is an adequate stand of the fall-planted type in the spring, insurance will attach on the date the AIP determines there is an adequate stand or on the spring final planting date if the AIP does not make that determination prior to the spring final planting date. Fall-planted acreage must be reported and insured if it meets the requirements of section 8.

In sections 11(a)(4) and (5), FCIC is removing the reference to ''final planting date'' and replacing it with the phrase ''type designated in the Special Provisions'' for clarity as explained above for section 8(d). FCIC is also removing ''are designated'' at the end of paragraph as it is redundant.

In section 13, FCIC is revising the steps for settlement of a claim and the example to consistently use defined terms and clarify that some instructions only apply if there is more than one dry pea type insured.

FCIC is revising section 13(d)(1)(iii) to clarify mature unharvested production of dry peas may be adjusted for excess moisture. This revision is necessary because FCIC is adding a moisture adjustment to gross production in section 13(e) of the Dry Pea Crop Provisions as described below.

FCIC is revising section 13(e), at the request of producers, to add a moisture adjustment to gross production; similar to other crops (for example, Dry Beans; Coarse Grains, Small Grains). Dry peas are sometimes harvested with moisture content above 14 percent. Most processors will apply a discount to either production or price due to excess moisture. The current Dry Pea policy does not allow for such reduction causing insureds to believe they are not being treated fairly. Applying moisture adjustment results in a reduction to production to count [1] of 0.12 percent for each 0.1 percentage points of moisture in excess of 14 percent. The adjustment for moisture is made prior to applying any qualifying quality adjustment(s). Applying moisture adjustment to gross production is proactive and consistent with other similar crop provisions. This adjustment will also lead to more accurate loss determinations. Adjustments for excess moisture should have no significant impacts to producers' rates or indemnities.

In section 14, FCIC is adding a new paragraph (a) to clarify that in counties for which the Special Provisions designate both fall-planted and spring-

[1] Production to count is harvested or appraised quantities of a crop produced (including appraised production from uninsured causes of loss) from a unit, which is subtracted from the unit's production guarantee in computing an indemnity.

planted types, the policyholder's prevented planting production guarantee will be based on their approved yield for spring-planted acreage of the insured crop.

FCIC is revising section 15(d) to remove the reference to ''final planting date'' and replacing it with the phrase ''planted type.'' As explained above, this change will eliminate any confusion of whether a fall final planting date exists in the actuarial documents if the Winter Coverage Option is not selected.

Effective Date and Notice and Comment

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption.

For major rules, the Congressional Review Act requires a delay the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective June 30, 2020. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

Executive Orders 12866, 13563, 13771, and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or 1356.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that in order to manage the costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by savings from deregulatory actions. As this rule is designated as not significant, it is not subject to Executive Order 13771. In a general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Force, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an ongoing approach. FCIC reviewed this regulation and made changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by SBREFA, generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because as noted above, this rule is exempt from APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

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

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the

Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

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

RMA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under E.O. 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes and additions identified in this rule are not expressly mandated by law.

The Unfunded Mandates Reform Act of 1995

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

Federal Assistance Program

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

Paperwork Reduction Act of 1995

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

For the reasons discussed above, FCIC amends 7 CFR part 457, effective for the 2021 and succeeding crop years, as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for part 457 is revised to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

■ 2. Amend § 457.140 as follows:
■ a. In the introductory text, remove the year ''2017'' and add ''2021'' in its place;
■ b. In section 1:
■ i. In the definition of ''Combining'', remove the phrase ''the peas'' and add ''dry peas'' in its place in both places it appears;
■ ii. Remove the definition of ''Contract seed peas'';
■ iii. Add a definition for ''Contract seed types'' in alphabetical order;
■ iv. Revise the definition of ''Dry peas'';
■ v. Add a definition for ''Latest final planting date'' in alphabetical order;
■ vi. Revise the definitions of ''Local market price'' and ''Practical to replant'';
■ vii. Add a definition for ''Prevented planting'' in alphabetical order;
■ viii. In the definitions of ''Price election'', ''Processor/seed company'', and ''Processor/seed company contract'' remove the phrase ''contract seed peas'' and add ''contract seed types'' in its place each time it appears; and
■ ix. Revise the definition of ''Type'';
■ c. In section 2:
■ i. Remove the phrase ''as specified on the Special Provisions'' at the end of the first sentence; and
■ ii. Remove the phrase, ''Contract seed peas'' and add ''Contract seed types'' in its place in the second sentence;
■ d. In section 3:
■ i. In paragraph (a), remove the phrase ''listed on the Special Provisions'' in the first sentence;
■ ii. In paragraph (b)(1), remove the phrase ''Special Provisions'' and add ''actuarial documents'' in its place; and
■ iii. Revise paragraph (b)(2);
■ e. Revise section 4;
■ f. Revise section 5;
■ g. In section 6, remove the phrase ''contract seed peas'' and ''contract seed types'' in its place;
■ h. In section 7:
■ i. In paragraph (a)(2)(ii), remove the phrase ''Contract seed peas'' and add the phrase ''Contract seed types'' in its place and add the word ''date'' after ''reporting''; and
■ ii. Redesignate paragraph (a)(3)(iv) as paragraph (a)(4) and revise it;
■ i. In section 8:
■ i. Revise paragraph (c) introductory text;
■ ii. Revise paragraph (c)(1);
■ iii. Remove paragraph (c)(3);
■ iv. Redesignate paragraph (d) as paragraph (e);
■ v. Add a new paragraph (d);
■ vi. Revise newly redesignated paragraph (e) introductory text; and
■ vii. In newly redesignated paragraph (e)(3), remove the word ''growers'' and add ''producers'' in its place;
■ j. In section 9, revise paragraph (a);
■ k. In section 11:
■ i. In paragraph (a)(4), remove the phrase, ''final planting date'' and add ''type designated in the Special Provisions'' in its place;
■ ii. In paragraph (a)(5), remove the phrase ''a fall and spring final planting date are designated'' and add ''fall and spring types are designated in the Special Provisions'' in its place; and
■ iii. In paragraph (a)(6), remove the phrase, ''fall planted'' and add ''fall-planted'' in its place;
■ l. In section 13:
■ i. Revise paragraph (b);
■ ii. In paragraph (c) introductory text, remove the phrase ''contract seed pea'' and add ''contract seed type'' in its place;
■ ii. Revise paragraph (d)(1)(iii);
■ iii. Revise paragraph (e) introductory text;
■ iv. Redesignate paragraph (e)(3)(iv) as paragraph (f);

■ v. Redesignate paragraphs (e)(1) through (3) as paragraphs (e)(2) through (4), respectively;
■ vi. Add a new paragraph (e)(1);
■ vii. In newly redesignated paragraph (e)(2)(i), remove the phrase ''Split Peas'' and add ''Split Peas, Beans (Chickpeas, Fava or Faba beans)'' in its place;
■ viii. In newly redesignated paragraph (e)(4) introductory text, remove the phrase ''12(e)(1) and (2)'' and add ''13(e)(2) and (3)'' in its place;
■ ix. In newly redesignated paragraph (e)(4)(ii), add the word ''and'' at the end; and
■ x. Revise newly redesignated paragraph (e)(4)(iii);
■ m. In section 14:
■ i. Redesignate the undesignated paragraph as paragraph (b); and
■ ii. Add paragraph (a);
■ n. In section 15:
■ i. In paragraph (d), remove the phrase ''both a fall final planting date and a spring final planting date'' and add ''both fall and spring-planted types'' in its place; and
■ ii. In paragraphs (e)(4) and (i) remove the phrase ''fall planted'' and add ''fall-planted'' in its place wherever it appears;

The revisions and additions read as follows:

§ 457.140 Dry pea crop insurance provisions.

* * * * *

1. Definitions

* * * * *

Contract seed types. Peas (Pisum sativum L.) or other categories of dry peas identified in the Special Provisions grown under the terms of a processor/seed company contract for the purpose of producing seed to be used in planting a future year's crop.

Dry peas. Peas (*Pisum sativum* L.), Austrian Peas (*Pisum sativum spp arvense*), Fava or Faba beans (*Vicia faba* L.), Lentils (*Lens culinaris* Medik.), Chickpeas (*Cicer arietinum* L.), and other types as listed in the Special Provisions or insured by written agreement.

* * * * *

Latest final planting date. (a) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate a spring-planted type only;

(b) The final planting date for fall-planted acreage in all counties for which the Special Provisions designate a fall-planted type only; or

(c) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate both spring-planted and fall-planted types.

Local market price. The cash price per pound for the U.S. No. 1 grade of dry peas as determined by us. This price will be considered the prevailing dollar amount buyers are willing to pay for dry peas containing the maximum limits of quality deficiencies allowable for the U.S. No. 1 grade. Moisture content and factors not associated with grading under the United States Standards for Whole Dry Peas, Split Peas, Beans (Chickpeas, Fava or Faba beans), and Lentils will not be considered, unless otherwise specified in the Special Provisions.

* * * * *

Practical to replant. In addition to the definition contained in the Basic Provisions, it will be considered practical to replant:

(a) Contract seed types only if the processor/seed company will accept the production under the terms of the processor/seed company contract.

(b) Fall-planted types 25 days or less after the final planting date for the corresponding spring-planted type of dry peas.

Prevented planting. As defined in the Basic Provisions, except that the references to ''final planting date'' contained in the definition in the Basic Provisions are replaced with the ''latest final planting date.''

* * * * *

Type. A category of dry peas identified as a type in the Special Provisions or insured by written agreement.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

* * * * *

(b) * * *

(2) If the actuarial documents designate separate price elections by type, you may select one price election for each dry pea type even if the prices for each type are the same. The price elections you choose for each type are not required to have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you may choose 75 percent of the maximum price election for another type.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is June 30 preceding the cancellation date for counties with an October 31 cancellation date, or November 30 preceding the cancellation date for counties with a March 15 cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are as follows:

State and county	Cancellation date	Termination date
All counties in California and Arizona Counties: La Paz, Maricopa, Mohave, Pima, Pinal, and Yuma	10/31	10/31
All other Arizona counties and all other states	3/15	3/15

* * * * *

7. Insured Crop

(a) * * *

(4) That is not planted to plow down, graze, harvest as hay, or otherwise not planted to harvest as a mature dry pea crop.

* * * * *

8. Insurable Acreage

* * * * *

(c) When the Special Provisions designate both fall and spring-planted types, and the Winter Coverage Option is not in force for the acreage:

(1) Any fall-planted dry pea acreage that is damaged before the spring final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to a fall-planted type of dry peas to obtain insurance based on the fall-planted type unless we agree that replanting is not practical. If it is not practical to replant to a fall-planted type of dry peas but it is practical to replant to a spring-planted type, you must replant to a spring-planted type to obtain insurance coverage based on the fall-planted type.

* * * * *

(d) When the Special Provisions designate both fall and spring-planted types, and the Winter Coverage Option is in force for the acreage, insurance will

be in accordance with the Winter Coverage Option (see section 15).

(e) Whenever the Special Provisions designate only a spring-planted type, any acreage of a fall-planted dry pea crop is not insured unless you request such coverage on or before the spring sales closing date, and we inspect and determine that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee.

* * * * *

9. Insurance Period

* * * * *

(a) If the Special Provisions designate both fall and spring-planted types, and the Winter Coverage Option is not in force for the acreage, you must report fall-planted acreage to your crop insurance agent on or before the spring sales closing date. Fall-planted types are only insurable if there is an adequate stand in the spring. Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not make that determination prior to the spring final planting date, unless otherwise specified in the Special Provisions. Fall-planted acreage must be reported and insured if it meets the requirements of section 8.

* * * * *

13. Settlement of Claim

* * * * *

(b) In the event of loss or damage to your dry pea crop covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage of each dry pea type, if applicable, excluding contract seed types, by its respective production guarantee;

(2) Multiplying each result of section 13(b)(1) by the respective price election;

(3) Totaling the results of section 13(b)(2) if there is more than one type;

(4) Multiplying the insured acreage of each contract seed type variety by its respective production guarantee;

(5) Multiplying each result of section 13(b)(4) by the applicable base contract price;

(6) Multiplying each result of section 13(b)(5) by your selected price election percentage;

(7) Totaling the results of section 13(b)(6) if there is more than one type;

(8) Totaling the results of section 13(b)(3) and section 13(b)(7);

(9) Multiplying the total production to be counted of each dry pea type, excluding contract seed types, if applicable (see section 13(d)), by the respective price elections;

(10) Totaling the value of all contract seed type production (see section 13(c));

(11) Totaling the results of section 13(b)(9) and section 13(b)(10);

(12) Subtracting the result of section 13(b)(11) from the result in section 13(b)(8); and

(13) Multiplying the result of section 13(b)(12) by your share.

Example 1:

In this example, you have not elected optional units by type. You have a 100 percent share in 100 acres of spring-planted smooth green dry edible peas in the unit, with a production guarantee of 4,000 pounds per acre and a price election of $0.09 per pound. Your selected price election percentage is 100 percent. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000-pound guarantee;

(2) 400,000-pound guarantee × $0.09 price election = $36,000 value of guarantee;

(9) 200,000-pound production to count × $0.09 price election = $18,000 value of production to count;

(12) $36,000 value of guarantee − $18,000 value of production to count = $18,000 loss; and

(13) $18,000 × 100 percent share = $18,000 indemnity payment.

Example 2:

Assume the same facts in example 1. Also assume you have a 100 percent share in 100 acres of contract seed types in the same unit, with a production guarantee of 5,000 pounds per acre and a base contract price of $0.40 per pound. Your selected price election percentage is 100 percent. You are only able to harvest 450,000 pounds. Your total indemnity for both spring-planted smooth green dry edible peas and contract seed types would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000-pound guarantee for the spring-planted smooth green dry edible pea type;

(2) 400,000-pound guarantee × $0.09 price election = $36,000 value of guarantee for the spring-planted smooth green dry edible pea type;

(3) $36,000 (only one spring-planted smooth green dry edible pea type, no other types in this example to total)

(4) 100 acres × 5,000 pounds = 500,000-pound guarantee for the contract seed type;

(5) 500,000-pound guarantee × $0.40 base contract price = $200,000 gross value of guarantee for the contract seed type;

(6) $200,000 × 1.0 price election percentage = $200,000 value of guarantee for the contract seed type;

(7) $200,000 (only one contract seed type, no other types in this example to total);

(8) $36,000 + $200,000 = $236,000 total value of guarantee;

(9) 200,000-pound production to count × $0.09 price election = $18,000 value of production to count for the spring-planted smooth green dry edible pea type;

(10) 450,000-pound production to count × $0.40 = $180,000 value of production to count for the contract seed type;

(11) $18,000 + $180,000 = $198,000 total value of production to count;

(12) $236,000 − $198,000 = $38,000 loss; and

(13) $38,000 loss × 100 percent share = $38,000 indemnity payment.

* * * * *

(d) * * *

(1) * * *

(iii) Unharvested production (mature unharvested production of dry peas may be adjusted for quality deficiencies and excess moisture in accordance with section 13(c) or (e), or as specified in the Special Provisions if applicable); and

* * * * *

(e) Mature dry pea production to count may be adjusted for excess moisture and quality deficiencies. If applying a moisture adjustment, it will be made prior to any adjustment for quality. Adjustment for excess moisture and quality deficiencies will not be applicable to contract seed types.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 14 percent. We may obtain samples of the production to determine the moisture content.

* * * * *

(4) * * *

(iii) The number of pounds remaining after any reduction due to excess moisture (the moisture-adjusted gross pounds, if appropriate) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count to be included in section 13(d);

* * * * *

14. Prevented Planting

(a) In counties for which the Special Provisions designate both fall and spring-planted types, your prevented planting production guarantee will be based on your approved yield for spring-planted acreage of the insured crop.

* * * * *

Martin R. Barbre,

Manager, Federal Crop Insurance Corporation.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AF53

Assessments, Mitigating the Deposit Insurance Assessment Effect of Participation in the Paycheck Protection Program (PPP), the PPP Liquidity Facility, and the Money Market Mutual Fund Liquidity Facility

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation is adopting a final rule that mitigates the deposit insurance assessment effects of participating in the Paycheck Protection Program (PPP) established by the Small Business Administration (SBA), and the Paycheck Protection Program Liquidity Facility (PPPLF) and Money Market Mutual Fund Liquidity Facility (MMLF) established by the Board of Governors of the Federal Reserve System. The final rule removes the effect of participation in the PPP and borrowings under the PPPLF on various risk measures used to calculate an insured depository institution's assessment rate, removes the effect of participation in the PPP and MMLF program on certain adjustments to an insured depository institution's assessment rate; provides an offset to an insured depository institution's assessment for the increase to its assessment base attributable to participation in the PPP and MMLF; and removes the effect of participation in the PPP and MMLF when classifying insured depository institutions as small, large, or highly complex for assessment purposes.

DATES: The final rule is effective June 26, 2020, and will apply as of April 1, 2020.

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SUPPLEMENTARY INFORMATION:

I. Introduction

A. Legal Authority

The FDIC, under its general rulemaking authority in Section 9 of the FDI Act, and its specific authority under Section 7 of the FDI Act to establish a risk-based assessment system and set assessments, is finalizing modifications to mitigate the deposit insurance assessment effects of participation in the PPP, PPPLF, and MMLF. For the reasons explained below, an IDI that participates in the PPP, PPPLF, or MMLF programs could be subject to increased deposit insurance assessments absent a change to the assessment regulations.

B. Background

Recent events have significantly and adversely impacted the global economy and financial markets. The spread of the Coronavirus Disease (COVID–19) slowed economic activity in many countries, including the United States. Sudden disruptions in financial markets placed increasing liquidity pressure on money market mutual funds (MMFs) and raised the cost of credit for most borrowers. MMFs faced redemption requests from clients with immediate cash needs and may need to sell a significant number of assets to meet these redemption requests, which could further increase market pressures.

In order to prevent the disruption in the money markets from destabilizing the financial system, on March 18, 2020, the Board of Governors of the Federal Reserve System (Board of Governors), with approval of the Secretary of the Treasury, authorized the Federal Reserve Bank of Boston (FRBB) to establish the MMLF, pursuant to section 13(3) of the Federal Reserve Act.[1] Under the MMLF, the FRBB is extending non-recourse loans to eligible borrowers to purchase assets from MMFs. Assets purchased from MMFs are posted as collateral to the FRBB. Eligible borrowers under the MMLF include IDIs. Eligible collateral under the MMLF includes U.S. Treasuries and fully guaranteed agency securities, securities issued by government-sponsored enterprises, and certain types of commercial paper. The MMLF is scheduled to terminate on September 30, 2020, unless extended by the Board of Governors.

Small businesses also are facing severe liquidity constraints and a collapse in revenue streams, as millions of Americans were ordered to stay home, severely reducing their ability to engage in normal commerce. Many small businesses were forced to close temporarily or furlough employees. Continued access to financing will be crucial for small businesses to weather economic disruptions caused by COVID–19 and, ultimately, to help restore economic activity.

As part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and in recognition of the exigent circumstances faced by small businesses, Congress created the PPP.[2] PPP loans are fully guaranteed as to principal and accrued interest by the Small Business Administration (SBA), the amount of each being determined at the time the guarantee is exercised. As a general matter, SBA guarantees are backed by the full faith and credit of the U.S. Government. PPP loans also afford borrowers forgiveness up to the principal amount of the PPP loan, if the proceeds of the PPP loan are used for certain expenses. The SBA reimburses PPP lenders for any amount of a PPP loan that is forgiven. PPP lenders are not held liable for any representations made by PPP borrowers in connection with a borrower's request for PPP loan forgiveness.[3] On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (PPP Flexibility Act) was signed into law, amending key provisions of the CARES Act, including provisions related to loan maturity, deferral of loan payments, and loan forgiveness.[4] Among other changes, the amendments increase from two to five years the maturity of PPP loans that are approved by the SBA on or after June 5, 2020, and provide greater flexibility for borrowers to qualify for loan forgiveness.

In order to provide liquidity to small business lenders and the broader credit markets, and to help stabilize the financial system, on April 8, 2020, the Board of Governors, with approval of the Secretary of the Treasury, authorized each of the Federal Reserve Banks to extend credit under the PPPLF, pursuant to section 13(3) of the Federal Reserve Act.[5] Under the PPPLF, Federal

[1] 12 U.S.C. 343(3).

[2] Public Law 116–136 (Mar. 27, 2020).

[3] Under the PPP, eligible borrowers generally include businesses with fewer than 500 employees or that are otherwise considered by the SBA to be small, including individuals operating sole proprietorships or acting as independent contractors, certain franchisees, nonprofit corporations, veterans' organizations, and Tribal businesses. The loan amount under the PPP would be limited to the lesser of $10 million and 250 percent of a borrower's average monthly payroll costs. For more information on the Paycheck Protection Program, see *https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp.*

[4] Public Law 116–142 (June 5, 2020). The SBA subsequently issued an interim final rule revising the SBA's interim final rule implementing sections 1102 and 1106 of the CARES Act temporarily adding the Paycheck Protection Program to the SBA's 7(a) Loan Program published on April 15, 2020. *See* 85 FR 20811 (Apr. 15, 2020) and 85 FR 36308 (June 16, 2020).

[5] 12 U.S.C. 343(3). On April 30, 2020, the facility was renamed the Paycheck Protection Program Liquidity Facility, from Paycheck Protection Program Lending Facility. *See* Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the

Reserve Banks are extending non-recourse loans to institutions that are eligible to make PPP loans, including insured depository institutions (IDIs). Under the PPPLF, only PPP loans that are guaranteed by the SBA with respect to both principal and interest and that are originated by an eligible institution may be pledged as collateral to the Federal Reserve Banks (loans pledged to the PPPLF). The maturity date of the extension of credit under the PPPLF[6] equals the maturity date of the PPP loans pledged to secure the extension of credit.[7] No new extensions of credit will be made under the PPPLF after September 30, 2020, unless extended by the Board of Governors and the Department of the Treasury.

To facilitate use of the MMLF and PPPLF, the FDIC, Board of Governors, and Comptroller of the Currency (together, the agencies) adopted interim final rules on March 23, 2020, and April 13, 2020, respectively, to allow banking organizations to neutralize the regulatory capital effects of purchasing assets under the MMLF program and loans pledged to the PPPLF.[8] Consistent with Section 1102 of the CARES Act, the April 2020 interim final rule also required banking organizations to apply a zero percent risk weight to PPP loans originated by the banking organization under the PPP for purposes of the banking organization's risk-based capital requirements.

C. Deposit Insurance Assessments

Pursuant to Section 7 of the FDI Act, the FDIC has established a risk-based assessment system through which it charges all IDIs an assessment amount for deposit insurance.[9]

Under the FDIC's regulations, an IDI's assessment is equal to its assessment base multiplied by its risk-based assessment rate.[10] An IDI's assessment base and assessment rate are determined each quarter based on supervisory ratings and information collected on the Consolidated Reports of Condition and Income (Call Report) or the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), as appropriate. Generally, an IDI's assessment base equals its average consolidated total assets minus its average tangible equity.[11] An IDI's assessment rate is calculated using different methods based on whether the IDI is a small, large, or highly complex institution.[12] For assessment purposes, a small bank is generally defined as an institution with less than $10 billion in total assets, a large bank is generally defined as an institution with $10 billion or more in total assets, and a highly complex bank is generally defined as an institution that has $50 billion or more in total assets and is controlled by a parent holding company that has $500 billion or more in total assets, or is a processing bank or trust company.[13]

Assessment rates for established small banks are calculated based on eight risk measures that are statistically significant in predicting the probability of an institution's failure over a three-year horizon.[14] Large banks are assessed using a scorecard approach that combines CAMELS ratings and certain forward-looking financial measures to assess the risk that a large bank poses to the deposit insurance fund (DIF).[15] All institutions are subject to adjustments to their assessment rates for certain liabilities that can increase or reduce loss to the DIF in the event the bank fails.[16] In addition, the FDIC may adjust a large bank's total score, which is used in the calculation of its assessment rate, based upon significant risk factors not adequately captured in the appropriate scorecard.[17]

Absent a change to the assessment rules, an IDI that participates in the PPP, PPPLF, or MMLF programs could be subject to increased deposit insurance assessments. For example, an institution that holds PPP loans, including loans pledged to the PPPLF, would increase its total loan portfolio, all else equal, which may increase its assessment rate. An IDI that receives funding under the PPPLF would increase the total assets on its balance sheet (equal to the amount of PPP loans pledged to the Federal Reserve Banks), and increase its total liabilities by the same amount, which would increase the IDI's assessment base and also may increase its assessment rate. An IDI that obtains additional funding, such as additional deposits or secured borrowings, to make PPP loans would increase its total liabilities and total assets by that amount of funding, which would increase its assessment base and also may increase its assessment rate. An IDI that relies on existing funding, including deposits already at the institution, to make PPP loans would not increase its total liabilities or total assets, which would not increase its assessment base.

Similarly, an IDI that participates in the MMLF would increase its total assets by the amount of assets purchased from MMFs under the MMLF and increase its liabilities by the same amount, which in turn would increase its assessment base and may also increase its assessment rate.

C. The Proposed Rule

On May 20, 2020, the FDIC published in the **Federal Register** a notice of proposed rulemaking (the proposed rule, or proposal)[18] that would mitigate the deposit insurance assessment effects of an IDI's participation in the PPP, PPPLF, and MMLF programs.[19] To remove the effect of these programs on the risk measures used to determine the deposit insurance assessment rate for each IDI, the FDIC proposed to exclude PPP loans, which include loans pledged to the PPPLF, from an institution's loan portfolio; exclude loans pledged to the PPPLF from an institution's total assets; and, for institutions subject to the large or highly complex bank scorecard, exclude amounts borrowed from the Federal Reserve Banks under the PPPLF from an institution's liabilities. In addition, because participation in the PPPLF and MMLF programs will have the effect of expanding an IDI's balance sheet (and, by extension, its assessment base), the FDIC proposed to exclude

Federal Reserve Act May 15, 2020, Board of Governors of the Federal Reserve System, available at: *https://www.federalreserve.gov/publications/files/mlf-msnlf-mself-and-ppplf-5-15-20.pdf.*

[6] The maturity date of the extension of credit under the PPPLF will be accelerated if the underlying PPP loan goes into default and the eligible borrower sells the PPP Loan to the SBA to realize the SBA guarantee. The maturity date of the extension of credit under the PPPLF also will be accelerated to the extent of any PPP loan forgiveness reimbursement received by the eligible borrower from the SBA.

[7] Under the SBA's interim final rule, a lender may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of PPP loans at the end of the covered period. See Interim Final Rule ''Business Loan Program Temporary Changes; Paycheck Protection Program,'' 85 FR 20811, 20816 (Apr. 15, 2020) and 85 FR 36308 (June 16, 2020).

[8] *See* 85 FR 16232 (Mar. 23, 2020) and 85 FR 20387 (Apr. 13, 2020).

[9] *See* 12 U.S.C. 1817(b).

[10] *See* 12 CFR 327.3(b)(1).

[11] *See* 12 CFR 327.5.

[12] *See* 12 CFR 327.16(a) and (b).

[13] As used in this final rule, the term ''bank'' is synonymous with the term ''insured depository institution'' as it is used in section 3(c)(2) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1813(c)(2). As used in this final rule, the term ''small bank'' is synonymous with the term ''small institution'' and the term ''large bank'' is synonymous with the term ''large institution'' or ''highly complex institution,'' as the terms are defined in 12 CFR 327.8.

[14] *See* 12 CFR 327.16(a); *see also* 81 FR 32180 (May 20, 2016).

[15] *See* 12 CFR 327.16(b); *see also* 76 FR 10672 (Feb. 25, 2011) and 77 FR 66000 (Oct. 31, 2012).

[16] *See* 12 CFR 327.16(e).

[17] *See* 12 CFR 327.16(b)(3); *see also Assessment Rate Adjustment Guidelines for Large and Highly Complex Institutions,* 76 FR 57992 (Sept. 19, 2011).

[18] 85 FR 30649 (May 20, 2020).

[19] *See* 12 U.S.C. 1817, 1819 (Tenth).

loans pledged to the PPPLF and assets purchased under the MMLF in the calculation of certain adjustments to an IDI's assessment rate, and to provide an offset to an IDI's total assessment amount for the increase to its assessment base attributable to participation in the PPPLF and MMLF. Finally, in classifying IDIs as small, large, or highly complex for assessment purposes, the FDIC proposed to exclude from an IDI's total assets the amount of loans pledged to the PPPLF and assets purchased under the MMLF.

In response to the proposal, the FDIC received 41 comment letters from depository institutions, depository institution holding companies, trade associations, and other interested parties.[20] As further detailed below, commenters generally supported the FDIC's efforts to mitigate the deposit insurance effects of an IDI's participation in the PPP, PPPLF, and MMLF programs, but expressed concerns with certain aspects of the proposal. The FDIC considered all comments received and is making some changes in the final rule, while clarifying other aspects of the rule that remain unchanged from the proposed rule.

II. The Final Rule

A. Summary

Under the final rule, the FDIC will remove the effect of participation in the PPP and borrowings under the PPPLF on various risk measures used to calculate an IDI's assessment rate, remove the effect of participation in the PPP and MMLF program on certain adjustments to an insured depository institution's assessment rate; provide an offset to an insured depository institution's assessment for the increase to its assessment base attributable to participation in the PPP and MMLF; and remove the effect of participation in the PPP and MMLF when classifying insured depository institutions as small, large, or highly complex for assessment purposes.

In the final rule, the FDIC tried to balance its policy objective of mitigating, to the fullest extent possible, the deposit insurance assessment effect of participation in the PPP, PPPLF, and MMLF, while minimizing the extent to which the final rule would result in an IDI paying less than it would have paid if it did not participate in the PPP, PPPLF, or MMLF. In response to comments and based on updated assumptions, as described further below, the final rule includes certain additional mitigation steps beyond those in the proposed rule that will more fully mitigate the assessment effect of participation in the aforementioned programs for more institutions, but may in certain cases result in over-mitigation for some institutions. At the same time, the FDIC declined to make certain adjustments requested by commenters, in part because such additional adjustments, when combined with the other provisions of the final rule, would likely have resulted, in the FDIC's estimation, in more over-mitigation than would be acceptable.

1. Exclusion of All PPP Loans

Most of the comments the FDIC received in response to the proposed rule stated that the proposed modifications would not completely offset the impact of PPP lending on assessments. Many of these commenters requested that the FDIC exclude all PPP loans, whether funded under the PPPLF or through other sources of liquidity, including deposits or Federal Home Loan Bank (FHLB) advances, from the calculation of an IDI's assessment rate, assessment base, or both, so that the bank's assessment would be mitigated accordingly, rather than excluding only loans pledged to the PPPLF.

A bank that funded its PPP loans with existing balance sheet liquidity would not have increased its total assets or total liabilities, and including these loans in the offset to its assessment would not be necessary because its assessment base would not have increased. Similarly, removing PPP loans from total assets in calculating an IDI's assessment rate would not be necessary if such loans did not increase the bank's total assets. For these reasons, the proposal would have removed only PPP loans pledged to the PPPLF from an IDI's total assets in calculating its deposit insurance assessment rate and certain other measures, and in calculating the offset due to the increase in its assessment base due to participation in the PPPLF. The FDIC understands that some banks have funded PPP loans through additional liabilities other than borrowings under the PPPLF, which would result in an increase to a bank's total assets and total liabilities. For banks that funded PPP loans by obtaining additional liabilities other than borrowings under the PPPLF, the proposal would not have fully mitigated the deposit insurance assessment effects of participation in the PPP.

After considering comments received, and in recognition of the important role IDIs play in providing liquidity to small businesses and helping to stabilize the broader economy in the midst of the economic disruption caused by COVID–19, as well as in recognition that some banks have funded PPP loans through additional liabilities other than borrowings under the PPPLF, under the final rule the FDIC will exclude the quarter-end outstanding balance of all PPP loans from an IDI's total assets in calculating an IDI's assessment rate and the offset to an IDI's assessment amount due to the inclusion of PPP loans in its assessment base. The FDIC expects that this exclusion will result in a more complete mitigation of the assessment effects of participation in PPP lending.

As described below, the FDIC will exclude the quarter-end outstanding balance of all PPP loans from an IDI's total assets in the applicable risk measures used to determine an IDI's assessment rate. In addition, because participation in the MMLF program will have the effect of expanding an IDI's balance sheet and because PPP lending funded by additional liabilities could have the effect of expanding an IDI's balance sheet (and, by extension, its assessment base), the FDIC will provide an offset to an IDI's total assessment amount for the increase to its assessment base attributable to PPP lending and participation in the MMLF. Under the final rule, the FDIC will calculate the offset to an IDI's total assessment amount based on its quarter-end outstanding balance of PPP loans and the quarterly average amount of assets purchased under the MMLF. The FDIC also will exclude the outstanding balance of PPP loans and assets purchased under the MMLF in the calculation of certain adjustments to an IDI's assessment rate.

Moreover, in classifying IDIs as small, large, or highly complex for assessment purposes, the FDIC also will exclude from an IDI's total assets the outstanding balance of PPP loans and assets purchased under the MMLF.

Because it is not possible for the FDIC to quantify how much of an IDI's total assets may have increased due to PPP loans relative to other balance sheet changes, including increased cash or other loans made either in response to the economic disruption caused by COVID–19 or that would have otherwise been made in the normal course of business, the final rule excludes all PPP loans from an IDI's total assets in calculating its deposit insurance assessment, rather than providing incomplete assessment mitigation for banks that funded PPP loans through additional liabilities other than borrowings under the PPPLF. To the extent that an institution did not

[20] *See* comments on the proposal, available at *https://www.fdic.gov/regulations/laws/federal/2020/2020-assessments-ppp-3064-af53.html.*

increase its total assets as a result of PPP participation, the final rule could provide an assessment reduction that exceeds the actual increase in assessments that an institution would have experienced due to participation in the PPP.

Some commenters requested that the FDIC specifically exclude the quarter-end balance of outstanding PPP loans when calculating an IDI's assessment, as opposed to the quarterly average of such loans. Under the NPR, the FDIC proposed to exclude the quarter-end balance of outstanding loans pledged to the PPPLF from an IDI's total assets in those risk measures used to determine the deposit insurance assessment rate that are based on quarter-end outstanding amounts. For measures reported on an average basis, the FDIC proposed to exclude the quarterly average of loans pledged to the PPPLF. For example, an IDI's assessment base is determined by subtracting its average tangible equity from average consolidated total assets. In calculating the offset to an IDI's total assessment amount for the increase due to participation in the PPPLF and MMLF, the FDIC proposed to exclude quarterly average loans pledged to the PPPLF and quarterly average assets purchased under the MMLF. Commenters asserted that the assessment relief provided under the proposal would be limited because an IDI's average PPPLF participation over a quarter can be considerably less than its quarter-end PPP loan balance.

After considering comments received, and to minimize additional reporting burden, under the final rule the FDIC will exclude the quarter-end outstanding balance of PPP loans in mitigating the effect of PPP participation on an IDI's deposit insurance assessment, both for risk measures that are calculated using amounts reported as of quarter-end and for calculations that use amounts reported on an average basis.

Changes to reporting requirements applicable to the Consolidated Reports of Condition and Income (Call Report), the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, and their respective instructions, have been implemented in order to make the adjustments to the assessment system under the final rule. These changes were effectuated in coordination with the other member entities of the Federal Financial Institutions Examination Council.[21]

2. Tier 1 Leverage Ratio

Some commenters also suggested that the leverage ratio, as applied in the calculation of an IDI's assessment rate, should be reduced by the quarter-end outstanding balances of all PPP loans. In accordance with the agencies' April 13, 2020, regulatory capital interim final rule, banking organizations are required to neutralize the regulatory capital effects of assets pledged to the PPPLF on leverage capital ratios.[22] This requirement is due to the non-recourse nature of the Federal Reserve's extension of credit to the banking organization, a protection that does not exist if the banking organization funds PPP loans using other sources of liquidity.

To remain consistent with the regulatory capital interim final rule, and consistent with the proposed rule for mitigating assessment effects of participation in the PPP, the FDIC will not modify its deposit insurance assessment pricing system with respect to the Tier 1 leverage ratio, which is one of the measures used to determine the assessment rate for small, large, and highly complex IDIs. Therefore, the neutralization of effects of participation in the PPPLF will be automatically reflected in an IDI's assessment because the FDIC's risk-based assessment system incorporates an IDI's regulatory capital reporting of its Tier 1 leverage ratio.

3. Assessment Calculators

Three commenters asked that the FDIC post revised assessment calculators as soon as possible. The FDIC will post on its public website assessment calculators that reflect the revisions under the final rule once data for the reporting period ending on June 30, 2020 becomes available.[23]

B. Mitigating the Effects of PPP Loans on an IDI's Assessment Rate

Under the final rule, to mitigate the assessment effect of PPP loans, the FDIC will exclude the outstanding amount of PPP loans held by an IDI and borrowings under the PPPLF, from various risk measures used in the calculation of an IDI's deposit insurance assessment rate, as described in more detail below.

1. Established Small Institutions

a. Exclusion of PPP Loans From Total Assets in Various Risk Measures

The final rule excludes the outstanding balance of all PPP loans from total assets in risk measures used to determine an established small institution's assessment rate: the net income before taxes to total assets ratio,[24] the nonperforming loans and leases to gross assets ratio, the other real estate owned to gross assets ratio, the brokered deposit ratio, the one-year asset growth measure, and the loan mix index (LMI).

Under the proposal, for established small banks, the FDIC would have excluded the outstanding balance of loans pledged to the PPPLF from total assets in the calculation of these risk measures. As discussed above, some commenters recommended that the FDIC exclude all PPP loans from specific measures utilized throughout the assessment rate calculation for established small banks, including from the net income before taxes to total assets ratio, the nonperforming loans and leases to gross assets ratio, the other real estate owned to gross assets ratio, the brokered deposit ratio, and the one-year asset growth measure. For the reasons described above, under the final rule, the FDIC will exclude the quarter-end outstanding amount of PPP loans, whether or not they have been pledged to the PPPLF, from total assets in risk measures used to determine an established small institution's assessment rate.

[21] The agencies requested and received emergency approvals on May 27, 2020, from the Office of Management and Budget (OMB) to implement revisions to the Call Report and FFIEC 002 that will take effect for the June 30, 2020, reporting period. Starting with the June 30, 2020, report date, the agencies will collect seven additional items on the Call Report (FFIEC 031, FFIEC 041, and FFIEC 051) that the FDIC will use to make the adjustments described in the final rule. The additional items are: (1) The quarter-end outstanding balance of PPP loans; (2) the outstanding balance of loans pledged to the PPPLF as of quarter-end; (3) the quarterly average amount of loans pledged to the PPPLF; (4) the outstanding balance of borrowings from the Federal Reserve Banks under the PPPLF with a remaining maturity of one year or less, as of quarter-end; (5) the outstanding balance of borrowings from the Federal Reserve Banks under the PPPLF with a remaining maturity of greater than one year, as of quarter-end; (6) the outstanding amount of assets purchased from MMFs under the MMLF as of quarter-end; and (7) the quarterly average amount of assets purchased under the MMLF. In addition, the agencies will collect two additional items on the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002): the quarterly average amount of loans pledged to the PPPLF and the quarterly average amount of assets purchased from MMFs under the MMLF.

[22] *See* 85 FR 20387 (April 13, 2020).

[23] *https://www.fdic.gov/deposit/insurance/calculator.html.*

[24] The FDIC expects that IDIs that participate in the PPP, PPPLF, and MMLF will earn additional income from participation in these programs. To minimize additional reporting burden, and as proposed in the NPR, the FDIC is not excluding income related to participation in these programs from the net income before taxes to total assets ratio in the calculation of an IDI's deposit insurance assessment rate.

b. Exclusion of PPP Loans From the Loan Portfolio in the LMI

The LMI is a measure of the extent to which an IDI's total assets include higher-risk categories of loans. Consistent with the proposed rule, under the final rule, the FDIC will exclude PPP loans, which include loans pledged to the PPPLF, from an institution's loan portfolio in calculating the LMI, based on a waterfall approach.[25] Under the final rule, the FDIC will first exclude the outstanding balance of PPP loans from the balance of C&I Loans in the calculation of the LMI. In the unlikely event that the outstanding balance of PPP loans exceeds the balance of C&I Loans, the FDIC will exclude any remaining balance of these loans from the balance of Agricultural Loans, up to the total amount of Agricultural Loans, in the calculation of the LMI.[26]

While some commenters supported the assumptions applied under the waterfall approach described in the NPR, others viewed the approach as unnecessarily complex. Several commenters confirmed that PPP loans will be reported as C&I Loans, Agricultural Loans, or in All Other Loans. Two commenters suggested reporting PPP loans as a separate loan category on Schedule RC–C rather than in the form of additional memoranda items, while another two commenters supported the reporting revisions recently implemented to make the adjustments to the assessment system, noting that many institutions have already established processes to report these loans in existing categories on Schedule RC–C and would therefore view reporting PPP loans in a separate loan category rather than as a memoranda item as operationally burdensome. Two commenters supported reducing unnecessary data collection and categorization and reporting of PPP loans as C&I Loans.

The FDIC has considered these comments and is adopting the waterfall approach as proposed. The FDIC views the waterfall approach as the approach that most effectively balances the goal of minimizing reporting burden while providing reasonably accurate mitigation for most institutions of the assessment effect of PPP loans. Accordingly, the FDIC is adopting the proposed waterfall approach as final and will apply it, as appropriate, in the calculation of the LMI for small banks (and in the calculation of the growth-adjusted portfolio concentration measure and loss severity measure for large or highly complex banks, as discussed below).

Two commenters requested that all PPP loans be excluded from total assets in the calculation of the LMI while others expressed support for the proposed modifications to the LMI. Under the final rule and as described above, the FDIC will exclude the quarter-end outstanding balance of PPP loans from an IDI's loan portfolio (the numerator) and its total assets (the denominator) in the calculation of the LMI.

2. Large or Highly Complex Institutions

Under the final rule, the FDIC will remove the outstanding balance of PPP loans from a large or highly complex bank's loan portfolio and its total assets in calculating its assessment rate. As proposed, under the final rule the FDIC will also exclude amounts borrowed from the Federal Reserve Banks under the PPPLF from a large or highly complex bank's liabilities in calculating its assessment rate.

a. Exclusion of PPP Loans From Total Assets in the Core Earnings Ratio and the Short-Term Funding Measure

As described above, the FDIC received numerous comments stating that the proposed modifications would not completely offset the impact of PPP lending on assessment rates, and many of these commenters recommended that the FDIC exclude the outstanding balance of PPP loans when calculating a large or highly complex bank's assessment, rather than excluding only the loans pledged to the PPPLF. Specifically, several commenters recommended that the FDIC exclude all PPP loans from total assets in the calculation of the core earnings ratio and the average short-term funding measure for purposes of determining a large or highly complex bank's assessment rate. Some commenters specified that, in making these modifications, the FDIC should exclude the quarter-end balance of outstanding PPP loans, as opposed to the quarterly average.

For the reasons described above, under the final rule the FDIC will exclude the quarter-end outstanding amount of PPP loans, whether or not they have been pledged to the PPPLF, from total assets in the core earnings ratio[27] and the short-term funding measure[28] used to determine a large or highly complex institution's assessment rate.

b. Exclusion of PPP Loans From the Loan Portfolio in Various Risk Measures

As proposed, the FDIC will exclude PPP loans from an IDI's loan portfolio in risk measures used to determine a large or highly complex IDI's assessment rate. In calculating the growth-adjusted portfolio concentration measure,[29] which is applicable to large IDIs, the FDIC will exclude the quarter-end outstanding balance of PPP loans from C&I Loans.[30] In calculating the trading asset ratio,[31] which is applicable to highly complex IDIs, the FDIC will reduce the balance of loans by the quarter-end outstanding balance of PPP loans.[32] The FDIC also will exclude the

[25] Based on data from the SBA and on the terms of the PPP, the FDIC expects that most PPP loans will be categorized as Commercial and Industrial (C&I) Loans. Collateral is not required to secure the loans. Therefore, the FDIC expects that PPP loans will not be included in other loan categories, such as those that are secured by real estate or consumer loans, in measures used to determine an IDI's deposit insurance assessment rate. *See* Public Law 116–136 (Mar. 27, 2020), Public Law 116–142 (June 5, 2020), 85 FR 20811 (Apr. 15, 2020), 85 FR 36308 (June 16, 2020), and Slide 8, Industry by NAICS Subsector, Paycheck Protection Program (PPP) Report: Approvals through 06/06/2020, Small Business Administration, available at: *https://www.sba.gov/sites/default/files/2020-06/PPP_Report_Public_200606%20FINAL_-508.pdf.*

[26] All Other Loans are not included in the LMI; therefore, the FDIC will exclude the outstanding balance of PPP loans, which include loans pledged to the PPPLF, first from the balance of C&I Loans, followed by Agricultural Loans. The loan categories used in the Loan Mix Index are: Construction and Development, Commercial and Industrial, Leases, Other Consumer, Real Estate Loans Residual, Multifamily Residential, Nonfarm Nonresidential, 1–4 Family Residential, Loans to Depository Banks, Agricultural Real Estate, Agricultural Loans. 12 CFR 327.16(a)(1)(ii)(B).

[27] For the core earnings ratio, the FDIC divides the four-quarter sum of merger-adjusted core earnings by the average of five quarter-end total assets (most recent and four prior quarters). See Appendix A to subpart A of 12 CFR part 327.

[28] For highly complex IDIs, the short-term funding ratio is calculated by dividing average short-term funding by average total assets. See Appendix A to subpart A of 12 CFR part 327.

[29] For large banks, the concentration measure is the higher of the ratio of higher-risk assets to Tier 1 capital and reserves, and the growth-adjusted portfolio measure. For highly complex institutions, the concentration measure is the highest of three measures: the ratio of higher risk assets to Tier 1 capital and reserves, the ratio of top 20 counterparty exposure to Tier 1 capital and reserves, and the ratio of the largest counterparty exposure to Tier 1 capital and reserves. *See* Appendix A to subpart A of part 327.

[30] All Other Loans and Agricultural Loans are not included in the growth-adjusted portfolio concentration measure; therefore, consistent with the proposal, the FDIC will exclude the outstanding balance of PPP loans from the balance of C&I Loans under the final rule. The loan concentration categories used in the growth-adjusted portfolio concentration measure are: construction and development, other commercial real estate, first lien residential mortgages (including non-agency residential mortgage-backed securities), closed-end junior liens and home equity lines of credit, commercial and industrial loans, credit card loans, and other consumer loans. Appendix C to subpart A of 12 CFR part 327.

[31] *See* 12 CFR 327.16(b)(2)(ii)(A)(2)(vii).

[32] To minimize reporting burden, the FDIC will reduce average loans in the trading asset ratio by the outstanding balance of PPP loans, as of quarter-

quarter-end balance of outstanding PPP loans from a large or highly complex IDI's loan portfolio in calculating the loss severity measure, as described below.

A few commenters suggested that PPP loans should not be classified as ''higher risk assets'' in calculating the concentration measures for large or highly complex institutions. In response to these comments the FDIC is clarifying that government guaranteed loans are not considered ''higher-risk assets'' for assessment purposes. Because PPP loans are guaranteed by the SBA, they are already excluded from ''higher-risk assets'' in calculating the concentration measures for large or highly complex institutions and no additional modification is necessary.[33]

c. Exclusion of Borrowings Under the PPPLF From Total Liabilities in Various Risk Measures

As proposed, under the final rule the FDIC will exclude borrowings from the Federal Reserve Banks under the PPPLF from an institution's liabilities in the calculation of the core deposit ratio, the balance sheet liquidity ratio, and the loss severity measure used to determine a large or highly complex IDI's assessment rate. The final rule clarifies that the exclusion of amounts borrowed from the Federal Reserve Banks under the PPPLF from an institution's total liabilities will only affect risk measures used to determine the assessment rate for a large or highly complex IDI because secured liabilities are not factored into the risk measures for determining the rate for an established small IDI.

Under the final rule, in calculating the core deposit ratio [34] for large or highly complex IDI, the FDIC will exclude from total liabilities borrowings from Federal Reserve Banks under the PPPLF.

Also as proposed, under the final rule the FDIC will exclude an IDI's reported borrowings from the Federal Reserve Banks under the PPPLF with a remaining maturity of one year or less from liabilities included in the denominator of the balance sheet liquidity ratio.[35] Additionally, in calculating the balance sheet liquidity ratio, the FDIC will treat the quarter-end outstanding balance of PPP loans that exceed borrowings from the Federal Reserve Banks under the PPPLF as highly liquid assets, as proposed. Because PPP loans are riskless and banks with PPP loans in excess of PPPLF borrowings can access additional liquidity by pledging such loans to PPPLF, the FDIC will treat these PPP loans as highly liquid assets. To the extent that a PPP loan represents collateral for borrowings other than under the PPPLF—such as an FHLB advance—treating the loan as highly liquid will provide an assessment benefit for IDIs that may not be able to readily access additional liquidity. PPP loans can no longer be pledged as collateral to the PPPLF after September 30, 2020, the date after which no new extensions of credit will be made under the PPPLF, unless extended by the Board of Governors and the Department of Treasury. Therefore, under the final rule, the quarter-end outstanding balance of PPP loans that exceed borrowings from the Federal Reserve Banks under the PPPLF will be treated as highly liquid assets until September 30, 2020, unless the Board of Governors and the Department of Treasury extend the deadline to apply for new extensions of credit under the PPPLF.

d. Treatment of PPP Loans and Borrowings Under the PPPLF in Calculating the Loss Severity Measure

The loss severity measure estimates the relative magnitude of potential losses to the DIF in the event of a large or highly complex IDI's failure.[36] Under the final rule, the FDIC will remove the effect of participation in the PPP and PPPLF, as proposed. In calculating the loss severity score under the final rule, the FDIC will remove the effect of PPP loans in an IDI's loan portfolio using a waterfall approach, as proposed. Under this approach, the FDIC will exclude PPP loans from an IDI's balance of C&I Loans. In the unlikely event that the outstanding balance of PPP loans exceeds the balance of C&I Loans, the FDIC will exclude any remaining balance from All Other Loans, up to the total amount of All Other Loans, followed by Agricultural Loans, up to the total amount of Agricultural Loans.

To the extent that an IDI's outstanding PPP loans are not pledged to the PPPLF, such loans may be funded by a variety of liabilities, such as deposits and secured borrowings. While IDIs will report borrowings under the PPPLF that are secured by PPP loans, the FDIC will not have sufficient data to determine other sources of funding for an IDI's PPP loans. Obtaining such data would require additional reporting burden on IDIs. Because the FDIC will not have sufficient data to remove each type of non-PPPLF funding used to make PPP loans, under the final rule the FDIC will remove PPP loans in excess of its PPPLF borrowings from a large or highly complex IDI's loan portfolio based on the waterfall approach described above and reallocate the same amount to cash. Such treatment of PPP loans is consistent with the proposal to treat PPP loans in excess of PPPLF borrowings as riskless for purposes of calculating a large or highly complex IDI's loss severity score.

To match the removal of PPP loans funded through borrowings under the PPPLF from an IDI's loan portfolio, the FDIC will remove the total amount of outstanding borrowings from the Federal Reserve Banks under the PPPLF from short- and long-term secured borrowings, as appropriate.

C. Mitigating the Effects of PPP Loans and Assets Purchased Under the MMLF on Certain Adjustments to an IDI's Assessment Rate

The FDIC proposed to exclude the quarterly average amount of loans pledged to the PPPLF and the quarterly average amount of assets purchased under the MMLF from the calculation of the unsecured debt adjustment, depository institution debt adjustment, and the brokered deposit adjustment. These adjustments would continue to be applied to an IDI's initial base assessment rate, as applicable, for purposes of calculating the IDI's total base assessment rate.[37]

end, rather than requiring institutions to additionally report the average balance of PPP loans.

[33] Appendix C to subpart A of part 327 describes the concentration measures, including the ratio of higher-risk assets to tier 1 capital and reserves.

[34] The core deposit ratio is defined as total domestic deposits excluding brokered deposits and uninsured non-brokered time deposits divided by total liabilities. *See* Appendix A to subpart A of 12 CFR part 327.

[35] The balance sheet liquidity ratio is defined as the sum of cash and balances due from depository institutions, federal funds sold and securities purchased under agreements to resell, and the market value of available-for-sale and held-to-maturity agency securities (excludes agency mortgage-backed securities but includes all other agency securities issued by the U.S. Treasury, U.S. government agencies, and U.S. government sponsored enterprises) divided by the sum of federal funds purchased and repurchase agreements, other borrowings (including FHLB) with a remaining maturity of one year or less, 5 percent of insured domestic deposits, and 10 percent of uninsured domestic and foreign deposits. Appendix A to subpart A of 12 CFR part 327.

[36] Appendix D to subpart A of 12 CFR 327 describes the calculation of the loss severity measure.

[37] For certain IDIs, adjustments include the unsecured debt adjustment and the depository institution debt adjustment (DIDA). The unsecured debt adjustment decreases an IDI's total assessment rate based on the ratio of its long-term unsecured debt to its assessment base. The DIDA increases an IDI's total assessment rate if it holds long-term, unsecured debt issued by another IDI. In addition, large IDIs that meet certain criteria and new small IDIs are subject to the brokered deposit adjustment. The brokered deposit adjustment increases the total assessment rate of large IDIs that hold significant

Continued

As previously described, many commenters requested that the FDIC provide relief throughout the assessment calculations for all PPP lending, whether funded under the PPPLF or through other sources of liquidity, including deposits. A few commenters expressed support for the proposed modifications to these adjustments.

After considering comments received, and in recognition of the important role IDIs play in providing liquidity to small businesses and helping to stabilize the broader economy in the midst of the economic disruption caused by COVID–19, as well as in recognition that some banks have funded PPP loans through liabilities other than borrowings under the PPPLF, under the final rule, the FDIC will exclude the quarter-end outstanding amount of PPP loans and the quarterly average amount of assets purchased under the MMLF from the calculation of the unsecured debt adjustment, depository institution debt adjustment, and the brokered deposit adjustment.

While the deposit insurance assessment calculations typically adjust quarter-end amounts by quarter-end amounts and average amounts by average amounts, in the interest of minimizing reporting burden, the agencies are collecting only the quarter-end outstanding balance of PPP loans and not the average amount. Accordingly, there are a few modifications under this final rule for which an average amount is adjusted by the quarter-end outstanding balance of PPP loans, as is the case with these three adjustments to an IDI's assessment rate.

D. Offset to Deposit Insurance Assessment Due To Increase in the Assessment Base Attributable to PPP Loans and Assets Purchased Under the MMLF

Under the final rule, the FDIC will provide an offset to an IDI's total assessment amount due for the increase to its assessment base attributable to the quarter-end outstanding balance of PPP loans and participation in the MMLF.[38]

Under the proposed rule, the FDIC would have provided an offset to an IDI's total assessment amount due for the increase to its assessment base attributable to participation in the PPPLF and MMLF.[39] To determine this offset amount, the FDIC proposed to calculate the total of the quarterly average amount of assets pledged to the PPPLF and the quarterly average amount of assets purchased under the MMLF, multiply that amount by an IDI's total base assessment rate (after excluding the effect of participation in the MMLF and PPPLF, as proposed), and subtract the resulting amount from an IDI's total assessment amount.[40]

The FDIC received numerous comments stating that the proposed modifications would not completely offset the impact of PPP lending on the assessment base. Some commenters requested that the FDIC exclude the quarter-end balance of outstanding PPP loans from the assessment base.

After considering the comments received, and recognizing that some banks have funded PPP loans by obtaining additional funding, such as deposits or borrowings other than under the PPPLF, and therefore increased their total assets and total liabilities, under the final rule the FDIC will use the quarter-end outstanding amount of PPP loans rather than the quarterly average amount of assets pledged to the PPPLF in calculating the offset to an IDI's total assessment amount. To determine this offset amount, the FDIC will sum the total of the quarter-end outstanding balance of PPP loans and the quarterly average amount of assets purchased under the MMLF, multiply that amount by an IDI's total base assessment rate (after excluding the effects of participation in the PPP, MMLF, and PPPLF, consistent with the final rule), and subtract the resulting amount from an IDI's total assessment amount.

While IDIs will report loans pledged to the PPPLF and borrowings under the PPPLF starting with the June 30, 2020, Call Report, it will not be possible for the FDIC to differentiate between an IDI that increased its total assets solely due to PPP funded by additional liabilities, and an IDI that used existing balance sheet liquidity to fund PPP loans and therefore did not increase its total assets or its assessment base. To the extent an IDI relies on existing balance sheet liquidity, including cash and securities to fund PPP loans, the IDI would not increase its total assets and would therefore not experience an increase to the assessment base as a result of its participation in the PPP. An IDI that obtains additional funding to make PPP loans, however, would increase its total liabilities by the amount of additional funding and increase its total assets by the amount of PPP loans made with such funding, resulting in an increase in its assessment base.

In recognition of the extraordinary steps taken by IDIs to provide liquidity to small businesses and help stabilize the broader economy in the midst of the economic disruption caused by COVID–19, and to more fully mitigate the deposit insurance assessment effect of participation in the PPP, the final rule will provide an offset to an IDI's assessment amount that is calculated using the total outstanding balance of PPP loans at quarter end and the quarterly average balance of assets purchased under the MMLF. Including total PPP loans in the calculation of the offset ensures that the final rule will more fully mitigate the assessment effects of participation in PPP lending. To the extent that an institution did not increase its total assets as a result of PPP participation, the final rule may, for some institutions, result in an assessment reduction that exceeds the actual increase in assessments that an institution would have experienced due to participation in the PPP.

As discussed above, in the interest of minimizing reporting burden, there are a few modifications under this final rule for which an average amount is adjusted by the quarter-end outstanding balance of PPP loans, as is the case with the calculation of the offset to the assessment base.

Because the FDIC proposed to calculate the offset as the sum of the quarterly average amount of loans pledged to the PPPLF and the quarterly average of assets purchased under the MMLF, the Board of Governors is requiring that insured branches of foreign banks report only these two additional items on the FFIEC 002 starting with the report filed as of June 30, 2020. Adjustments to the calculation of the assessment rate of an insured branch of foreign banks to mitigate the effect of participation in the PPP, PPPLF, and MMLF are not necessary.[41] Under the final rule, the FDIC will provide an offset to the assessment of an

concentrations of brokered deposits and that are less than well capitalized, not CAMELS composite 1- or 2-rated, as well as new, small IDIs that are not assigned to Risk Category I. *See* 12 CFR 327.16(e).

[38] Under the final rule, the offset to the total assessment amount due for the increase to the assessment base attributable to the quarter-end outstanding balance of PPP loans and participation in the MMLF will apply to all IDIs, including new small institutions as defined in 12 CFR 327.8(w), and insured U.S. branches and agencies of foreign banks.

[39] Under the proposed rule, the offset to the total assessment amount due for the increase to the assessment base attributable to participation in the PPPLF and MMLF would have applied to all IDIs, including new small institutions as defined in 12 CFR 327.8(w), and insured U.S. branches and agencies of foreign banks.

[40] Currently, an IDI's total assessment amount on its quarterly certified statement invoice is equal to the product of the institution's assessment base (calculated in accordance with 12 CFR 327.5) multiplied by the institution's assessment rate (calculated in accordance with 12 CFR 327.4 and 12 CFR 327.16). *See* 12 CFR 327.3(b)(1).

[41] Insured branches are assessed for deposit insurance in accordance with 12 CFR 327.16(c).

insured branch of a foreign bank that is calculated by summing the quarterly average amount of assets purchased under the MMLF with either the quarterly average amount of loans pledged to the PPPLF or the amount of outstanding PPP loans at the end of the quarter, based on available data.[42]

E. Classification of IDIs as Small, Large, or Highly Complex for Assessment Purposes

In defining IDIs for assessment purposes under the proposed rule, the FDIC would have excluded from an IDI's total assets the amount of loans pledged to the PPPLF and assets purchased under the MMLF. Several commenters specifically requested that the FDIC provide full credit for the outstanding balance of PPP loans throughout the assessment calculations, including in the classification of an IDI as small, large, or highly complex for deposit insurance assessment purposes.

After considering these comments and for the reasons described above, the FDIC will exclude the quarter-end outstanding balance of all PPP loans, rather than only those PPP loans pledged to the PPPLF, in the classification of an IDI as small, large, or highly complex for assessment purposes. As a result, the FDIC will not reclassify a small institution as large or a large institution as a highly complex institution solely due to participation in the PPPLF and MMLF programs, which would otherwise have the effect of expanding an IDI's balance sheet. In addition, an institution with total assets between $5 billion and $10 billion, excluding the amount of PPP loans and assets purchased under the MMLF, may request that the FDIC determine its assessment rate as a large institution.[43]

F. Other Conforming Amendments to the Assessment Regulations

Under the final rule, the FDIC will make conforming amendments to the FDIC's assessment regulations to effectuate the modifications described above and consistent with the proposed rule. These conforming amendments will ensure that the modifications to an IDI's assessment rate and the offset to an IDI's assessment amount under the final rule are properly incorporated into the assessment regulation provisions governing the calculation of an IDI's quarterly deposit insurance assessment.

III. Expected Effects

To facilitate participation in the PPP and use of the PPPLF and MMLF, under the final rule the FDIC will mitigate the deposit insurance assessment effects of PPP loans, amounts borrowed under the PPPLF, and assets purchased under the MMLF. Estimating the dollar amount of assessment mitigation resulting from the rule is difficult. Because IDIs are not yet reporting the necessary data, the FDIC does not have sufficient data on the distribution of loans among IDIs and other non-bank financial institutions made under the PPP, the loan categories of PPP loans held, the types of liabilities used to fund PPP lending, the extent to which PPP participation resulted in an increase to an IDI's total assets and total liabilities, nor on the dollar volume of assets purchased under the MMLF by IDIs. Therefore, the FDIC has estimated the potential effects of these programs on deposit insurance assessments based on certain assumptions. Although this estimate is subject to considerable uncertainty, the FDIC estimates that application of the final rule could provide quarterly assessment relief to IDIs participating in these programs totaling approximately $150 million, based on the assumptions described below which improve upon the assumptions applied in the proposal given information provided by commenters and FDIC analysis of updated data published by the SBA on the PPP and Federal Reserve Board on the PPPLF and MMLF. Because PPP loans must be issued by June 30, 2020, and because the FDIC expects that eligible IDIs will begin receiving PPP loan forgiveness reimbursement from the SBA, the FDIC expects that the amount of assessment relief provided under this final rule will decline in subsequent quarters.

The FDIC anticipates that PPP loans will be held by both IDIs and non-IDIs, and that IDIs will fund PPP loans through growth in liabilities, including through additional deposits, borrowings from Federal Reserve Banks under the PPPLF, and other secured borrowings, although the rate of IDI participation in the PPP and PPPLF is uncertain.

Based on Call Report data as of March 31, 2020, and assuming that (1) $600 billion of PPP loans are held by IDIs,[44] (2) the PPP loans that are held by IDIs are evenly distributed across all IDIs that have C&I loans, which results in a 33 percent increase in those loans, except where IDI-specific data are available, (3) 5.9 percent of PPP loans held by IDIs are pledged to the PPPLF, except where IDI-specific data are available from the Federal Reserve Board, (4) 100 percent of loans pledged to the PPPLF are matched by borrowings from the Federal Reserve Banks with maturities greater than one year, (5) IDIs fund the remaining 94.1 percent of PPP loans with additional funding, including deposits or secured borrowings, and (6) large and highly complex IDIs hold approximately $30 billion in assets pledged under the MMLF,[45] the FDIC estimates that (1) quarterly deposit insurance assessments would increase for some institutions absent the final rule and (2) the final rule could provide quarterly assessment relief of approximately $150 million.

The actual effect of these programs on deposit insurance assessments will vary depending on participation in the programs by IDIs and non-IDIs, the maturity of borrowings from the Federal Reserve Banks under these programs, the extent of reliance on existing sources of funding for PPP lending, and the types of loans held under the PPP, as described above. While items on the Call Report will enable the FDIC to quantify funding from the PPPLF, it is not possible for the FDIC to quantify how much an IDI's total assets grew due to PPP loans relative to other balance sheet changes, including increased cash or other loans made either in response to the economic disruption caused by COVID–19 or that would have otherwise

[42] Through the Board of Governors, the FDIC anticipates revising the reporting of the quarterly average amount of loans pledged to the PPPLF and instead requiring insured branches of foreign banks to report the outstanding balance of PPP loans at quarter-end, beginning as of September 30, 2020. For purposes of determining the deposit insurance assessment amount for an insured branch of a foreign bank as of June 30, 2020, an insured branch additionally may provide to the FDIC certified information on the amount of outstanding PPP loans at the end of the quarter.

[43] *See* 12 CFR 327.16(f).

[44] Section 101(a)(1) of the Paycheck Protection Program and Health Care Enhancement Act, Public Law 116–139, authorizes $659 billion for the Paycheck Protection Program. The FDIC assumes all the authorized funds will be distributed and roughly 90 percent will be held by IDIs.

[45] These assumptions reflect current participation in the PPP and PPPLF and that all authorized funds under the PPP will be distributed, based on data published by the SBA and Federal Reserve Board. These assumptions use transaction-level data published by the Federal Reserve Board, SBA data to estimate the participation in the PPP program of nonbank lenders including CDFI funds, CDCs, Microlenders, Farm Credit Lenders, and FinTechs. *See* Paycheck Protection Program (PPP) Report: Approvals through 06/06/2020, Small Business Administration, available at: *https://www.sba.gov/sites/default/files/2020-06/PPP_Report_Public_200606%20FINAL_-508.pdf;* Factors Affecting Reserve Balances, Federal Reserve statistical release H.4.1, as of June 11, 2020, available at: *https://www.federalreserve.gov/releases/h41/current/;* Board of Governors of the Federal Reserve System, Money Market Mutual Fund Liquidity Facility, as of June 10, 2020, available at: *https://fred.stlouisfed.org/series/H41RESPPALDBNWW;* and Board of Governors of the Federal Reserve System, PPPLF Transaction-specific Disclosures as of May 15, 2020, available at: *https://www.federalreserve.gov/publications/files/PPPLF-transaction-specific-disclosures-5-15-20.xlsx.*

been made in the normal course of business. For example, to the extent an IDI relies on existing balance sheet liquidity including cash and securities to fund PPP lending, the IDI would not experience an increase in liabilities and would therefore not experience an increase to the assessment base as a result of its participation in PPP lending. Accordingly, the assumption that IDIs will rely entirely on additional funding for PPP lending could reduce quarterly assessments by more than they will increase due to participation in PPP lending, as some IDIs may rely on existing balance sheet liquidity to fund PPP lending.

IV. Effective Date of the Final Rule

As stated above, in response to recent events which have significantly and adversely impacted global financial markets along with the spread of COVID–19, which has slowed economic activity in many countries, including the United States, the agencies moved quickly due to exigent circumstances and issued two interim final rules to allow banking organizations to neutralize the regulatory capital effects of purchasing assets under the MMLF and loans pledged to the PPPLF. Since the implementation of the PPP, PPPLF, and MMLF, the FDIC has observed uncertainty from the public and the banking industry and wants to provide clarity on how, if at all, these programs would affect the assessments of IDIs which participate in these programs. Because PPP loans must be issued by June 30, 2020, the full assessment impact of these programs will first occur in the second quarterly assessment period. Congress has also given indications that implementation of these programs is an urgent policy matter, instructing the SBA to issue regulations for the PPP within 15 days of the CARES Act's enactment.[46]

The final rule will take effect immediately upon publication in the **Federal Register** with an application date of April 1, 2020, and changes made as a result of this rule will be reflected in the invoices for deposit insurance assessments due September 30, 2020.[47] An immediate effective date and an application date of April 1, 2020, will enable the FDIC to provide the relief contemplated in this rulemaking as soon as practicable, starting with the second quarter of 2020, and provide certainty to IDIs regarding the assessment effects of participating in the PPP, PPPLF, or MMLF for the second quarter of 2020, which is the first assessment quarter in which the assessments will be affected.

V. Administrative Law Matters

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA),[48] ''[t]he required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.'' [49] Under this rulemaking, the amendments to the FDIC's deposit insurance assessment regulations would be effective upon publication of the final rule in the **Federal Register**. The FDIC finds good cause that the publication of this final rule can be effective immediately in order to fully effectuate the intent of ensuring that IDIs benefit from the mitigation effects to their deposit insurance assessments as soon as practicable, and to provide IDIs with certainty regarding the assessment effects of participating in the PPP, PPPLF, or MMLF for the second quarter of 2020, which is the first assessment quarter in which the assessments will be affected.

As explained in the Supplementary Information section and in the proposed rule, the FDIC expects that an IDI that participates in either the PPP, the PPPLF, or the MMLF program could be subject to increased deposit insurance assessments, beginning with the second quarter of 2020. The FDIC invoices for quarterly deposit insurance assessments in arrears. As a result, invoices for the second quarterly assessment period of 2020 (*i.e.,* April 1—June 30) would be made available to IDIs in September 2020, with a payment due date of September 30, 2020.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a final rule, to prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of a final rule on small entities.[50] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[51] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-insured institutions. Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA.[52] The final rule relates directly to the rates imposed on IDIs for deposit insurance and to the deposit insurance assessment system that measures risk and determines each established small bank's assessment rate and is, therefore, not subject to the RFA. Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

Based on quarterly regulatory report data as of March 31, 2020, the FDIC insures 5,125 depository institutions,[53] of which 3,771 are defined as small entities by the terms of the RFA.[54] The final rule applies to all FDIC-insured

[46] *See* CARES Act, § 1114. Public Law 116–142 (June 05, 2020). The SBA subsequently issued an interim final rule implementing sections 1102 and 1106 of the CARES Act. *See* 85 FR 20811 (April 15, 2020). On June 5, 2020, the PPP Flexibility Act was signed into law, amending key provisions of the CARES Act. The SBA issued an interim final rule implementing these provisions. *See* 85 FR 36308 (June 16, 2020).

[47] The application date of April 1, 2020, is permissible because the effects of the final rule will occur after its publication. The assessment amount owed on an IDI's quarterly certified statement invoice for the second quarterly assessment period of 2020 (*i.e.,* April 1–June 30) will be calculated on the basis of Call Report data as of June 30, 2020, with a payment due date of September 30, 2020. Furthermore, even if the effects of the final rule were retroactive, a rule is impermissibly retroactive only when it ''takes away or impairs vested rights acquired under existing law, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past.'' *See Nat'l Mining Ass'n* v. *Dep't of Labor,* 292 F.3d 849, 859 (D.C. Cir. 2002) (quoting *Nat'l Mining Ass'n* v. *Dep't of Interior,* 177 F.3d 1, 8 (D.C. Cir. 1999)) (internal quotations omitted). This final rule does none of those things.

[48] 5 U.S.C. 553.

[49] 5 U.S.C. 553(d).

[50] 5 U.S.C. 601 *et seq.*

[51] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, effective August 19, 2019). In its determination, the SBA ''counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[52] 5 U.S.C. 601.

[53] FDIC Call Report data, as of March 31, 2020.

[54] The FDIC does not have data to identify small entities as of March 2020. This count includes small entities as of December 31, 2019, as well as small entities that opened between December 2019 and March 2020.

institutions, but is expected to affect only those institutions that participate in the PPP, PPPLF, and MMLF. The FDIC does not presently have access to information that would enable it to identify which institutions are participating in these programs and lending facilities.

As previously discussed, to facilitate participation in the PPP and use of the PPPLF and MMLF, the final rule mitigates the deposit insurance assessment effects of PPP loans, borrowings under the PPPLF, and assets purchased under the MMLF. Therefore, the FDIC estimated the potential effects of these programs on deposit insurance assessments based on certain assumptions. Based on Call Report data as of March 31, 2020, assuming that (1) $600 billion of PPP loans are held by IDIs,[55] (2) the PPP loans that are held by IDIs are evenly distributed across all IDIs that have C&I loans, which results in a 33 percent increase in those loans, except where IDI-specific data are available, (3) 5.9 percent of PPP loans held by IDIs are pledged to the PPPLF, except where IDI-specific data are available, (4) 100 percent of loans pledged to the PPPLF are matched by borrowings from the Federal Reserve Banks with maturities greater than one year,[56] and (5) IDIs fund the remaining 94.1 percent of PPP loans with additional funding, including deposits or secured borrowings, the FDIC estimates that the final rule will save small IDIs approximately $10 million in quarterly deposit insurance assessments.

The actual effect of these programs on deposit insurance assessments will vary depending on IDIs' participation in the PPP and Federal Reserve Facilities, the maturity of borrowings from the Federal Reserve Banks under these programs, the extent of reliance on existing sources of funding for PPP lending, and the types of loans held under the PPP.

C. Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on IDIs, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[57]

The amendments to the FDIC's deposit insurance assessment regulations under this final rule do not impose additional reporting, disclosures, or other new requirements. Nonetheless, the FDIC considered the requirements of RCDRIA when finalizing this rule with an immediate effective date. The FDIC invited comments regarding the application of RCDRIA to the final rule, but did not receive comments on this topic.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number.[58] The final rule affects the agencies' current information collections for the Call Report (FFIEC 031, FFIEC 041, and FFIEC 051). The agencies' OMB control numbers for the Call Reports are: Comptroller of the Currency OMB No. 1557–0081; Board of Governors OMB No. 7100–0036; and FDIC OMB No. 3064–0052. The final rule also affects the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), which the Federal Reserve System collects and processes on behalf of the three agencies (Board of Governors OMB No. 7100–0032). Submissions were made by the agencies to OMB for their respective information collections. The changes to the Call Report, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, and their respective instructions, have been addressed in a separate **Federal Register** notice or notices.

E. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[59] requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invited comment regarding the use of plain language, but did not receive any comments on this topic.

F. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[60] The OMB has determined that the final rule is a major rule for purposes of the Congressional Review Act. If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[61] The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or Local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[62] As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the

[55] Section 101(a)(1) of the Paycheck Protection Program and Health Care Enhancement Act, Pub. L. 116–139, authorizes $659 billion for the Paycheck Protection Program. The FDIC assumes that all the authorized funds will be distributed and roughly 90 percent will be held by IDIs.

[56] These assumptions reflect current participation in the PPP and PPPLF and that all the authorized funds under the PPP will be distributed, based on data published by the SBA and Federal Reserve Board. These assumptions use SBA data to estimate the participation in the PPP program of nonbank lenders including CDFI funds, CDCs, Microlenders, Farm Credit Lenders, and FinTechs. *See* Paycheck Protection Program (PPP) Report: Approvals from through 06/06/2020, Small Business Administration, available at: *https://www.sba.gov/sites/default/files/2020-06/PPP_Report_Public_200606%20FINAL_-508.pdf;* Factors Affecting Reserve Balances, Federal Reserve statistical release H.4.1, as of June 11, 2020, available at: *https://www.federalreserve.gov/releases/h41/current/,* and Board of Governors of the Federal Reserve System, Money Market Mutual Fund Liquidity Facility, as of June 10, 2020, available at: *https://fred.stlouisfed.org/series/H41RESPPALDBNWW;* Board of Governors of the Federal Reserve System, PPPLF Transaction-specific Disclosures as of May 15, 2020, available at: *https://www.federalreserve.gov/publications/files/PPPLF-transaction-specific-disclosures-5-15-20.xlsx.*

[57] 5 U.S.C. 553(b)(B), 5 U.S.C. 553(d), 5 U.S.C. 601 *et seq.,* 5 U.S.C. 801 *et seq.,* 5 U.S.C. 801(a)(3), 5 U.S.C. 804(2), 5 U.S.C. 808(2), 12 U.S.C. 4802(a), 12 U.S.C. 4802(b).

[58] 4 U.S.C. 3501–3521.

[59] 12 U.S.C. 4809.

[60] 5 U.S.C. 801 *et seq.*

[61] 5 U.S.C. 801(a)(3).

[62] 5 U.S.C. 804(2).

Government Accountability Office for review.

Section 808 of the Congressional Review Act provides that any rule as to which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.[63] Although OMB has determined that this is a major rule for purposes of the Congressional review Act, and hence would ordinarily be subject to a 60-day delayed effective date, the FDIC believes there is good cause for an immediate effective date. In this case, the FDIC provided notice and accepted comment, as required by section 7 of the FDI Act, but further public procedure and the attendant delay would be contrary to the public interest.[64]

The FDIC believes that, under section 808 of the Congressional Review Act, good cause exists for the final rule to become effective without further public procedure and immediately upon its filing for publication, as delaying the effective date would be contrary to the public interest. In particular, by providing for an immediate effective date for the final rule, the intent of ensuring that IDIs benefit from the mitigation effects to their deposit insurance assessments starting with the second quarter of 2020, which is the first assessment quarter in which the assessments will be affected, and will thereby provide IDIs with certainty regarding the assessment effects of participating in the PPP, PPPLF, or MMLF.

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

Authority and Issuance

For the reasons stated above, the Federal Deposit Insurance Corporation amends 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

■ 1. The authority citation for part 327 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817–19, 1821.

■ 2. Amend § 327.3 by revising paragraph (b)(1) to read as follows:

§ 327.3 Payment of assessments.

* * * * *

(b) * * *

(1) *Quarterly certified statement invoice.* Starting with the first assessment period of 2007, no later than 15 days prior to the payment date specified in paragraph (b)(2) of this section, the Corporation will provide to each insured depository institution a quarterly certified statement invoice showing the amount of the assessment payment due from the institution for the prior quarter (net of credits or dividends, if any), and the computation of that amount. Subject to paragraph (e) of this section and § 327.17, the invoiced amount on the quarterly certified statement invoice shall be the product of the following: The assessment base of the institution for the prior quarter computed in accordance with § 327.5 multiplied by the institution's rate for that prior quarter as assigned to the institution pursuant to §§ 327.4(a) and 327.16.

* * * * *

■ 3. Amend § 327.8 by revising paragraphs (e), (f), and (g)(1) to read as follows:

§ 327.8 Definitions.

* * * * *

(e) *Small institution.* (1) An insured depository institution with assets of less than $10 billion, excluding assets as described in § 327.17(e), as of December 31, 2006, and an insured branch of a foreign institution shall be classified as a small institution.

(2) Except as provided in paragraph (e)(3) of this section and § 327.17(e), if, after December 31, 2006, an institution classified as large under paragraph (f) of this section (other than an institution classified as large for purposes of §§ 327.9(e) and 327.16(f)) reports assets of less than $10 billion in its quarterly reports of condition for four consecutive quarters, excluding assets as described in § 327.17(e), the FDIC will reclassify the institution as small beginning the following quarter.

(3) An insured depository institution that elects to use the community bank leverage ratio framework under 12 CFR 3.12(a)(3), 12 CFR 217.12(a)(3), or 12 CFR 324.12(a)(3), shall be classified as a small institution, even if that institution otherwise would be classified as a large institution under paragraph (f) of this section.

(f) *Large institution.* An institution classified as large for purposes of §§ 327.9(e) and 327.16(f) or an insured depository institution with assets of $10 billion or more, excluding assets as described in § 327.17(e), as of December 31, 2006 (other than an insured branch of a foreign bank or a highly complex institution) shall be classified as a large institution. If, after December 31, 2006, an institution classified as small under paragraph (e) of this section reports assets of $10 billion or more in its quarterly reports of condition for four consecutive quarters, excluding assets as described in § 327.17(e), the FDIC will reclassify the institution as large beginning the following quarter.

(g) * * *

(1) A highly complex institution is:

(i) An insured depository institution (excluding a credit card bank) that has had $50 billion or more in total assets for at least four consecutive quarters, excluding assets as described in § 327.17(e), that is controlled by a U.S. parent holding company that has had $500 billion or more in total assets for four consecutive quarters, or controlled by one or more intermediate U.S. parent holding companies that are controlled by a U.S. holding company that has had $500 billion or more in assets for four consecutive quarters; or

(ii) A processing bank or trust company.

* * * * *

■ 4. Amend § 327.16 by adding introductory text and revising paragraph (f)(1) to read as follows:

§ 327.16 Assessment pricing methods—beginning the first assessment period after June 30, 2016, where the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent.

Subject to the modifications described in § 327.17, the following pricing methods shall apply beginning in the first assessment period after June 30, 2016, where the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent, and for all subsequent assessment periods.

* * * * *

(f) * * *

(1) *Procedure.* Any small institution with assets of between $5 billion and $10 billion, excluding assets as described in § 327.17(e), may request that the FDIC determine its assessment rate as a large institution. The FDIC will consider such a request provided that it has sufficient information to do so. Any such request must be made to the FDIC's Division of Insurance and Research. Any approved change will become effective within one year from the date of the request. If an institution whose request has been granted subsequently reports assets of less than $5 billion in its report of condition for four consecutive quarters, excluding assets as described in § 327.17(e), the institution shall be deemed a small institution for assessment purposes.

[63] 5 U.S.C. 808(2).

[64] *See* 12 U.S.C. 1817(b)(1)(F).

■ 5. Add § 327.17 to read as follows:

§ 327.17 Mitigating the Deposit Insurance Assessment Effect of Participation in the Money Market Mutual Fund Liquidity Facility, the Paycheck Protection Program Liquidity Facility, and the Paycheck Protection Program.

(a) *Mitigating the assessment effects of loans provided under the Paycheck Protection Program for established small institutions.* Applicable beginning April 1, 2020, the FDIC will take the following actions when calculating the assessment rate for established small institutions under § 327.16:

(1) *Exclusion of loans provided under the Paycheck Protection Program from net income before taxes ratio, nonperforming loans and leases ratio, other real estate owned ratio, brokered deposit ratio, and one-year asset growth measure.* As described in appendix E to this subpart, the FDIC will exclude the outstanding balance of loans provided under the Paycheck Protection Program, as reported on the Consolidated Report of Condition and Income, from the total assets in the calculation of the following risk measures: Net income before taxes ratio, the nonperforming loans and leases ratio, the other real estate owned ratio, the brokered deposit ratio, and the one-year asset growth measure, which are described in § 327.16(a)(1)(ii)(A).

(2) *Exclusion of loans provided under the Paycheck Protection Program from Loan Mix Index.* As described in appendix E to this subpart A, when calculating the loan mix index described in § 327.16(a)(1)(ii)(B), the FDIC will exclude:

(i) The outstanding balance of loans provided under the Paycheck Protection Program, as reported on the Consolidated Report of Condition and Income, from the total assets; and

(ii) The outstanding balance loans provided under the Paycheck Protection Program, as reported on the Consolidated Report of Condition and Income, from an established small institution's balance of commercial and industrial loans. To the extent that the outstanding balance of loans provided under the Paycheck Protection Program exceeds an established small institution's balance of commercial and industrial loans, as reported on the Consolidated Report of Condition and Income, the FDIC will exclude any remaining balance of these loans from the balance of agricultural loans, up to the amount of agricultural loans, in the calculation of the loan mix index.

(b) *Mitigating the assessment effects of loans provided under the Paycheck Protection Program for large or highly complex institutions.* Applicable beginning April 1, 2020, the FDIC will take the following actions when calculating the assessment rate for large institutions and highly complex institutions under § 327.16:

(1) *Exclusion of Paycheck Protection Program loans from average short-term funding ratio, core earnings ratio, growth-adjusted portfolio concentration measure, and trading asset ratio.* As described in appendix E of this subpart, the FDIC will exclude the outstanding balance of loans provided under the Paycheck Protection Program, as reported on the Consolidated Report of Condition and Income, from the calculation of the average short-term funding ratio, the core earnings ratio, the growth-adjusted portfolio concentration measure, and the trading asset ratio.

(2) *Exclusion of Paycheck Protection Program Liquidity Facility borrowings from core deposit ratio.* As described in appendix E of this subpart, the FDIC will exclude the total outstanding balance of borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility, as reported on the Consolidated Report of Condition and Income, from the calculation of the core deposit ratio.

(3) *Exclusion of Paycheck Protection Program Liquidity Facility borrowings from balance sheet liquidity ratio.* As described in appendix E to this subpart, when calculating the balance sheet liquidity measure described under appendix A to this subpart, the FDIC will:

(i) Include the outstanding balance of loans provided under the Paycheck Protection Program that exceed total borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility, as reported on the Consolidated Report of Condition and Income, in the amount of highly liquid assets until September 30, 2020, or, if the Board of Governors of the Federal Reserve System and the Secretary of the Treasury determine to extend the Paycheck Protection Program Liquidity Facility, until such date of extension; and

(ii) Exclude the outstanding balance of borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility with a remaining maturity of one year or less from other borrowings with a remaining maturity of one year or less, both as reported on the Consolidated Report of Condition and Income. (4) *Exclusion of loans provided under the Paycheck Protection Program and Paycheck Protection Program Liquidity Facility borrowings from loss severity measure.* As described in appendix E to this subpart, when calculating the loss severity measure described under appendix A to this subpart, the FDIC will exclude:

(i) The total outstanding balance of borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility, as reported on the Consolidated Report of Condition and Income, from short- and long-term secured borrowings, as appropriate; and

(ii) The outstanding balance of loans provided under the Paycheck Protection Program, as reported on the Consolidated Report of Condition and Income, from an institution's balance of commercial and industrial loans. To the extent that the outstanding balance of loans provided under the Paycheck Protection Program exceeds an institution's balance of commercial and industrial loans, the FDIC will exclude any remaining balance from all other loans, up to the total amount of all other loans, followed by agricultural loans, up to the total amount of agricultural loans, as reported on the Consolidated Report of Condition and Income. To the extent that an institution's outstanding balance of loans provided under the Paycheck Protection Program exceeds its borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility, the FDIC will add the amount of outstanding loans provided under the Paycheck Protection Program in excess of borrowings under the Paycheck Protection Program Liquidity Facility to cash.

(c) *Mitigating the effects of loans provided under the Paycheck Protection Program and assets purchased under the Money Market Mutual Fund Liquidity Facility on the unsecured adjustment, depository institution debt adjustment, and the brokered deposit adjustment to an insured depository institution's assessment rate.* As described in appendix E to this subpart, when calculating an insured depository institution's unsecured debt adjustment, depository institution debt adjustment, or the brokered deposit adjustment described in § 327.16(e), as applicable, the FDIC will exclude the outstanding balance of loans provided under the Paycheck Protection Program and the quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility, both as reported on the Consolidated Report of Condition and Income.

(d) *Mitigating the effects on the assessment base attributable to loans provided under the Paycheck Protection Program and participation in the Money Market Mutual Fund Liquidity Facility.* As described in appendix E to this

subpart, when calculating an insured depository institution's quarterly deposit insurance assessment payment due under this part, the FDIC will provide an offset to an institution's assessment for the increase to its assessment base attributable to participation in the Money Market Mutual Fund Liquidity Facility and loans provided under the Paycheck Protection Program.

(1) *Calculation of offset amount.* (i) To determine the offset amount, the FDIC will take the sum of the outstanding balance of loans provided under the Paycheck Protection Program and the quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility, both as reported on the Consolidated Report of Condition and Income, and multiply the sum by an institution's total base assessment rate, as calculated under § 327.16, including any adjustments under § 327.16(e).

(ii) To the extent that an institution does not report the outstanding balance of loans provided under the Paycheck Protection Program, such as in an insured branch's Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, the FDIC will take the sum of either the quarterly average amount of loans pledged to the Paycheck Protection Program Liquidity Facility as reported in the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or the outstanding balance of loans provided under the Paycheck Protection Program, as such certified data is provided to the FDIC, and the quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility, as reported in the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, and multiply the sum by an institution's total base assessment rate, as calculated under § 327.16.

(2) *Calculation of assessment amount due.* The FDIC will subtract the offset amount described in § 327.17(d)(1) from an insured depository institution's total assessment amount, consistent with § 327.3(b)(1).

(e) *Mitigating the effects of loans provided under the Paycheck Protection Program and assets purchased under the Money Market Mutual Fund Liquidity Facility on the classification of insured depository institutions as small, large, or highly complex for deposit insurance purposes.* When classifying an insured depository institution as small, large, or complex for assessment purposes under § 327.8, the FDIC will exclude from an institution's total assets the outstanding balance of loans provided under the Paycheck Protection Program and the balance of assets purchased under the Money Market Mutual Fund Liquidity Facility outstanding, both as reported on the Consolidated Report of Condition and Income. Any institution with assets of between $5 billion and $10 billion, excluding the outstanding balance of loans provided under the Paycheck Protection Program and the balance of assets purchased under the MMLF, both as reported on the Consolidated Report of Condition and Income, may request that the FDIC determine its assessment rate as a large institution under § 327.16(f).

(f) *Definitions.* For the purposes of this section:

(1) *Paycheck Protection Program.* The term ''Paycheck Protection Program'' means the program of that name that was created in section 1102 of the Coronavirus Aid, Relief, and Economic Security Act.

(2) *Paycheck Protection Program Liquidity Facility.* The term ''Paycheck Protection Program Liquidity Facility'' means the program of that name that was announced by the Board of Governors of the Federal Reserve System on April 9, 2020, and renamed as such on April 30, 2020.

(3) *Money Market Mutual Fund Liquidity Facility.* The term ''Money Market Mutual Fund Liquidity Facility'' means the program of that name announced by the Board of Governors of the Federal Reserve System on March 18, 2020.

■ 6. Add appendix E to subpart A of part 327 to read as follows:

Appendix E to Subpart A of Part 327—Mitigating the Deposit Insurance Assessment Effect of Participation in the Money Market Mutual Fund Liquidity Facility, the Paycheck Protection Program Liquidity Facility, and the Paycheck Protection Program

I. Mitigating the Assessment Effects of Paycheck Protection Program Loans for Established Small Institutions

TABLE E.1—EXCLUSIONS FROM CERTAIN RISK MEASURES USED TO CALCULATE THE ASSESSMENT RATE FOR ESTABLISHED SMALL INSTITUTIONS

Variables	Description	Exclusions
Leverage Ratio (%)	Tier 1 capital divided by adjusted average assets. (Numerator and denominator are both based on the definition for prompt corrective action.)	No Exclusion.
Net Income before Taxes/Total Assets (%).	Income (before applicable income taxes and discontinued operations) for the most recent twelve months divided by total assets[1].	Exclude from total assets the outstanding balance of loans provided under the Paycheck Protection Program.
Nonperforming Loans and Leases/Gross Assets (%).	Sum of total loans and lease financing receivables past due 90 or more days and still accruing interest and total nonaccrual loans and lease financing receivables (excluding, in both cases, the maximum amount recoverable from the U.S. Government, its agencies or government-sponsored enterprises, under guarantee or insurance provisions) divided by gross assets[2].	Exclude from gross assets the outstanding balance of loans provided under the Paycheck Protection Program.
Other Real Estate Owned/Gross Assets (%).	Other real estate owned divided by gross assets[2]	Exclude from gross assets the outstanding balance of loans provided under the Paycheck Protection Program.
Brokered Deposit Ratio	The ratio of the difference between brokered deposits and 10 percent of total assets to total assets. For institutions that are well capitalized and have a CAMELS composite rating of 1 or 2, brokered reciprocal deposits as defined in § 327.8(q) are deducted from brokered deposits. If the ratio is less than zero, the value is set to zero.	Exclude from total assets (in both numerator and denominator) the outstanding balance of loans provided under the Paycheck Protection Program.
Weighted Average of C, A, M, E, L, and S Component Ratings.	The weighted sum of the ''C,'' ''A,'' ''M,'' ''E'', ''L'', and ''S'' CAMELS components, with weights of 25 percent each for the ''C'' and ''M'' components, 20 percent for the ''A'' component, and 10 percent each for the ''E'', ''L'' and ''S'' components.	No Exclusion.
Loan Mix Index	A measure of credit risk described paragraph (A) of this section	Exclusions are described in paragraph (A) of this section.

TABLE E.1—EXCLUSIONS FROM CERTAIN RISK MEASURES USED TO CALCULATE THE ASSESSMENT RATE FOR ESTABLISHED SMALL INSTITUTIONS—Continued

Variables	Description	Exclusions
One-Year Asset Growth (%)	Growth in assets (adjusted for mergers [3]) over the previous year in excess of 10 percent.[4] If growth is less than 10 percent, the value is set to zero.	Exclude from total assets (in both numerator and denominator) the outstanding balance of loans provided under the Paycheck Protection Program.

[1] The ratio of Net Income before Taxes to Total Assets is bounded below by (and cannot be less than) -25 percent and is bounded above by (and cannot exceed) 3 percent.
[2] Gross assets are total assets plus the allowance for loan and lease financing receivable losses (ALLL) or allowance for credit losses, as applicable.
[3] Growth in assets is also adjusted for acquisitions of failed banks.
[4] The maximum value of the Asset Growth measure is 230 percent; that is, asset growth (merger adjusted) over the previous year in excess of 240 percent (230 percentage points in excess of the 10 percent threshold) will not further increase a bank's assessment rate.

(a) *Definition of Loan Mix Index.* The Loan Mix Index assigns loans in an institution's loan portfolio to the categories of loans described in the following table. Exclude from the balance of commercial and industrial loans the outstanding balance of loans provided under the Paycheck Protection Program. In the event that the outstanding balance of loans provided under the Paycheck Protection Program exceeds the balance of commercial and industrial loans, exclude the remaining balance from the balance of agricultural loans, up to the total amount of agricultural loans. The Loan Mix Index is calculated by multiplying the ratio of an institution's amount of loans in a particular loan category to its total assets, excluding the outstanding balance of loans provided under the Paycheck Protection Program by the associated weighted average charge-off rate for that loan category, and summing the products for all loan categories. The table gives the weighted average charge-off rate for each category of loan. The Loan Mix Index excludes credit card loans.

(b) [Reserved]

LOAN MIX INDEX CATEGORIES AND WEIGHTED CHARGE-OFF RATE PERCENTAGES

	Weighted charge-off rate percent
Construction & Development	4.4965840
Commercial & Industrial	1.5984506
Leases	1.4974551
Other Consumer	1.4559717
Real Estate Loans Residual	1.0169338
Multifamily Residential	0.8847597
Nonfarm Nonresidential	0.7289274
I—4 Family Residential	0.6973778
Loans to Depository banks	0.5760532
Agricultural Real Estate	0.2376712
Agriculture	0.2432737

II. Mitigating the Assessment Effects of Paycheck Protection Program Loans for Large or Highly Complex Institutions

TABLE E.2—EXCLUSIONS FROM CERTAIN RISK MEASURES USED TO CALCULATE THE ASSESSMENT RATE FOR LARGE OR HIGHLY COMPLEX INSTITUTIONS

Scorecard Measures[1]	Description	Exclusions
Leverage Ratio	Tier 1 capital for Prompt Corrective Action (PCA) divided by adjusted average assets based on the definition for prompt corrective action.	No Exclusion.
Concentration Measure for Large Insured depository institutions (excluding Highly Complex Institutions).	The concentration score for large institutions is the higher of the following two scores:	
(1) Higher-Risk Assets/Tier 1 Capital and Reserves.	Sum of construction and land development (C&D) loans (funded and unfunded), higher-risk commercial and industrial (C&I) loans (funded and unfunded), nontraditional mortgages, higher-risk consumer loans, and higher-risk securitizations divided by Tier 1 capital and reserves. See Appendix C for the detailed description of the ratio.	No Exclusion.
(2) Growth-Adjusted Portfolio Concentrations.	The measure is calculated in the following steps: (1) Concentration levels (as a ratio to Tier 1 capital and reserves) are calculated for each broad portfolio category:. • Constructions and land development (C&D), • Other commercial real estate loans, • First lien residential mortgages (including non-agency residential mortgage-backed securities),. • Closed-end junior liens and home equity lines of credit (HELOCs),. • Commercial and industrial loans (C&I), • Credit card loans, and • Other consumer loans. (2) Risk weights are assigned to each loan category based on historical loss rates.	

TABLE E.2—EXCLUSIONS FROM CERTAIN RISK MEASURES USED TO CALCULATE THE ASSESSMENT RATE FOR LARGE OR HIGHLY COMPLEX INSTITUTIONS—Continued

Scorecard Measures[1]	Description	Exclusions
	(3) Concentration levels are multiplied by risk weights and squared to produce a risk-adjusted concentration ratio for each portfolio.	
	(4) Three-year merger-adjusted portfolio growth rates are then scaled to a growth factor of 1 to 1.2 where a 3-year cumulative growth rate of 20 percent or less equals a factor of 1 and a growth rate of 80 percent or greater equals a factor of 1.2. If three years of data are not available, a growth factor of 1 will be assigned.	Exclude from C&I loan growth rate the outstanding amount of loans provided under the Paycheck Protection Program.
	(5) The risk-adjusted concentration ratio for each portfolio is multiplied by the growth factor and resulting values are summed.	
	See Appendix C for the detailed description of the measure	
Concentration Measure for Highly Complex Institutions.	Concentration score for highly complex institutions is the highest of the following three scores:	
(1) Higher-Risk Assets/Tier 1 Capital and Reserves.	Sum of C&D loans (funded and unfunded), higher-risk C&I loans (funded and unfunded), nontraditional mortgages, higher-risk consumer loans, and higher-risk securitizations divided by Tier 1 capital and reserves. See Appendix C for the detailed description of the measure.	No Exclusion.
(2) Top 20 Counterparty Exposure/Tier 1 Capital and Reserves.	Sum of the 20 largest total exposure amounts to counterparties divided by Tier 1 capital and reserves. The total exposure amount is equal to the sum of the institution's exposure amounts to one counterparty (or borrower) for derivatives, securities financing transactions (SFTs), and cleared transactions, and its gross lending exposure (including all unfunded commitments) to that counterparty (or borrower). A counterparty includes an entity's own affiliates. Exposures to entities that are affiliates of each other are treated as exposures to one counterparty (or borrower). Counterparty exposure excludes all counterparty exposure to the U.S. Government and departments or agencies of the U.S. Government that is unconditionally guaranteed by the full faith and credit of the United States. The exposure amount for derivatives, including OTC derivatives, cleared transactions that are derivative contracts, and netting sets of derivative contracts, must be calculated using the methodology set forth in 12 CFR 324.34(b), but without any reduction for collateral other than cash collateral that is all or part of variation margin and that satisfies the requirements of 12 CFR 324.10(c)(4)(ii)(C)(1)(ii) and (iii) and 324.10(c)(4)(ii)(C)(3) through (7). The exposure amount associated with SFTs, including cleared transactions that are SFTs, must be calculated using the standardized approach set forth in 12 CFR 324.37(b) or (c). For both derivatives and SFT exposures, the exposure amount to central counterparties must also include the default fund contribution.	No Exclusion.
(3) Largest Counterparty Exposure/Tier 1 Capital and Reserves.	The largest total exposure amount to one counterparty divided by Tier 1 capital and reserves. The total exposure amount is equal to the sum of the institution's exposure amounts to one counterparty (or borrower) for derivatives, SFTs, and cleared transactions, and its gross lending exposure (including all unfunded commitments) to that counterparty (or borrower). A counterparty includes an entity's own affiliates. Exposures to entities that are affiliates of each other are treated as exposures to one counterparty (or borrower). Counterparty exposure excludes all counterparty exposure to the U.S. Government and departments or agencies of the U.S. Government that is unconditionally guaranteed by the full faith and credit of the United States. The exposure amount for derivatives, including OTC derivatives, cleared transactions that are derivative contracts, and netting sets of derivative contracts, must be calculated using the methodology set forth in 12 CFR 324.34(b), but without any reduction for collateral other than cash collateral that is all or part of variation margin and that satisfies the requirements of 12 CFR 324.10(c)(4)(ii)(C)(1)(ii) and (iii) and 324.10(c)(4)(ii)(C)(3) through (7). The exposure amount associated with SFTs, including cleared transactions that are SFTs, must be calculated using the standardized approach set forth in 12 CFR 324.37(b) or (c). For both derivatives and SFT exposures, the exposure amount to central counterparties must also include the default fund contribution.	No Exclusion.

TABLE E.2—EXCLUSIONS FROM CERTAIN RISK MEASURES USED TO CALCULATE THE ASSESSMENT RATE FOR LARGE OR HIGHLY COMPLEX INSTITUTIONS—Continued

Scorecard Measures[1]	Description	Exclusions
Core Earnings/Average Quarter-End Total Assets.	Core earnings are defined as net income less extraordinary items and tax-adjusted realized gains and losses on available-for-sale (AFS) and held-to-maturity (HTM) securities, adjusted for mergers. The ratio takes a four-quarter sum of merger-adjusted core earnings and divides it by an average of five quarter-end total assets (most recent and four prior quarters). If four quarters of data on core earnings are not available, data for quarters that are available will be added and annualized. If five quarters of data on total assets are not available, data for quarters that are available will be averaged.	Prior to averaging, exclude from total assets for the applicable quarter-end periods the outstanding balance of loans provided under the Paycheck Protection Program.
Credit Quality Measure [1]	The credit quality score is the higher of the following two scores:	
(1) Criticized and Classified Items/Tier 1 Capital and Reserves.	Sum of criticized and classified items divided by the sum of Tier 1 capital and reserves. Criticized and classified items include items an institution or its primary federal regulator have graded ''Special Mention'' or worse and include retail items under Uniform Retail Classification Guidelines, securities, funded and unfunded loans, other real estate owned (ORE), other assets, and marked-to-market counterparty positions, less credit valuation adjustments. Criticized and classified items exclude loans and securities in trading books, and the amount recoverable from the U.S. government, its agencies, or government-sponsored enterprises, under guarantee or insurance provisions.	No Exclusion.
(2) Underperforming Assets/Tier 1 Capital and Reserves.	Sum of loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans (including restructured 1–4 family loans), and ORE, excluding the maximum amount recoverable from the U.S. government, its agencies, or government-sponsored enterprises, under guarantee or insurance provisions, divided by a sum of Tier 1 capital and reserves.	No Exclusion.
Core Deposits/Total Liabilities	Total domestic deposits excluding brokered deposits and uninsured non-brokered time deposits divided by total liabilities.	Exclude from total liabilities outstanding borrowings from Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility with a maturity of one year or less and outstanding borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility with a maturity of greater than one year.
Balance Sheet Liquidity Ratio	Sum of cash and balances due from depository institutions, federal funds sold and securities purchased under agreements to resell, and the market value of available for sale and held to maturity agency securities (excludes agency mortgage-backed securities but includes all other agency securities issued by the U.S. Treasury, U.S. government agencies, and U.S. government sponsored enterprises) divided by the sum of federal funds purchased and repurchase agreements, other borrowings (including FHLB) with a remaining maturity of one year or less, 5 percent of insured domestic deposits, and 10 percent of uninsured domestic and foreign deposits.	Include in highly liquid assets the outstanding balance of PPP loans that exceed borrowings from the Federal Reserve Banks under the PPPLF, until September 30, 2020, or if extended by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, until such date of extension. Exclude from other borrowings with a remaining maturity of one year or less the balance of outstanding borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility with a remaining maturity of one year or less.
Potential Losses/Total Domestic Deposits (Loss Severity Measure).	Potential losses to the DIF in the event of failure divided by total domestic deposits. Paragraph [A] of this section describes the calculation of the loss severity measure in detail.	Exclusions are described in paragraph (A) of this section.
Market Risk Measure for Highly Complex Institutions.	The market risk score is a weighted average of the following three scores:	
(1) Trading Revenue Volatility/Tier 1 Capital	Trailing 4-quarter standard deviation of quarterly trading revenue (merger-adjusted) divided by Tier 1 capital.	No Exclusion.
(2) Market Risk Capital/Tier 1 Capital	Market risk capital divided by Tier 1 capital	No Exclusion.
(3) Level 3 Trading Assets/Tier 1 Capital	Level 3 trading assets divided by Tier 1 capital	No Exclusion.
Average Short-term Funding/Average Total Assets.	Quarterly average of federal funds purchased and repurchase agreements divided by the quarterly average of total assets as reported on Schedule RC–K of the Call Reports.	Exclude from the quarterly average of total assets the outstanding balance of loans provided under the Paycheck Protection Program.

[1] The credit quality score is the greater of the criticized and classified items to Tier 1 capital and reserves score or the underperforming assets to Tier 1 capital and reserves score. The market risk score is the weighted average of three scores—the trading revenue volatility to Tier 1 capital score, the market risk capital to Tier 1 capital score, and the level 3 trading assets to Tier 1 capital score. All of these ratios are described in appendix A of this subpart and the method of calculating the scores is described in appendix B of this subpart. Each score is multiplied by its respective weight, and the resulting weighted score is summed to compute the score for the market risk measure. An overall weight of 35 percent is allocated between the scores for the credit quality measure and market risk measure. The allocation depends on the ratio of average trading assets to the sum of average securities, loans and trading assets (trading asset ratio) as follows: (1) Weight for credit quality score = 35 percent * (1—trading asset ratio); and, (2) Weight for market risk score = 35 percent * trading asset ratio. In calculating the trading asset ratio, exclude from the balance of loans the outstanding balance of loans provided under the Paycheck Protection Program.

(a) *Description of the loss severity measure.* The loss severity measure applies a standardized set of assumptions to an institution's balance sheet to measure possible losses to the FDIC in the event of an institution's failure. To determine an institution's loss severity rate, the FDIC first applies assumptions about uninsured deposit and other liability runoff, and growth in insured deposits, to adjust the size and composition of the institution's liabilities. Exclude total outstanding borrowings from Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility from short-and long-term secured borrowings, as

appropriate. Assets are then reduced to match any reduction in liabilities. Exclude from an institution's balance of commercial and industrial loans the outstanding balance of loans provided under the Paycheck Protection Program. In the event that the outstanding balance of loans provided under the Paycheck Protection Program exceeds the balance of commercial and industrial loans, exclude any remaining balance of loans provided under the Paycheck Protection Program first from the balance of all other loans, up to the total amount of all other loans, followed by the balance of agricultural loans, up to the total amount of agricultural loans. Increase cash balances by outstanding loans provided under the Paycheck Protection Program that exceed total outstanding borrowings from Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility, if any. The institution's asset values are then further reduced so that the Leverage Ratio reaches 2 percent. In both cases, assets are adjusted pro rata to preserve the institution's asset composition. Assumptions regarding loss rates at failure for a given asset category and the extent of secured liabilities are then applied to estimated assets and liabilities at failure to determine whether the institution has enough unencumbered assets to cover domestic deposits. Any projected shortfall is divided by current domestic deposits to obtain an end-of-period loss severity ratio. The loss severity measure is an average loss severity ratio for the three most recent quarters of data available.

Runoff and Capital Adjustment Assumptions

Table E.3 contains run-off assumptions.

TABLE E.3—RUNOFF RATE ASSUMPTIONS

Liability type	Runoff rate * (percent)
Insured Deposits	(10)
Uninsured Deposits	58
Foreign Deposits	80
Federal Funds Purchased	100
Repurchase Agreements	75
Trading Liabilities	50
Unsecured Borrowings < = 1 Year	75
Secured Borrowings < = 1 Year, excluding outstanding borrowings from the Federal Reserve Banks under the PPPLF < = 1 Year	25
Subordinated Debt and Limited Liability Preferred Stock	15

* A negative rate implies growth.

Given the resulting total liabilities after runoff, assets are then reduced pro rata to preserve the relative amount of assets in each of the following asset categories and to achieve a Leverage Ratio of 2 percent:

- Cash and Interest Bearing Balances, including outstanding loans provided under the Paycheck Protection Program in excess of borrowings from Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility;
- Trading Account Assets;
- Federal Funds Sold and Repurchase Agreements;
- Treasury and Agency Securities;
- Municipal Securities;
- Other Securities;
- Construction and Development Loans
- Nonresidential Real Estate Loans;
- Multifamily Real Estate Loans;
- 1—4 Family Closed-End First Liens;
- 1—4 Family Closed-End Junior Liens;
- Revolving Home Equity Loans; and
- Agricultural Real Estate Loans

Recovery Value of Assets at Failure

Table E.4—shows loss rates applied to each of the asset categories as adjusted above.

TABLE E.4—ASSET LOSS RATE ASSUMPTIONS

Asset category	Loss rate (percent)
Cash and Interest Bearing Balances, including outstanding loans provided under the Paycheck Protection Program in excess of borrowings from Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility	0.0
Trading Account Assets	0.0
Federal Funds Sold and Repurchase Agreements	0.0
Treasury and Agency Securities	0.0
Municipal Securities	10.0
Other Securities	15.0
Construction and Development Loans	38.2
Nonresidential Real Estate Loans	17.6
Multifamily Real Estate Loans	10.8
1–4 Family Closed-End First Liens	19.4
1–4 Family Closed-End Junior Liens	41.0
Revolving Home Equity Loans	41.0
Agricultural Real Estate Loans	19.7
Agricultural Loans, excluding outstanding loans under the Paycheck Protection Program, as described in § 327.17 and this appendix	11.8
Commercial and Industrial Loans, excluding outstanding loans under the Paycheck Protection Program, described in § 327.17 and this appendix	21.5
Credit Card Loans	18.3
Other Consumer Loans	18.3
All Other Loans, excluding outstanding loans under the Paycheck Protection Program, described in § 327.17 and this appendix	51.0
Other Assets	75.0

Secured Liabilities at Failure

Federal Home Loan Bank advances, secured federal funds purchased and repurchase agreements are assumed to be fully secured. Foreign deposits are treated as fully secured because of the potential for ring fencing.

Exclude total outstanding borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility.

Loss Severity Ratio Calculation

The FDIC's loss given failure (LGD) is calculated as:

$$LGD = \frac{InsuredDeposits_{Failure}}{DomesticDeposits_{Failure}} \times (\text{DomesticDeposits}_{\text{Failure}} - \text{RecoveryValueofAssets}_{\text{Failure}} + \text{SecuredLiabilities}_{\text{Failure}})$$

An end-of-quarter loss severity ratio is LGD divided by total domestic deposits at quarter-end and the loss severity measure for the scorecard is an average of end-of-period loss severity ratios for three most recent quarters.

(b) [Reserved]

III. Mitigating the Effects of Loans Provided Under the Paycheck Protection Program and Assets Purchased Under the Money Market Mutual Fund Liquidity Facility on the Unsecured Adjustment, Depository Institution Debt Adjustment, and the Brokered Deposit Adjustment to an IDI's Assessment Rate

TABLE E.5—EXCLUSIONS FROM ADJUSTMENTS TO THE INITIAL BASE ASSESSMENT RATE

Adjustment	Calculation	Exclusion
Unsecured debt adjustment	The unsecured debt adjustment shall be determined as the sum of the initial base assessment rate plus 40 basis points; that sum shall be multiplied by the ratio of an insured depository institution's long-term unsecured debt to its assessment base. The amount of the reduction in the assessment rate due to the adjustment is equal to the dollar amount of the adjustment divided by the amount of the assessment base.	Exclude from the assessment base the outstanding balance of loans provided under the Paycheck Protection Program and the quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility.
Depository institution debt adjustment.	An insured depository institution shall pay a 50 basis point adjustment on the amount of unsecured debt it holds that was issued by another insured depository institution to the extent that such debt exceeds 3 percent of the institution's Tier 1 capital. This amount is divided by the institution's assessment base. The amount of long-term unsecured debt issued by another insured depository institution shall be calculated using the same valuation methodology used to calculate the amount of such debt for reporting on the asset side of the balance sheets.	Exclude from the assessment base the outstanding balance of loans provided under the Paycheck Protection Program and the quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility.
Brokered deposit adjustment	The brokered deposit adjustment shall be determined by multiplying 25 basis points by the ratio of the difference between an insured depository institution's brokered deposits and 10 percent of its domestic deposits to its assessment base.	Exclude from the assessment base the outstanding balance of loans provided under the Paycheck Protection Program and the quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility.

IV. Mitigating the Effects on the Assessment Base Attributable to Loans Provided Under the Paycheck Protection Program and Participation in the Money Market Mutual Fund Liquidity Facility

Total Assessment Amount Due = Total Assessment Amount LESS: (SUM (Outstanding balance of loans provided under the Paycheck Protection Program and quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility) * Total Base Assessment Rate)

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on June 22, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z); Determining ''Underserved'' Areas Using Home Mortgage Disclosure Act Data

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interpretive rule.

SUMMARY: This interpretive rule construes the Bureau of Consumer Financial Protection's (Bureau's) Regulation Z, which implements the Truth in Lending Act (TILA). The Bureau produces annually a list of rural and underserved counties and areas that is used in applying various Regulation Z provisions, such as the exemption from the requirement to establish an escrow account for a higher-priced mortgage loan and the ability to originate balloon-payment qualified mortgages. Regulation Z states that an area is ''underserved'' during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in Regulation Z, secured by first liens on properties in the county five or more times. The official commentary provides an interpretation relating to this standard that refers to certain data elements from the previous version of the Bureau's Regulation C, which implements HMDA, that were modified or eliminated in the 2015 amendments to Regulation C. The Bureau is issuing this interpretive rule to supersede that now outdated interpretation, specifically by describing below the HMDA data that will instead be used in determining that an area is ''underserved.''

DATES: This interpretive rule is effective on June 26, 2020.

FOR FURTHER INFORMATION CONTACT: Waeiz Syed, Counsel, Office of Regulations, at (202) 435–7700 or *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Definition of ''Underserved''

As adopted in the Dodd-Frank Act and further amended by the Helping Expand Lending Practices in Rural Communities Act of 2015, TILA sections 129C(b)(2)(E) and 129D(c) granted the Bureau authority, among other things, to create a special provision allowing the origination of balloon-payment qualified mortgages and an exemption from the requirement to establish an escrow account for higher-priced mortgage loans.[1] Through these amendments, Congress limited the class of creditors to which the Bureau may grant the special provision and exemption to include only certain creditors that operate in ''rural'' or ''underserved'' areas.

Section 1026.35(b)(2)(iv)(B) of Regulation Z defines an area as ''underserved'' during a calendar year if, according to HMDA data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in § 1026.43(b)(1), secured by first liens on properties in the county five or more times.[2] Section 1026.43(b)(1) of Regulation Z defines a ''covered transaction'' as a consumer credit transaction that is secured by a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other than a transaction exempt from coverage under § 1026.43(a).[3] Accordingly, in determining the number of first-lien covered transactions in an area for the purposes of determining whether an area is ''underserved,'' the Bureau would not count transactions that fail to meet the definition of a ''covered transaction'' as set forth in § 1026.43(b)(1), such as a home equity line of credit subject to § 1026.40.

The Bureau interpreted the definition of ''underserved'' in the official commentary to Regulation Z. In comment 35(b)(2)(iv)–1.ii, the Bureau stated that a county is an ''underserved'' area if, in the applicable calendar year's public HMDA aggregate dataset, no more than two creditors have reported five or more first-lien covered transactions with HMDA geocoding that places the properties in that county. For the purposes of this determination, because only covered transactions as defined in § 1026.43(b)(1) of Regulation Z are counted, all first-lien originations (and only first-lien originations) reported in the HMDA data are counted except those for which the owner-occupancy status is reported as ''Not owner-occupied,'' the property type is reported as ''Multifamily,'' the applicant's or co-applicant's race is reported as ''Not applicable,'' or the applicant's or co-applicant's sex is reported as ''Not applicable.'' Comment 35(b)(2)(iv)–1.ii also specified HMDA codes for each of these HMDA reporting categories.

B. Determining ''Underserved'' Areas Using HMDA Data

In 2015, the Bureau issued a final rule amending Regulation C; for the most part, the 2015 amendments took effect on January 1, 2018.[4] Among other changes, the 2015 HMDA Final Rule amended Regulation C to include nine new data points as required by the Dodd-Frank Act; added a number of additional data points pursuant to the Bureau's discretionary authority under HMDA section 304(b)(5) and (6); and revised certain pre-existing data points to clarify or amend their requirements.

In light of these changes, certain parts of the methodology described in comment 35(b)(2)(iv)–1.ii became obsolete, as they referred to HMDA data points replaced or otherwise modified by the 2015 HMDA Final Rule. To avoid uncertainty concerning how HMDA data is to be used to determine the underserved status of a county, the Bureau is issuing this interpretive rule to supersede the outdated portions of the commentary and identify current HMDA data points it will use to determine whether a county is underserved.

Under this interpretive rule, the determination will be made by counting first-lien originations from HMDA data for the preceding calendar year, except those for which any of the following HMDA data points are reported with values we interpret as being inconsistent with Regulation Z's definition of a ''covered transaction.''

1. Construction Method and Total Units

Because a ''covered transaction,'' as defined in § 1026.43(b)(1) of Regulation Z, includes loans secured by residential structures that contain one to four units, the Bureau will not count first-lien originations reported in HMDA data for which the construction method status is reported as ''Site-built'' (HMDA Code 1) and the total units (*i.e.,* number of individual dwelling units related to the property) is reported as being greater than ''4.''

2. Open-End Line of Credit and Reverse Mortgage

The definition of a ''covered transaction'' in § 1026.43(b)(1) of Regulation Z excludes specific categories of loans, such as a home equity line of credit subject to § 1026.40. The definition of a ''covered transaction'' also excludes, for example, a reverse mortgage subject to § 1026.33, for the purposes of § 1026.43(f), which is the provision that permits creditors operating in underserved areas to originate qualified mortgages with balloon payments.

For these reasons, the Bureau will not count first-lien originations reported in HMDA data for which the open-end line of credit status is reported as ''Open-end line of credit'' (HMDA Code 1) or the reverse mortgage status is reported as ''Reverse mortgage'' (HMDA Code 1).

3. Business or Commercial Purpose

Regulation Z's ''covered transaction'' definition also excludes an extension of credit primarily for a business or commercial purpose. Accordingly, the Bureau will not count first-lien originations reported in HMDA data for which the business or commercial purpose status is reported as ''Primarily for a business or commercial purpose'' (HMDA Code 1).

4. Demographic Information of Applicant and Co-Applicant

As defined in § 1026.43(b)(1) of Regulation Z, a ''covered transaction'' is limited to transactions made to consumers, which § 1026.2(a)(11) of Regulation Z defines, in part, as a natural person to whom consumer credit is offered or extended.

Appendix B and comment 4(a)(10)(ii)–4 of Regulation C instruct covered financial institutions to report

[1] Public Law 111–203, sections 1412 and 1461(a), 124 Stat. 1376, 2147 and 2179 (2010); Public Law 114–94, section 89003, 129 Stat. 1312, 1800 (2015) (codified at 15 U.S.C. 1639c(b)(2)(E) and 15 U.S.C. 1639d(c)).

[2] Escrow Requirements Under the Truth in Lending Act (Regulation Z), 78 FR 4725, 4740–41 (Jan. 22, 2013) (noting that the Bureau adopted this definition based on HMDA data to provide an objective, easily administered rule and one that is consistent with the purpose of preserving credit access in underserved areas), as subsequently amended by Amendments to the 2013 Escrows Final Rule under the Truth in Lending Act (Regulation Z), 78 FR 30739 (May 23, 2013), and Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z), 80 FR 59943 (Oct. 2, 2015). 12 CFR 1026.35(b)(2)(iv)(B).

[3] 12 CFR 1026.43(b)(1).

[4] Home Mortgage Disclosure Act (Regulation C), 80 FR 66128, 66256–58 (Oct. 28, 2015).

the applicant's or co-applicant's ethnicity, race, sex, and age as ''not applicable'' if the applicant or co-applicant is not a natural person. For these reasons, the Bureau will not count first-lien originations reported in HMDA data for which both the applicant's and co-applicant's ethnicity, race, sex, and age *all* are reported as follows: (1) The applicant's ethnicity is reported as ''Not applicable'' (HMDA Code 4); (2) the applicant's race is reported as ''Not applicable'' (HMDA Code 7); (3) the applicant's sex is reported as ''Not applicable'' (HMDA Code 4); (4) the applicant's age is reported as ''Not applicable'' (HMDA Code 8888); (5) the co-applicant's ethnicity is reported as ''Not applicable'' (HMDA Code 4) *or* ''No co-applicant'' (HMDA Code 5); (6) the co-applicant's race is reported as ''Not applicable'' (HMDA Code 7) *or* ''No co-applicant'' (HMDA Code 8); (7) the co-applicant's sex is reported as ''Not applicable'' (HMDA Code 4) *or* ''No co-applicant'' (HMDA Code 5); *and* (8) the co-applicant's age is reported as ''Not applicable'' (HMDA Code 8888) *or* ''No co-applicant'' (HMDA Code 9999).

The underserved counties list, using the HMDA data described above, can be found on the Bureau's public website at *https://www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/rural-and-underserved-counties-list/,* where, consistent with past practice, the list is made available along with historical lists.

C. Legal Authority

The Bureau is issuing this interpretive rule based on its authority to interpret Regulation Z, including under section 1022(b)(1) of the Dodd-Frank Act, which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.[5]

By operation of TILA section 130(f), no provision of TILA sections 130, 108(b), 108(c), 108(e), or 112 imposing any liability applies to any act done or omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.[6]

II. Effective Date

Because this rule is solely interpretive, it is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the Administrative Procedure Act.[7] Therefore, this rule is effective on June 26, 2020, the same date that it is published in the **Federal Register**.

III. Regulatory Requirements

This rule articulates the Bureau's interpretation of Regulation Z and TILA. As an interpretive rule, it is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.[8] Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[9]

The Bureau has determined that this interpretive rule does not impose any new requirements or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[10]

IV. Congressional Review Act

Pursuant to the Congressional Review Act,[11] the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

Dated: June 23, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–13801 Filed 6–25–20; 8:45 am]

BILLING CODE 4810–AM–P

[5] 12 U.S.C. 5512(b)(1). The relevant provisions of Regulation Z form part of Federal consumer financial law. 12 U.S.C. 5481(12)(O), (14).

[6] 15 U.S.C. 1640(f).

[7] 5 U.S.C. 553(d).

[8] 5 U.S.C. 553(b).

[9] 5 U.S.C. 603(a), 604(a).

[10] 44 U.S.C. 3501 *et seq.*

[11] 5 U.S.C. 801 *et seq.*

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket No. SBA–2020–0039]

RIN 3245–AH53

Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Eligibility Revisions to First Interim Final Rule

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted on its website an interim final rule relating to the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act) (published in the **Federal Register** on April 15, 2020). Section 1102 of the Act temporarily adds a new product, titled the ''Paycheck Protection Program,'' to the U.S. Small Business Administration's (SBA's) 7(a) Loan Program. Subsequently, SBA issued a number of interim final rules implementing the Paycheck Protection Program. On June 12, 2020, SBA posted on its website an interim final rule revising the interim final rule published in the **Federal Register** on April 15, 2020 by changing the eligibility requirement related to felony convictions of applicants or owners of the applicant. This interim final rule further revises SBA's interim final rule published in the **Federal Register** on April 15, 2020, by further changing that eligibility requirement.

DATES:

Effective date: The provisions in this interim final rule are effective June 24, 2020.

Comment date: Comments must be received on or before July 27, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0039, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, have been implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, have been implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency.

Section 1102 of the Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program.'' Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program.

On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the PPP. On June 5, 2020, the President signed the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) (Pub. L. 116–142), which changed provisions of the PPP relating to the maturity of PPP loans, the deferral of PPP loan payments, and the forgiveness of PPP loans.

II. Comments and Immediate Effective Date

This interim final rule is effective without advance notice and public comment because section 1114 of the CARES Act authorizes SBA to issue regulations to implement Title I of the Act without regard to notice requirements. In addition, SBA has determined that there is good cause for dispensing with advance public notice and comment on the grounds that that it would be contrary to the public interest. Specifically, advance public notice and comment would defeat the purpose of this interim final rule given that SBA's authority to guarantee PPP loans expires on June 30, 2020. These same reasons provide good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act (APA). Although this interim final rule is effective on or before date of filing, comments are solicited from interested members of the public on all aspects of the interim final rule, including section III below. These comments must be submitted on or before July 27, 2020. The SBA will consider these comments, comments received on the interim final rule posted on SBA's website April 2, 2020 (the First Interim Final Rule) and published in the **Federal Register** on April 15, 2020, comments received on the interim final rule posted on SBA's website June 12, 2020 and published in the **Federal Register** on June 18, 2010, and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program—Additional Eligibility Revisions to First Interim Final Rule (85 FR 20811)

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and businesses affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under a new 7(a) loan program titled the ''Paycheck Protection Program.'' Loans guaranteed under the Paycheck Protection Program (PPP) will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. The purpose of this interim final rule is to make further changes to the First Interim Final Rule, posted on SBA's website on April 2, 2020, and published in the **Federal Register** on April 15, 2020 (85 FR 20811), as amended by the interim final rule posted on SBA's website on June 12, 2020 and published in the **Federal Register** on June 18, 2020 (85 FR 36717). The First Interim Final Rule, as amended, should be interpreted consistent with the frequently asked questions (FAQs) regarding the PPP that are posted on SBA's website [1] and the other interim final rules issued regarding the PPP.[2]

1. Changes to the First Interim Final Rule

Eligibility Requirements

The First Interim Final Rule provided, among other things, that a PPP loan will not be approved if an owner of 20 percent or more of the equity of the applicant has been convicted of a felony within the last five years. On June 12, 2020, the First Interim Final Rule was amended after the Administrator, in consultation with the Secretary of the Treasury (the Secretary), determined that a shorter timeframe for felonies that do not involve fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance is more consistent with Congressional intent to provide relief to small businesses and also promotes the important policies underlying the First Step Act of 2018 (Pub. L. 115–391).

Upon further consideration, and in consultation with the Secretary, the Administrator has determined that two additional modifications to the First Interim Final Rule are appropriate to ensure a consistent approach to applicants with criminal histories. First, the First Interim Final Rule provided that an applicant is ineligible for a PPP loan if an owner of 20 percent or more of the equity of the applicant is presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction. The Administrator has determined that this restriction should be limited to pending criminal charges for felony offenses, which aligns with the Administrator's prior determination that only felony convictions (but not convictions for other types of offenses) will limit an applicant's eligibility for the PPP, subject to the time periods specified above. Second, the First Interim Final Rule provided that an applicant was ineligible for a PPP loan if an owner of 20 percent or more of the equity of the applicant is on probation

[1] *See https://www.sba.gov/document/support--faq-lenders-borrowers.*

[2] *See https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program.*

or on parole. The Administrator has determined that this restriction should be limited to individuals whose probation or parole commenced within the time periods specified above—*i.e.,* within the last five years for any felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance, and within the last one year for other felonies. Applying these time limitations to the probation and parole restriction aligns with the Administrator's prior determination to apply the identical time limitations to felony convictions. Moreover, aligning the time limitations applicable to these restrictions is consistent with Congressional intent to provide relief to small businesses and also promotes the important policies underlying the First Step Act of 2018 (Pub. L. 115–391). This amendment does not affect the rule regarding applicants that are presently suspended, debarred, or proposed for debarment, which remains effective. Therefore, Part III.2.b.iii. of the First Interim Final Rule (85 FR 20811, 20812) is revised to read as follows:

b. Could I be ineligible even if I meet the eligibility requirements in (a) above?

You are ineligible for a PPP loan if, for example:

* * * * *

iii. An owner of 20 percent or more of the equity of the applicant is presently incarcerated or, for any felony, presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for, a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year; or

* * * * *

Under the First Interim Final Rule, as amended, an applicant is ineligible if an owner of 20 percent or more of its equity is presently incarcerated. In considering this amended Interim Final Rule the Administrator, in consultation with the Secretary, has determined that this restriction on eligibility remains appropriate because the operations of small business concerns present a greater danger of becoming impaired when their owners are incarcerated. As a result, they may have greater difficulty repaying their loans and present a greater credit risk. Although PPP loans may be forgiven under section 1106 of the CARES Act, PPP loans may only be forgiven in cases where borrowers can document that the proceeds were expended in accordance with the requirements of section 1106. In situations where the proceeds have not been used appropriately, and the loans, accordingly, cannot be forgiven, the borrowers' ability to repay the loans remains an important consideration. In addition, ineligibility for businesses whose owners are currently incarcerated will help prevent misuse of PPP loan funds, irrespective of loan forgiveness considerations.

Under the First Interim Final Rule, as amended, an applicant is also ineligible if an owner of 20 percent or more of its equity is, for any felony, subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction. Individuals charged with felonies are at risk of imprisonment, which, as discussed above, could place the creditworthiness of their businesses in question. Therefore, the Administrator, in consultation with the Secretary, has determined that this limitation also remains appropriate to ensure that PPP funds are not allocated to an applicant for which a recent felony charge may impair its ongoing business operations and therefore its ability to repay a PPP loan for reasons unrelated to the COVID–19 pandemic.

Finally, under the First Interim Final Rule, as amended, an applicant is ineligible if an owner of 20 percent or more of its equity has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for, a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year. The Administrator, in consultation with the Secretary, has determined that, in order to ensure program integrity and safeguard against misuse of PPP funds, it remains appropriate to require that applicants whose owners previously were convicted of or pleaded guilty or nolo contendere to a felony offense have avoided a further felony charge following conviction or incarceration for a period of at least one year before obtaining a PPP loan. This interval provides a reasonable level of assurance that such applicants do not present unacceptable risks of re-incarceration that could, as discussed above, undermine the ability of their businesses to repay their PPP loans. The Administrator, in consultation with the Secretary, has determined that a longer five-year limitation is appropriate for felonies involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance because such felonies are most relevant to the applicant's business integrity and responsibility, and may indicate a greater risk of potential misuse of PPP loan funds.

Each of the ineligible applicant categories described above has been formulated to reduce the risk of default and fraud in the PPP and to ensure that PPP loan funds are provided for small businesses that will be able to support jobs, consistent with Congressional intent in the CARES Act. These measures are particularly necessary in light of the structure of the PPP, in which lenders are subject to relatively few underwriting obligations before issuing loans that are 100 percent guaranteed by SBA and that may be subject to full forgiveness based on documentation provided by the borrower. While neither lenders nor SBA are conducting typical analysis of the characteristics of PPP applicants, the measures described above are intended to mitigate the risk of default, fraud, or misuse of PPP loan funds intended to benefit small business employees and at the same time balance that need with the need to assist in the rehabilitation of felons, who are working to become responsible and productive members of society.

2. Additional Information

SBA may provide further guidance, if needed, through SBA notices which will be posted on SBA's website at *www.sba.gov.* Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate

the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

This rule is necessary to implement Sections 1102 and 1106 of the CARES Act and the Flexibility Act in order to provide economic relief to small businesses nationwide adversely impacted under the COVID–19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive effect but does have a limited retroactive effect consistent with section 3(d) of the Flexibility Act.

Executive Order 13132

SBA has determined that this rule 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 layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will require modification to the existing PPP information collection that is approved under OMB Control Number 3245–0407 as an emergency request until October 31, 2020. As discussed above, this rule amends the PPP eligibility requirements regarding certain criminal activity. As a result of these amendments, conforming changes will be made to Questions 5 and 6 of Form 2483, *Borrower Application Form,* and Section H of Form 2484, *Lender Application Form.* SBA will submit the revisions to these forms to the Office of Management and Budget for approval.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities.

The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Small Business Administration's Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Act, Ch.1. p.9.* Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Authority: 15 U.S.C. 636(a)(36); Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116–136, Section 1114.

Jovita Carranza,

Administrator.

[FR Doc. 2020–13942 Filed 6–24–20; 4:15 pm]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket No. SBA–2020–0038]

RIN 3245–AH52

DEPARTMENT OF THE TREASURY

RIN 1505–AC70

Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules

AGENCY: U.S. Small Business Administration; Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted on its website an interim final rule relating to the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act) (published in the **Federal Register** on April 15, 2020). Section 1102 of the Act temporarily adds a new product, titled the ''Paycheck Protection Program,'' to the SBA's 7(a) Loan Program. Subsequently, SBA and Treasury issued additional interim final rules implementing the Paycheck Protection Program. On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) was signed into law, amending the CARES Act. This interim final rule revises interim final rules posted on SBA's and the Department of the Treasury's websites on May 22, 2020 (published on June 1, 2020, in the **Federal Register**), by changing key provisions to conform to the Flexibility Act. Several of these amendments are retroactive to the date of enactment of the CARES Act, as required by section 3(d) of the Flexibility Act.

DATES:

Effective Date: This interim final rule is effective March 27, 2020, except for the provision relating to the maturity date of PPP loans, which is effective June 5, 2020, and the provision relating to the cap on the amount of loan forgiveness for owner-employees and self-employed individuals, which is effective on June 24, 2020.

Comment Date: Comments must be received on or before July 27, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0038, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

SBA and Treasury will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA and Treasury should hold this information as confidential. SBA and Treasury will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, have been implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, have been implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency.

Section 1102 of the Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program.'' Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program.

On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the PPP. On June 5, 2020, the President signed the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) (Pub. L. 116–142), which changes key provisions of the Paycheck Protection Program, including provisions relating to the maturity of PPP loans, the deferral of PPP loan payments, and the forgiveness of PPP loans. Section 3(d) of the Flexibility Act provides that the amendments relating to PPP loan forgiveness and extension of the deferral period for PPP loans shall be effective as if included in the CARES Act, which means that they are retroactive to March 27, 2020. Section 2 of the Flexibility Act provides that the amendment relating to the extension of the maturity date for PPP loans shall take effect on the date of enactment (June 5, 2020). Under the Flexibility Act, the extension of the maturity date for PPP loans is applicable to PPP loans made on or after that date, and lenders and borrowers may mutually agree to modify PPP loans made before such date to reflect the longer maturity.

II. Comments and Retroactive/Immediate Effective Date

This interim final rule is effective without advance notice and public comment because section 1114 of the CARES Act authorizes SBA to issue regulations to implement Title I of the Act without regard to notice requirements. In addition, SBA has determined that there is good cause for dispensing with advance public notice and comment on the grounds that it would be contrary to the public interest. Specifically, advance public notice and comment would defeat the purpose of this interim final rule given that SBA's authority to guarantee PPP loans expires on June 30, 2020, and that many PPP borrowers can now apply for loan forgiveness following the end of their eight-week covered period. Providing borrowers and lenders with certainty on both loan requirements and loan forgiveness requirements following the enactment of the Flexibility Act will enhance the ability of lenders to make loans and process loan forgiveness applications, particularly in light of the fact that most of the Flexibility Act's provisions are retroactive to March 27, 2020. Specifically, small businesses that have yet to apply for and receive a PPP loan need to be informed of the terms of PPP loans as soon as possible, because the last day on which a lender can obtain an SBA loan number for a PPP loan is June 30, 2020. Borrowers that have already applied for and received a PPP loan need certainty regarding how loan proceeds must be used during the covered period, as amended by the Flexibility Act, so that they can maximize the amount of loan forgiveness. Additionally, because some borrowers can apply for loan forgiveness now, those borrowers need updated direction on how to do so. These same reasons provide good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Although this interim final rule is effective on or before date of filing, comments are solicited from interested members of the public on all aspects of the interim final rule, including section III below. These comments must be submitted on or before July 27, 2020. The SBA and Treasury will consider these comments, comments received on the two interim final rules amended by this interim final rule, which were posted on SBA's website May 22, 2020 and published on June 1, 2020, in the **Federal Register**, and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program—Revisions to Loan Forgiveness Interim Final Rule and SBA Loan Review Procedures and Related Borrower and Lender Responsibilities Interim Final Rule

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and businesses affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under a new 7(a) loan program titled the ''Paycheck Protection Program.'' Loans guaranteed under the Paycheck Protection Program (PPP) will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness.

SBA and Treasury have posted several documents on the loan forgiveness provisions in the CARES Act on their websites. On April 2, 2020, SBA posted its first PPP interim final rule (85 FR 20811) covering in part loan forgiveness. On April 8, 2020 and April 26, 2020, SBA also posted Frequently Asked Questions relating to loan forgiveness. On April 14, 2020, SBA posted an interim final rule covering in part loan forgiveness for individuals with self-employment income. On May 22, 2020,

SBA and Treasury jointly posted an additional interim final rule on loan forgiveness (85 FR 33004) (First Loan Forgiveness Rule). The SBA also posted an interim final rule on May 22, 2020 on SBA loan review procedures and related borrower and lender responsibilities (85 FR 33010) (First Loan Review Rule). On June 11, 2020, SBA posted an interim final rule revising the first PPP interim final rule to incorporate Flexibility Act amendments, including those relating to loan forgiveness. On June 17, 2020, SBA posted an interim final rule revising the interim final rule covering individuals with self-employment income to incorporate Flexibility Act amendments, including those relating to loan forgiveness.

The Flexibility Act amends the CARES Act, including its provisions relating to loan terms and loan forgiveness. The purpose of this interim final rule is to update the First Loan Forgiveness Rule and the First Loan Review Rule in light of the amendments under the Flexibility Act. The First Loan Forgiveness Rule and First Loan Review Rule, as amended by this interim final rule, should be interpreted consistent with the frequently asked questions (FAQs) regarding the PPP that are posted on SBA's website [1] and the other interim final rules issued regarding the PPP.[2]

1. Changes to the First Loan Forgiveness Rule

a. General

Section 3(b) of the Flexibility Act amended the requirements regarding forgiveness of PPP loans to reduce, from 75 percent to 60 percent, the portion of PPP loan proceeds that must be used for payroll costs for the full amount of the PPP loan to be eligible for forgiveness. Therefore, Part III.1 of the First Loan Forgiveness Rule (85 FR 33004, 33005) is revised by striking ''25 percent'' in the last sentence and replacing it with ''40 percent''.

b. Maturity

Section 2(a) of the Flexibility Act provides a minimum maturity of five years for all PPP loans made on or after the date of enactment of the Flexibility Act (June 5, 2020), and permits lenders and borrowers to extend the maturity date of earlier PPP loans by mutual agreement. Section 3(c) of the Flexibility Act extended the deferral period for PPP loans to the date that SBA remits the forgiveness amount to the lender. Further, SBA has issued an alternative Loan Forgiveness Application Form, SBA Form 3508EZ. Therefore, in Part III.2 of the First Loan Forgiveness Rule (85 FR 33004, 33005), the introductory question is redesignated as paragraph a. and revised to read as follows:

2. *Loan Forgiveness Process*

a. *What is the general process to obtain loan forgiveness?*

To receive loan forgiveness, a borrower must complete and submit the Loan Forgiveness Application (SBA Form 3508, 3508EZ, or lender equivalent) to its lender (or the lender servicing its loan). As a general matter, the lender will review the application and make a decision regarding loan forgiveness. The lender has 60 days from receipt of a complete application to issue a decision to SBA. If the lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations, the lender must request payment from SBA at the time the lender issues its decision to SBA. SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA. If applicable, SBA will deduct EIDL Advance Amounts from the forgiveness amount remitted to the Lender as required by section 1110(e)(6) of the CARES Act. If SBA determines in the course of its review that the borrower was ineligible for the PPP loan based on the provisions of the CARES Act, SBA rules or guidance available at the time of the borrower's loan application, or the terms of the borrower's PPP loan application (for example, because the borrower lacked an adequate basis for the certifications that it made in its PPP loan application), the loan will not be eligible for loan forgiveness. The lender is responsible for notifying the borrower of the forgiveness amount. If only a portion of the loan is forgiven, or if the forgiveness request is denied, any remaining balance due on the loan must be repaid by the borrower on or before the maturity date of the loan. The lender is responsible for notifying the borrower of remittance by SBA of the loan forgiveness amount (or that SBA determined that no amount of the loan is eligible for forgiveness) and the date on which the borrower's first payment is due, if applicable. If SBA determines that the full amount of the loan is eligible for forgiveness and remits the full amount of the loan to the lender, the lender must mark the PPP loan note as ''paid in full'' and report the status of the loan as ''paid in full'' on the next monthly 1502 report filed by the lender.

The general loan forgiveness process described above applies only to loan forgiveness applications that are not reviewed by SBA prior to the lender's decision on the forgiveness application. A separate interim final rule on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities describes SBA's procedures for reviewing PPP loan applications and loan forgiveness applications.

c. Deferral Period and Forgiveness

Section 3(c) of the Flexibility Act provides that if the borrower does not apply for forgiveness of a loan within 10 months after the last day of the covered period, the PPP loan is no longer deferred and the borrower must begin paying principal and interest. Therefore, the following text is added as a new paragraph b. at the end of Part III.2:

b. When must a borrower apply for loan forgiveness or start making payments on a loan?

A borrower may submit a loan forgiveness application any time on or before the maturity date of the loan—including before the end of the covered period—if the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness. If the borrower applies for forgiveness before the end of the covered period and has reduced any employee's salaries or wages in excess of 25 percent, the borrower must account for the excess salary reduction for the full 8-week or 24-week covered period, as described in Part III.5. If the borrower does not apply for loan forgiveness within 10 months after the last day of the covered period, or if SBA determines that the loan is not eligible for forgiveness (in whole or in part), the PPP loan is no longer deferred and the borrower must begin paying principal and interest. If this occurs, the lender must notify the borrower of the date the first payment is due. The lender must report that the loan is no longer deferred to SBA on the next monthly SBA Form 1502 report filed by the lender.

d. Payroll Costs Eligible for Loan Forgiveness

Under section 1106 of the CARES Act, certain provisions regarding the forgiveness of PPP loans are limited to the ''covered period.'' ''Covered period,'' as that term is used in section 1106 of the CARES Act, was originally defined as the eight-week period beginning on the date of the origination of a covered loan. However, section 3(b) of the Flexibility Act extended the length of the covered period as defined in section 1106 of the CARES Act from eight to 24 weeks, while allowing borrowers that received PPP loans before June 5, 2020 to elect to use the original eight-week covered period. As set forth below, several provisions in Part III.3 of the First Loan Forgiveness Rule require revisions to conform to these amendments under Flexibility Act.

Part III.3.a of the First Loan Forgiveness Rule (85 FR 33004, 33006) is revised to read as follows:

a. When must payroll costs be incurred and/or paid to be eligible for forgiveness?

In general, payroll costs paid or incurred during the covered period are eligible for

[1] *See https://www.sba.gov/document/support--faq-lenders-borrowers.*

[2] *See https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program.*

forgiveness. For purposes of loan forgiveness, the covered period is the 24-week period beginning on the date the lender disburses the PPP loan.[3] Alternatively, a borrower that received a PPP loan before June 5, 2020 may elect for the covered period to end eight weeks after the date of disbursement of the PPP loan. Borrowers may seek forgiveness for payroll costs for the applicable covered period beginning on either:

i. the date of disbursement of the borrower's PPP loan proceeds from the Lender (*i.e.,* the start of the covered period); or

ii. the first day of the first payroll cycle in the covered period (the ''alternative payroll covered period'').

Payroll costs are considered paid on the day that paychecks are distributed or the borrower originates an ACH credit transaction. Payroll costs incurred during the borrower's last pay period of the covered period or the alternative payroll covered period are eligible for forgiveness if paid on or before the next regular payroll date; otherwise, payroll costs must be paid during the covered period (or alternative payroll covered period) to be eligible for forgiveness. Payroll costs are generally incurred on the day the employee's pay is earned (*i.e.,* on the day the employee worked). For employees who are not performing work but are still on the borrower's payroll, payroll costs are incurred based on the schedule established by the borrower (typically, each day that the employee would have performed work).

The Administrator of the Small Business Administration (Administrator), in consultation with the Secretary of the Treasury (Secretary), recognizes that the covered period will not always align with a borrower's payroll cycle. For administrative convenience of the borrower, a borrower with a bi-weekly (or more frequent) payroll cycle may elect to use an alternative payroll covered period that begins on the first day of the first payroll cycle in the covered period and continues for either (a) eight weeks, in the case of a borrower that received its PPP loan before June 5, 2020 and elects to use an eight-week covered period, or (b) 24 weeks, in the case of all other borrowers. If payroll costs are incurred during this alternative payroll covered period, but paid after the end of the alternative payroll covered period, such payroll costs will be eligible for forgiveness if they are paid no later than the first regular payroll date thereafter.

The Administrator, in consultation with the Secretary, determined that this alternative computational method for payroll costs is justified by considerations of administrative feasibility for borrowers, as it will reduce burdens on borrowers and their payroll agents while achieving the paycheck protection purposes manifest throughout the CARES Act, including section 1102. Because this alternative computational method is limited to payroll cycles that are bi-weekly or more frequent, this computational method will yield a calculation that the Administrator does not expect to materially differ from the actual covered period, while avoiding unnecessary administrative burdens and enhancing auditability.

Example: A borrower that received a PPP loan before June 5, 2020 and elects to use an eight-week covered period has a bi-weekly payroll schedule (with payments made every other week). The borrower's eight-week covered period begins on June 1 and ends on July 26. The first day of the borrower's first payroll cycle that starts in the covered period is June 7. The borrower may elect an alternative payroll covered period for payroll cost purposes that starts on June 7 and ends 55 days later (for a total of 56 days), on August 1. Payroll costs paid during this alternative payroll covered period are eligible for forgiveness. In addition, payroll costs incurred during this alternative payroll covered period are eligible for forgiveness if they are paid on or before the first regular payroll date occurring after August 1. Payroll costs that were both paid and incurred during the covered period (or alternative payroll covered period) may only be counted once.

Part III.3.c of the First Loan Forgiveness Rule (85 FR 33004, 33006) is revised to read as follows:

c. Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation?

Yes. For borrowers that received a PPP loan before June 5, 2020 and elect to use an eight-week covered period, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at eight weeks' worth (8/52) of 2019 compensation (*i.e.,* approximately 15.38 percent of 2019 compensation) or $15,385 per individual, whichever is less, in total across all businesses. For all other borrowers, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at 2.5 months' worth (2.5/12) of 2019 compensation (*i.e.,* approximately 20.83 percent of 2019 compensation) or $20,833 per individual, whichever is less, in total across all businesses.

In particular, C-corporation owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health insurance contributions made on their behalf. S-corporation owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement contributions made on their behalf, but employer health insurance contributions made on their behalf cannot be separately added because those payments are already included in their employee cash compensation. Schedule C or F filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit.[4] General partners are capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. For self-employed individuals, including Schedule C or F filers and general partners, retirement and health insurance contributions are included in their net self-employment income and therefore cannot be separately added to their payroll calculation.

The Administrator, in consultation with the Secretary, determined that it is appropriate to limit the forgiveness of owner compensation to either eight weeks' worth (8/52) of their 2019 compensation (up to $15,385) for an eight-week covered period or 2.5 months' worth (2.5/12) of their 2019 compensation (up to $20,833) for a 24-week covered period per owner in total across all businesses. This approach is consistent with the structure of the CARES Act and its overarching focus on keeping workers paid, and will prevent windfalls that Congress did not intend. Specifically, Congress determined that the maximum loan amount is generally based on 2.5 months of a borrower's average monthly payroll costs during the one-year period preceding the loan. 15 U.S.C. 636(a)(36)(E). For example, a borrower with one other employee would receive a maximum loan amount equal to 5 months of payroll (2.5 months of payroll for the owner plus 2.5 months of payroll for the employee). If the owner laid off the employee and availed itself of the exemption in the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) related to reductions in business activity described in e. below, the owner could treat the entire amount of the PPP loan as payroll, with the entire loan being forgiven. This would not only result in a windfall for the owner, by providing the owner with five months of payroll instead of 2.5 months, but also defeat the purpose of the CARES Act of protecting the paycheck of the employee. For owners with no employees, this limitation will have no effect, because the maximum loan amount for such borrowers already includes only 2.5 months of their payroll.

e. Nonpayroll Costs Eligible for Loan Forgiveness

Part III.4.a of the First Loan Forgiveness Rule (85 FR 33004, 33007) is revised to read as follows:

a. *When must nonpayroll costs be incurred and/or paid to be eligible for forgiveness?*

A nonpayroll cost is eligible for forgiveness if it was:

i. Paid during the covered period; or

ii. incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period.

Example: A borrower that received a loan before June 5, 2020 uses a 24-week covered period that begins on June 1 and ends on November 15. The borrower pays its electricity bills for June through October during the covered period and pays its November electricity bill on December 10, which is the next regular billing date. The borrower may seek loan forgiveness for its June through October electricity bills, because they were paid during the covered

[3] Under section 3(b)(1) of the Paycheck Protection Program Flexibility Act of 2020, the loan forgiveness covered period of any borrower will end no later than December 31, 2020.

[4] *See* 85 FR 21747, 21749 (April 20, 2020).

period. In addition, the borrower may seek loan forgiveness for the portion of its November electricity bill through November 15 (the end of the covered period), because it was incurred during the covered period and paid on the next regular billing date. The Administrator, in consultation with the Secretary, has determined that this interpretation provides an appropriate degree of borrower flexibility while remaining consistent with the text of section 1106(b). The Administrator believes that this simplified approach to calculation of forgivable nonpayroll costs is also supported by considerations of administrative convenience for borrowers, and the Administrator notes that the 40 percent cap on nonpayroll costs as a portion of the total loan forgiveness amount will avoid excessive inclusion of nonpayroll costs.

f. Reductions to Loan Forgiveness Amount

As described above, section 3(b) of the Flexibility Act amended provisions of the CARES Act regarding the covered period and the portion of PPP loan proceeds that must be used for payroll costs for the full amount of the PPP loan to be eligible for forgiveness. As set forth below, these amendments necessitate several revisions to Part III.5 of the First Loan Forgiveness Rule. First, the introductory paragraph in Part III.5 of the First Loan Forgiveness Rule (85 FR 33004, 33007) is revised to read as follows:

5. Reductions to Loan Forgiveness Amount

Section 1106 of the CARES Act, as amended by Section 3(b)(2) of the Flexibility Act, specifically requires certain reductions in a borrower's loan forgiveness amount based on reductions in full-time equivalent employees or in employee salary and wages, subject to an important statutory exemption for borrowers that have eliminated the reduction on or before December 31, 2020. Section 3(b)(2) of the Flexibility Act also adds exemptions from reductions in loan forgiveness amounts based on employee availability and business activity. In addition, SBA and Treasury have adopted a regulatory exemption to the reduction rules for borrowers that have offered to restore employee hours at the same salary or wages, even if the employees have not accepted. The instructions to the loan forgiveness applications and the guidance below explains how the statutory forgiveness reduction formulas work.

Section 1106(d)(2) of the CARES Act reduces the amount of the PPP loan that may be forgiven if the borrower reduces full-time equivalent employees during the covered period as compared to a base period selected by the borrower. Section 1106(d)(5) of the CARES Act originally waived this reduction in the forgiveness amount if the borrower eliminates the reduction in full-time equivalent employees occurring during a different statutory reference period by not later than June 30, 2020. Section 3(b)(2) of the Flexibility Act amended this provision to replace ''June 30'' with ''December 31.'' To conform the First Loan Forgiveness Rule to this amendment under the Flexibility Act, Part III.5.a of the First Loan Forgiveness Rule (85 FR 33004, 33007) is revised by striking ''June 30, 2020'' and replacing it with ''December 31, 2020.'' Section 3(d) of the Flexibility Act provides that this amendment shall be effective as if included in the CARES Act, which was enacted on March 27, 2020.

As described above, section 3(b) of the Flexibility Act extended the length of the covered period as defined in section 1106 of the CARES Act from eight to 24 weeks, while allowing borrowers that received PPP loans before June 5, 2020 to elect to use the original eight-week covered period. For consistency with this amendment, the paragraph consisting of the example in Part III.5.e of the First Loan Forgiveness Rule (85 FR 33004, 33008) is revised to provide two examples that read as follows:

Example: A borrower is using a 24-week covered period. This borrower reduced a full-time employee's weekly salary from $1,000 per week during the reference period to $700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first $250 (25 percent of $1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list $1,200 as the salary/hourly wage reduction for that employee (the extra $50 weekly reduction multiplied by 24 weeks). If the borrower applies for forgiveness before the end of the covered period, it must account for the salary reduction for the full 24-week covered period (totaling $1,200).

Example: A borrower that received a PPP loan before June 5, 2020 has elected to use an eight-week covered period. This borrower reduced a full-time employee's weekly salary from $1,000 per week during the reference period to $700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first $250 (25 percent of $1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list $400 as the salary/hourly wage reduction for that employee (the extra $50 weekly reduction multiplied by eight weeks).

In light of the amendments under the Flexibility Act described above, Part III.5.g of the First Loan Forgiveness Rule (85 FR 33004, 33009) is revised by striking ''June 30, 2020'' each place that it appears and replacing it with ''December 31, 2020,'' and by striking ''75 percent'' and replacing it with ''60 percent.'' Section 3(d) of the Flexibility Act provides that these amendments shall be effective as if included in the CARES Act, which was enacted on March 27, 2020.

Lastly, section 3(b)(2)(B) of the Flexibility Act established two new exemptions based on employee availability and business activity, respectively, that would eliminate a reduction in the loan forgiveness amount that would otherwise be required due to a reduction in full-time equivalent (FTE) employees. Specifically, that section of the Flexibility Act states that the amount of loan forgiveness ''shall be determined without regard to a proportional reduction in the number of full-time equivalent employees'' if an eligible recipient, in good faith, (A) is able to document (i) an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; and (ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or (B) is able to document an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19. The new exemption pertaining to individuals who refuse an offer to be rehired is very similar, but not identical, to a *de minimis* exemption that was provided in the First Loan Forgiveness Rule; therefore, the Administrator and the Secretary have determined that this new statutory exemption should supersede the previous *de minimis* exemption relating to reductions in FTE employees. However, a related *de minimis* exemption in the First Loan Forgiveness Rule for borrowers that have reduced the hours of an employee and offered to restore the reduction in hours, but the employee declined the offer, is not addressed in the Flexibility Act and is therefore being retained.

In order to implement these exemptions, Part III.5.a of the First Loan Forgiveness Rule (85 FR 33004, 33007) is revised to read:

a. Will a borrower's loan forgiveness amount be reduced if the borrower reduced the hours of an employee, then offered to restore the reduction in hours, but the employee declined the offer?

No. In calculating the loan forgiveness amount, a borrower may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual employee if:

i. The borrower made a good faith, written offer to restore the reduced hours of such employee;

ii. the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the reduction in hours;

iii. the offer was rejected by such employee; and

iv. the borrower has maintained records documenting the offer and its rejection.

The Administrator and the Secretary determined that this exemption is an appropriate exercise of their joint rulemaking authority to grant a *de minimis* exemption under section 1106(d)(6).[5] Section 1106(d)(2) of the CARES Act reduces the amount of the PPP loan that may be forgiven if the borrower reduces full-time equivalent employees during the covered period as compared to a base period selected by the borrower. Section 1106(d)(5) of the CARES Act waives this reduction in the forgiveness amount if the borrower eliminates the reduction in full-time equivalent employees occurring during a different statutory reference period [6] by not later than December 31, 2020. The Administrator and the Secretary believe that the additional exemption set forth above is consistent with the purposes of the CARES Act and provides borrowers appropriate flexibility in the current economic climate. The Administrator, in consultation with the Secretary, has determined that the exemption is *de minimis* for two reasons. First, it is reasonable to anticipate that most employees will accept the offer of restored hours in light of current labor market conditions. Second, to the extent this exemption allows employers to cure FTE reductions attributable to reductions in hours that occurred before February 15, 2020 (the start of the statutory FTE reduction safe harbor period), it is reasonable to anticipate those reductions will represent a relatively small portion of aggregate employees given the historically strong labor market conditions before the COVID–19 emergency.

In addition, Part III.5.b of the First Loan Forgiveness Rule (85 FR 33004, 33007–08) is revised by adding the following at the end thereof:

Borrowers are exempted from the loan forgiveness reduction arising from a proportional reduction in FTE employees during the covered period if the borrower is able to document in good faith the following: (1) An inability to rehire individuals who were employees of the borrower on February 15, 2020; and (2) an inability to hire similarly qualified individuals for unfilled positions on or before December 31, 2020. Borrowers are required to inform the applicable state unemployment insurance office of any employee's rejected rehire offer within 30 days of the employee's rejection of the offer.[7] The documents that borrowers should maintain to show compliance with this exemption include, but are not limited to, the written offer to rehire an individual, a written record of the offer's rejection, and a written record of efforts to hire a similarly qualified individual.

Borrowers are also exempted from the loan forgiveness reduction arising from a reduction in the number of FTE employees during the covered period if the borrower is able to document in good faith an inability to return to the same level of business activity as the borrower was operating at before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention (CDC), or the Occupational Safety and Health Administration related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19 (COVID Requirements or Guidance). Specifically, borrowers that can certify that they have documented in good faith that their reduction in business activity during the covered period stems directly or indirectly from compliance with such COVID Requirements or Guidance are exempt from any reduction in their forgiveness amount stemming from a reduction in FTE employees during the covered period. Such documentation must include copies of applicable COVID Requirements or Guidance for each business location and relevant borrower financial records.

The Administrator, in consultation with the Secretary, is interpreting the above statutory exemption to include both direct and indirect compliance with COVID Requirements or Guidance, because a significant amount of the reduction in business activity stemming from COVID Requirements or Guidance is the result of state and local government shutdown orders that are based in part on guidance from the three federal agencies.

Example: A PPP borrower is in the business of selling beauty products both online and at its physical store. During the covered period, the local government where the borrower's store is located orders all non-essential businesses, including the borrower's business, to shut down their stores, based in part on COVID–19 guidance issued by the CDC in March 2020. Because the borrower's business activity during the covered period was reduced compared to its activity before February 15, 2020 due to compliance with COVID Requirements or Guidance, the borrower satisfies the Flexibility Act's exemption and will not have its forgiveness amount reduced because of a reduction in FTEs during the covered period, if the borrower in good faith maintains records regarding the reduction in business activity and the local government's shutdown orders that reference a COVID Requirement or Guidance as described above.

g. Documentation Requirements

Because SBA has issued an alternative loan forgiveness application, SBA Form 3508EZ, the parenthetical in the first sentence of Part III.6 of the First Loan Forgiveness Rule (85 FR 33004, 33009) is revised to read as follows: ''(SBA Form 3508 or SBA Form 3508EZ, as applicable, or lender equivalent)''.

2. Changes to the First Loan Review Rule

a. Alternative Loan Forgiveness Application

The First Loan Review Rule informs borrowers and lenders of SBA's process for reviewing PPP loan applications and loan forgiveness applications. Because SBA has issued an alternative Loan Forgiveness Application, SBA Form 3508EZ, the following changes are necessary.

Parts III.1.b and III.1.e are revised by striking each reference in those sections to ''SBA Form 3508 or lender's equivalent form'' and replacing it with ''SBA Form 3508, 3508EZ, or lender's equivalent form''.

b. The Loan Forgiveness Process for Lenders

As noted above, SBA has issued an alternative Loan Forgiveness Application Form, SBA Form 3508EZ. Further, Section 3(b)(2) of the Flexibility Act reduced, from 75 percent to 60 percent, the portion of PPP loan proceeds that must be used for payroll costs for the full amount of the PPP loan to be eligible for forgiveness. As set forth below, these developments necessitate several revisions to Part III.2 of the First Loan Review Rule.

Part III.2.a. is revised to read as follows:

a. What should a lender review?

When a borrower submits SBA Form 3508 or lender's equivalent form, the lender shall:

i. Confirm receipt of the borrower certifications contained in the SBA Form 3508 or lender's equivalent form.

ii. Confirm receipt of the documentation the borrower must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the SBA Form 3508 or lender's equivalent form.

[5] Section 1106(d)(6) is the sole joint rulemaking authority exercised in this interim final rule. All other provisions of this interim final rule are an exercise of rulemaking authority by SBA, except as expressly noted otherwise.

[6] Section 1106(d)(5) specifies that this reference period is between February 15, 2020 and 30 days after the date of enactment of the CARES Act or April 26, 2020 (the safe harbor period).

[7] Further information regarding how borrowers will report information concerning rejected rehire offers to state unemployment insurance offices will be provided on SBA's website.

iii. Confirm the borrower's calculations on the borrower's SBA Form 3508 or lender's equivalent form, including the dollar amount of the (A) Cash Compensation, Non-Cash Compensation, and Compensation to Owners claimed on Lines 1, 4, 6, 7, 8, and 9 on PPP Schedule A and (B) Business Mortgage Interest Payments, Business Rent or Lease Payments, and Business Utility Payments claimed on Lines 2, 3, and 4 on the PPP Loan Forgiveness Calculation Form, by reviewing the documentation submitted with the SBA Form 3508 or lender's equivalent form.

iv. Confirm that the borrower made the calculation on Line 10 of the SBA Form 3508 or lender's equivalent form correctly, by dividing the borrower's Eligible Payroll Costs claimed on Line 1 by 0.60.

When the borrower submits SBA Form 3508EZ or lender's equivalent form, the lender shall:

i. Confirm receipt of the borrower certifications contained in the SBA Form 3508EZ or lender's equivalent form.

ii. Confirm receipt of the documentation the borrower must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the SBA Form 3508EZ or lender's equivalent form.

iii. Confirm the borrower's calculations on the borrower's SBA Form 3508EZ or lender's equivalent form, including the dollar amount of the Payroll Costs, Business Mortgage Interest Payments, Business Rent or Lease Payments, and Business Utility Payments claimed on Lines 1, 2, 3, and 4 of the SBA Form 3508EZ or lender's equivalent form, by reviewing the documentation submitted with the SBA Form 3508EZ or lender's equivalent form.

iv. Confirm that the borrower made the calculation on Line 7 of the SBA Form 3508EZ or lender's equivalent form correctly, by dividing the borrower's Eligible Payroll Costs claimed on Line 1 by 0.60.

Providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application Form. Lenders are expected to perform a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. By contrast, if payroll costs are not documented with such recognized sources, more extensive review of calculations and data would be appropriate. The borrower shall not receive forgiveness without submitting all required documentation to the lender.

As the First Interim Final Rule [8] indicates, lenders may rely on borrower representations. If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue. As stated in paragraph III.3.c of the First Interim Final Rule, the lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.

Part III.2.b. is revised to read as follows:

b. What is the timeline for the lender's decision on a loan forgiveness application?

The lender must issue a decision to SBA on a loan forgiveness application not later than 60 days after receipt of a complete loan forgiveness application from the borrower. That decision may take the form of an approval (in whole or in part); denial; or (if directed by SBA) a denial without prejudice due to a pending SBA review of the loan for which forgiveness is sought. In the case of a denial without prejudice, the borrower may subsequently request that the lender reconsider its application for loan forgiveness, unless SBA has determined that the borrower is ineligible for a PPP loan. The Administrator has determined that this process appropriately balances the need for efficient processing of loan forgiveness applications with considerations of program integrity, including affording SBA the opportunity to ensure that borrower representations and certifications (including concerning eligibility for a PPP loan) were accurate. When the lender issues its decision to SBA approving the application (in whole or in part), it must include the following:

i. For applications submitted using the SBA Form 3508 or lender's equivalent form:

(1) the PPP Loan Forgiveness Calculation Form;

(2) PPP Schedule A; and

(3) the (optional) PPP Borrower Demographic Information Form (if submitted to the lender).

ii. For applications submitted using the SBA Form 3508EZ or lender's equivalent form:

(1) the SBA Form 3508EZ or lender's equivalent form; and

(2) the (optional) Borrower Demographic Information Form (if submitted to the lender).

The lender must confirm that the information provided by the lender to SBA accurately reflects lender's records for the loan, and that the lender has made its decision in accordance with the requirements set forth in 2.a. If the lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations, the lender must request payment from SBA at the time the lender issues its decision to SBA. SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA. If applicable, SBA will deduct EIDL Advance Amounts from the forgiveness amount remitted to the Lender as required by section 1110(e)(6) of the CARES Act. The lender is responsible for notifying the borrower of remittance by SBA of the loan forgiveness amount (or that SBA determined that no amount of the loan is eligible for forgiveness) and the date on which the borrower's first payment is due, if applicable.

When the lender issues its decision to SBA determining that the borrower is not entitled to forgiveness in any amount, the lender must provide SBA with the reason for its denial, together with the following:

i. For applications submitted using the SBA Form 3508 or lender's equivalent form:

(1) the PPP Loan Forgiveness Calculation Form;

(2) PPP Schedule A; and

(3) the (optional) PPP Borrower Demographic Information Form (if submitted to the lender).

iii. For applications submitted using the SBA Form 3508EZ or lender's equivalent form:

(1) the SBA Form 3508EZ or lender's equivalent form; and

(2) the (optional) Borrower Demographic Information Form (if submitted to the lender).

The lender must confirm that the information provided by the lender to SBA accurately reflects lender's records for the loan, and that the lender has made its decision in accordance with the requirements set forth in 2.a. The lender must also notify the borrower in writing that the lender has issued a decision to SBA denying the loan forgiveness application. SBA reserves the right to review the lender's decision in its sole discretion. Within 30 days of notice from the lender, a borrower may notify the lender that it is requesting that SBA review the lender's decision by reviewing the loan in accordance with 2.c. below. Within 5 days of receipt, the lender must notify SBA of the borrower's request for review. SBA will notify the lender if SBA declines a request for review. If the borrower does not request SBA review or SBA declines the request for review, the lender is responsible for notifying the borrower of the date on which the borrower's first payment is due. If SBA accepts a borrower's request for review, SBA will notify the borrower and the lender of the results of the review. If SBA denies forgiveness in whole or in part, the

[8] 85 FR 20811, 20815–20816 (April 15, 2020).

lender is responsible for notifying the borrower of the date on which the borrower's first payment is due.

Enabling SBA to use the statutory 90-day period to review the PPP loan and forgiveness documentation is an appropriate procedural protection to prevent fraud or misuse of PPP funds, ensure that recipients of PPP loans are within the scope of entities that the CARES Act is intended to assist, and confirm compliance with the PPP requirements set forth in the statute, rules, and guidance. This protection is also important in light of the large number and diverse types of PPP lenders, many of which were not previously SBA participating lenders and which were approved rapidly in order to enable financial assistance to be provided as rapidly as feasible to millions of small businesses. SBA will use the 90-day period to help ensure that applicable legal requirements have been satisfied.

Part III.2.c.ii. is revised to read as follows:

ii. The Loan Forgiveness Application (SBA Form 3508, 3508EZ, or lender's equivalent form), and all supporting documentation provided by the borrower (if the lender has received such application). If the lender receives such application after it receives notice that SBA has commenced a loan review, the lender shall transmit electronic copies of the application and all supporting documentation provided by the borrower to SBA within five business days of receipt.

The lender must also request that the borrower provide the lender with the applicable documentation that the instructions to the Loan Forgiveness Application Form (SBA Form 3508, 3508EZ, or lender's equivalent) instruct the borrower to maintain but not submit (documentation listed under ''Documents that Each Borrower Must Maintain but is Not Required to Submit''). The lender must submit documents received from the borrower to SBA within five business days of receipt from the borrower.

3. Additional Information

SBA may provide further guidance, if needed, through SBA notices which will be posted on SBA's website at *www.sba.gov.* Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D), based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

Executive Order 12988

SBA and Treasury have drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA and Treasury have determined that this rule 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 layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA and Treasury have determined that this rule modifies existing information collection. The amendments to the PPP made by the Flexibility Act and implemented in this interim final rule require conforming revisions to the Paycheck Protection Program—Loan Forgiveness Application (SBA Form 3508), for use in collecting the information required to determine whether a borrower is eligible for loan forgiveness. In addition, SBA has developed a streamlined Paycheck Protection Program—PPP Loan Forgiveness Application Form 3508EZ (SBA Form 3508 EZ), which is available for borrowers meeting criteria described in the instructions accompanying the form. SBA has obtained OMB approval of the modification to the existing information collection, which is currently approved as an emergency request under OMB Control Number 3245–0407 until October 31, 2020.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities. The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Accordingly, SBA and Treasury are not

required to conduct a regulatory flexibility analysis.

Jovita Carranza,

Administrator,Small Business Administration.

Michael Faulkender,

Assistant Secretary for Economic Policy Department of the Treasury.

[FR Doc. 2020–13782 Filed 6–24–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0612; Project Identifier MCAI–2020–00674–E; Amendment 39–21152; AD 2020–13–07]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd. & Co KG (RRD) Trent 1000–D2, Trent 1000–J2, and Trent 1000–K2 model turbofan engines with fuel pump, part number G5030FPU01, installed. This AD requires removal and replacement of the fuel pump with a part eligible for installation. This AD was prompted by the manufacturer's investigation into an unexpected reduction in fuel pump performance in certain high life fuel pumps. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 13, 2020.

The FAA must receive comments on this AD by August 10, 2020.

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

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

For service information identified in this final rule, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 708 6 0; email: *https://www.rolls-royce.com/contact-us.aspx*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0612.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0612; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Stephen Elwin, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7236; fax: 781–238–7199; email: *stephen.l.elwin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2020–0124, dated May 29, 2020 (referred to after this as ''the MCAI''), to address an unsafe condition for the specified products. The MCAI states:

> An unexpected reduction in fuel pump performance has been seen during testing of high life units. Strip examination of these fuel pumps has identified that life related wear-out of the internal components is causing deterioration in pump efficiency. The effect of the loss of fuel pump efficiency is more pronounced on higher rated engines.
>
> This condition, if not corrected, could lead to reduced engine thrust, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Rolls-Royce published the NMSB to provide instructions for replacement of the affected parts before exceeding reduced life limits.
>
> For the reasons described above, this [EASA] AD requires removal from service of the affected parts.

You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0612.

Related Service Information

The FAA reviewed Rolls-Royce plc (RR) Alert Non-Modification Service Bulletin (NMSB) Trent 1000 73–AK581, dated May 12, 2020. The Alert NMSB introduces a reduced life limit for fuel pumps installed on affected engines.

FAA's Determination

This product has been approved by EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI. The FAA is issuing this AD because it evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires removal of the affected fuel pump and its replacement with a part eligible for installation.

Differences Between This AD and the Service Information

RR Alert NMSB Trent 1000 73–AK581, dated May 12, 2020, recommends removal of D2-rated engine fuel pumps with more than 17,000 hours (or 5,200 cycles) by May 31, 2020, and more than 16,000 hours (or 4,900 cycles) by June 30, 2020, or within 3 engine flight cycles, whichever is later. Since this AD will become effective after the RRD recommended compliance date of June 30, 2020, this AD requires removal of D2-rated engine fuel pumps before exceeding 16,000 hours time in service or 4,900 engine cycles since new or since last overhaul. This AD also provides a 30-day grace period for compliance.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) 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 seeking comment prior to the rulemaking. Similarly, Section 553(d) of the APA authorizes agencies to make rules effective in less than 30 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 waiving notice and comment prior to adoption of this rule. An unexpected reduction in fuel pump performance was seen during testing of high life fuel pumps. The reduced fuel pump performance could lead to reduced engine thrust, resulting in reduced control of the airplane. These fuel pumps must be removed and replaced before exceeding the reduced life-limits or within 30 days after the effective date of this AD, whichever occurs later.

The FAA considers the removal of these fuel pumps from service to be an urgent safety issue. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reasons stated above, 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.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2020–0612 and Project Identifier MCAI–2020–00674–E at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

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 final rule 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 final rule, 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 final rule. Submissions containing CBI should be sent to Stephen Elwin, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 11 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace fuel pump	3 work-hours × $85 per hour = $255	$393,552	$393,807	$4,331,877

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify 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.

Adoption of 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 (AD):

2020–13–07 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Amendment 39–21152; Docket No. FAA–2020–0612; Project Identifier MCAI–2020–00674–E.

(a) Effective Date

This AD is effective July 13, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce Deutschland Ltd. & Co KG (Type Certificate previously held by Rolls-Royce plc) Trent 1000–D2, Trent 1000–J2, and Trent 1000–K2 model turbofan engines with fuel pump, part number (P/N) G5030FPU01, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7314, Engine Fuel Pump.

(e) Unsafe Condition

This AD was prompted by the manufacturer's investigation into an unexpected reduction in fuel pump performance in certain high life fuel pumps. Further troubleshooting of the fuel pump discovered life-related wear-out of the internal components, which causes deterioration in fuel pump efficiency. The FAA is issuing this AD to reduce the risk of reduced thrust during engine operation. The unsafe condition, if not addressed, could result in failure of the fuel pump, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Remove fuel pump, P/N G5030FPU01, and replace it with a part eligible for installation within the compliance times specified in paragraph (g)(1) or (2) of this AD, whichever occurs later:

(1) Before exceeding 16,000 hours in service or 4,900 engines cycles in service since new, or since last overhaul; or

(2) Within 30 days after the effective date of this AD.

(h) Definition

For the purpose of this AD, a ''part eligible for installation'' is a fuel pump that has not exceeded the compliance times specified in paragraph (g)(1) of this AD.

Note 1 to paragraph (h): Additional information on a sub-population of parts that are eligible for installation can be found in Appendix 1 of Rolls-Royce plc Alert Non-Modification Service Bulletin Trent 1000 73–AK581, dated May 12, 2020.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Stephen Elwin, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7236; fax: 781–238–7199; email: *stephen.l.elwin@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0124, dated May 29, 2020, for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2020–0612.

(k) Material Incorporated by Reference

None.

Issued on June 17, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–13448 Filed 6–25–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0842; Airspace Docket No. 18–AGL–15]

RIN 2120–AA66

Amendment of VOR Federal Airways V–59, V–92, V–115, and V–117 in the Vicinity of Newcomerstown, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends VHF Omnidirectional Range (VOR) Federal airways V–59, V–92, V–115, and V–117 in the vicinity of Newcomerstown, OH. These modifications are necessary due to the planned decommissioning of the VOR portion of the Newcomerstown, OH (CTW), VOR/Distance Measuring Equipment (VOR/DME) navigation aid (NAVAID), which provides navigation guidance for portions of the affected air traffic service (ATS) routes. The Newcomerstown VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program and due to service availability issues.

DATES: Effective date 0901 UTC, September 10, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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 modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2019–0842 in the **Federal Register** (84 FR 67381; December 10, 2019), amending VOR Federal airways V–59, V–92, V–115, and V–117 due to the planned decommissioning of the VOR portion of the Newcomerstown, OH, VOR/DME NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be subsequently published in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Differences From the Proposal

The Choo Choo VOR/Tactical Air Navigation (VORTAC) NAVAID listed in the V–115 description is actually located in Chattanooga, Tennessee. As such, the state abbreviation for the NAVAID listed in the description should reflect the abbreviation ''TN'' instead of ''GA''. This editorial correction to the V–115 description is included in this action.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal airways V–59, V–92, V–115, and V–117. The planned decommissioning of the VOR portion of the Newcomerstown, OH, VOR/DME NAVAID has made this action necessary. The VOR Federal airway changes are described below.

V–59: V–59 extends between the Pulaski, VA, VORTAC and the Newcomerstown, OH, VOR/DME. The airway segment between the Parkersburg, WV, VOR/DME and the Newcomerstown, OH, VOR/DME is removed. The unaffected portions of the existing airway remain as charted.

V–92: V–92 extends between the Chicago Heights, IL, VORTAC and the Goshen, IN, VORTAC; and between the Newcomerstown, OH, VOR/DME and the Bellaire, OH, VOR/DME. The airway segment between the Newcomerstown, OH, VOR/DME and the Bellaire, OH, VOR/DME is removed. The unaffected portion of the existing airway remains as charted.

V–115: V–115 extends between the Crestview, FL, VORTAC and the Franklin, PA, VOR/DME. The airway segment between the Parkersburg, WV, VORTAC and the Franklin, PA, VOR/DME is removed. Additionally, an editorial correction changes the state abbreviation for the Choo Choo VORTAC listed in the description from ''GA'' to ''TN''. The unaffected portions of the existing airway remain as charted.

V–117: V–117 extends between the Parkersburg, WV, VORTAC and the intersection of the Bellaire, OH, VOR/DME 044° radial and the Newcomerstown, OH, VOR/DME 099° radial (WISKE fix). The WISKE fix in the airway description is amended to describe it as the intersection of the Bellaire, OH, VOR/DME 044° and the Briggs, OH, VOR/DME 136° radials. The existing airway remains as charted.

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

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 modifying VOR Federal airways V–59, V–92, V–115, and V–117 in the vicinity of Newcomerstown, OH, due to the VOR portion of the Newcomerstown, OH, VOR/DME being decommissioned, qualifies for categorical exclusion under the National Environmental Policy Act 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). As such, this action is not expected to result in 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 that 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).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–59 [Amended]

From Pulaski, VA; Beckley, WV; to Parkersburg, WV.

* * * * *

V–92 [Amended]

From Chicago Heights, IL; to Goshen, IN.

* * * * *

V–115 [Amended]

From Crestview, FL; INT Crestview 001° and Montgomery, AL, 204° radials; Montgomery; INT Montgomery 323° and Vulcan, AL, 177° radials; Vulcan; Choo Choo, TN; Volunteer, TN; Hazard, KY; Charleston, WV; to Parkersburg, WV.

* * * * *

V–117 [Amended]

From Parkersburg, WV; Bellaire, OH; to INT Bellaire 044° and Briggs, OH, 136° radials.

* * * * *

Issued in Washington, DC, on June 17, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–13525 Filed 6–25–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0990; Airspace Docket No. 18–AGL–13]

RIN 2120–AA66

Amendment of VOR Federal Airways V–128 and V–144 in the Vicinity of Kankakee, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends VHF Omnidirectional Range (VOR) Federal airways V–128 and V–144 in the vicinity of Kankakee, IL. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Kankakee, IL, VOR/Distance Measuring Equipment (VOR/DME) navigation aid (NAVAID), which provides navigation guidance for portions of the affected air traffic service (ATS) routes. The Kankakee VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, September 10, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov,* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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 modifies the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** for Docket No. FAA–2018–0990 (83 FR 63601; December 11, 2018), amending VOR Federal airways V–128 and V–144 due to the planned decommissioning of the Kankakee, IL, VOR. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document will be subsequently published in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal airways V–128 and V–144. The planned decommissioning of the VOR portion of the Kankakee, IL, VOR/DME has made these actions necessary. The VOR Federal airway changes are outlined below.

V–128: V–128 extends between the Janesville, WI, VOR/DME and the Casanova, VA, VOR/Tactical Air Navigation (VORTAC). The airway segment between the Janesville, WI, VOR/DME and the Brickyard, IN, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

V–144: V–144 extends between the Bradford, IL, VORTAC and the Linden, VA, VOR/DME. The airway segment between the Bradford, IL, VORTAC and the Fort Wayne, IN, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

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

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 will only affect air traffic procedures and air navigation, it is certified that this 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

The FAA has determined that this action of modifying VOR Federal airways V–128 and V–144 near Kankakee, IL, due to the VOR portion of the Kankakee, IL, VOR/DME being decommissioned, qualifies for categorical exclusion under the National Environmental Policy Act 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). As such, this action is not expected to result in 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 that 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).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019 and effective September 15, 2019, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–128 [Amended]

From Brickyard, IN; INT Brickyard 137° and Cincinnati, OH, 290° radials; Cincinnati; York, KY; Charleston, WV; to Casanova, VA.

* * * * *

V–144 [Amended]

From Fort Wayne, IN; Appleton, OH; Zanesville, OH; Morgantown, WV; Kessel, WV; to Linden, VA.

Issued in Washington, DC, on June 17, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–13647 Filed 6–25–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0188; Airspace Docket No. 20–ASO–9]

RIN 2120–AA66

Amendment of Air Traffic Service (ATS) Routes J–6, Q–68, V–5, V–49, V–243, and T–325 in the Vicinity of Bowling Green, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Jet Route J–6, VHF Omnidirectional Range (VOR) Federal airways V–5, V–49, and V–243, and area navigation (RNAV) routes Q–68 and T–325 in the vicinity of Bowling Green, KY. These amendments are necessary due to the planned decommissioning of the VOR portion of the Bowling Green, KY, VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID). The Bowling Green VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, September 10, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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 modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking (NPRM) for Docket No. FAA–2020–0188 in the **Federal Register** (85 FR 16585; March 24, 2020), amending Jet Route J–6, VOR Federal airways V–5, V–49, and V–243, and RNAV routes Q–68 and T–325 in the vicinity of Bowling Green, KY. The amendments were necessary due to the planned decommissioning of the VOR portion of the Bowling Green, KY, VORTAC. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Jet routes are published in paragraph 2004, RNAV Q-routes are published in paragraph 2006, VOR Federal airways are published in paragraph 6010(a), and RNAV T-routes are published in paragraph 6011 of FAA Order 7400.11D,

dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document will be subsequently published in the Order.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 to modify Jet Route J–6, VOR Federal airways V–5, V–49, and V–243, and RNAV routes Q–68 and T–325. The planned decommissioning of the VOR portion of the Bowling Green, KY, VORTAC has made these amendments necessary. This rule also corrects the state listed for the Choo Choo VORTAC, located in Chattanooga, TN, from ''GA'' to ''TN'' in the V–5 and V–243 descriptions. The ATS route amendments are described below.

J–6: J–6 extends between the Salinas, CA, VORTAC and the Albany, NY, VORTAC. The route segment between the Little Rock, AR, VORTAC and the Charleston, WV, VOR/Distance Measuring Equipment (VOR/DME) is removed. The unaffected portions of the existing route remain as charted.

Q–68: Q–68 extends between the Charleston, WV, VOR/DME and the OTTTO, VA, waypoint located near the Linden, VA, VORTAC. The route is extended westward from the Charleston, WV, VOR/DME to the LITTR, AR, waypoint established near the Little Rock, AR, VORTAC. The unaffected portions of the existing route remain as charted.

V–5: V–5 extends between the Pecan, GA, VOR/DME and the Appleton, OH, VORTAC. The airway segment between the Choo Choo, TN, VORTAC and the New Hope, KY, VOR/DME is removed. The unaffected portions of the existing airway remain as charted.

V–49: V–49 extends between the Vulcan, AL, VORTAC and the Mystic, KY, VOR. The airway segment between the Nashville, TN, VORTAC and the Mystic, KY, VOR is removed. The unaffected portions of the existing airway remain as charted.

V–243: V–243 extends between the Craig, FL, VORTAC and the Bowling Green, KY, VORTAC. The airway segment between the Choo Choo, TN, VORTAC and the Bowling Green, KY, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

T–325: T–325 extends between the Bowling Green, KY, VORTAC and the Terre Haute, IN, VORTAC. The Bowling Green, KY (BWG), route point is changed from being listed as a ''VORTAC'' to a ''DME''. Additionally, the Bowling Green, KY, ''BWG'' identifier and Terre Haute, IN, ''TTH'' identifier are added to the first line of the route description and the geographic coordinates of each route point are expressed in degrees, minutes, seconds, and hundredths of a second. The existing RNAV route remains as charted.

The NAVAID radials listed in the ATS route descriptions below are unchanged and stated in True degrees.

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 will only affect air traffic procedures and air navigation, it is certified that this 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

The FAA has determined that this action of modifying Jet Route J–6, VOR Federal airways V–5, V–49, and V–243, and RNAV routes Q–68 and T–325, due to the planned decommissioning of the VOR portion of the Bowling Green, KY, VORTAC NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act 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). As such, this action is not expected to result in 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 that 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).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–6 [Amended]

From Salinas, CA; INT Salinas 145° and Avenal, CA, 292° radials; Avenal; INT Avenal 119° and Palmdale, CA, 310° radials; Palmdale; Hector, CA; Needles, CA; Drake, AZ; Zuni, AZ; Albuquerque, NM; Tucumcari, NM; Panhandle, TX; Will Rogers, OK; to Little Rock, AR. From Charleston, WV; INT Charleston 076° and Martinsburg, WV, 243° radials; Martinsburg; Lancaster, PA; Broadway, NJ; Sparta, NJ; to Albany, NY.

* * * * *

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–68 LITTR, AR to OTTTO, VA [Amended]

LITTR, AR	WP	(Lat. 34°40′39.90″ N, long. 092°10′49.26″ W)
SOPIE, TN	FIX	(Lat. 36°08′37.48″ N, long. 088°33′47.95″ W)
Bowling Green, KY	DME	(Lat. 36°55′43.47″ N, long. 086°26′36.36″ W)

YOCKY, KY	FIX	(Lat. 37°39′14.79″ N, long. 084°09′22.45″ W)
SPAYD, WV	FIX	(Lat. 38°11′36.56″ N, long. 082°19′28.69″ W)
Charleston, WV (HVQ)	VOR/DME	(Lat. 38°20′58.83″ N, long. 081°46′11.69″ W)
TOMCA, WV	WP	(Lat. 38°34′42.49″ N, long. 080°36′41.09″ W)
RONZZ, WV	WP	(Lat. 38°33′16.08″ N, long. 080°07′56.63″ W)
HHOLZ, WV	WP	(Lat. 38°38′01.96″ N, long. 079°41′33.22″ W)
CAPOE, VA	WP	(Lat. 38°51′13.13″ N, long. 078°22′27.45″ W)
OTTTO, VA	WP	(Lat. 38°51′15.81″ N, long. 078°12′20.01″ W)

* * * * *

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–5 [Amended]

From Pecan, GA; Vienna, GA; Dublin, GA; Athens, GA; INT Athens 340° and Electric City, SC, 274° radials; INT Electric City 274° and Choo Choo, TN, 127° radials; to Choo Choo. From New Hope, KY; Louisville, KY; Cincinnati, OH; to Appleton, OH.

* * * * *

V–49 [Amended]

From Vulcan, AL; Decatur, AL; to Nashville, TN.

* * * * *

V–243 [Amended]

From Craig, FL; Waycross, GA; Vienna, GA; LaGrange, GA; INT LaGrange 342° and Choo Choo, TN, 189° radials; to Choo Choo.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–325 Bowling Green, KY (BWG) to Terre Haute, IN (TTH) [Amended]

Bowling Green, KY (BWG)	DME	(Lat. 36°55′43.47″ N, long. 086°26′36.36″ W)
RENRO, KY	WP	(Lat. 37°28′50.53″ N, long. 086°39′19.25″ W)
LOONE, KY	WP	(Lat. 37°44′14.43″ N, long. 086°45′18.02″ W)
APALO, IN	WP	(Lat. 38°00′20.59″ N, long. 086°51′35.27″ W)
BUNKA, IN	WP	(Lat. 39°04′57.32″ N, long. 087°09′06.58″ W)
Terre Haute, IN (TTH)	VORTAC	(Lat. 39°29′20.19″ N, long. 087°14′56.45″ W)

* * * * *

Issued in Washington, DC, on June 17, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–13526 Filed 6–25–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0306; Airspace Docket No. 20–ASO–13]

RIN 2120–AA66

Amendment of VOR Federal Airway V–52 in the Vicinity of Bowling Green, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends VHF Omnidirectional Range (VOR) Federal airway V–52 due to the planned decommissioning of the VOR portion of the Bowling Green, KY, VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID). The Bowling Green VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (VOR MON) program.

DATES: Effective date 0901 UTC, September 10, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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 route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking (NPRM) for Docket No. FAA–2020–0306 in the **Federal Register** (85 FR 17792; March 31, 2020), amending VOR Federal airway V–52 in the vicinity of Bowling Green, KY, due to the planned decommissioning of the VOR portion of the Bowling Green, KY, VORTAC. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Subsequent to the NPRM, the FAA published a rule for Docket No. FAA–2020–0008 in the **Federal Register** (85 FR 26601; May 5, 2020), amending VOR Federal airway V–52 by removing the airway segment between the Pocket City, IN, VORTAC and the Bowling Green, KY, VORTAC. That airway amendment, effective July 16, 2020, is included in this rule.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be subsequently published in the Order.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 to modify VOR Federal airway V–52 due to the planned decommissioning of the VOR portion of the Bowling Green, KY, VORTAC. The VOR Federal airway action is described below.

V–52: V–52 extends between the Des Moines, IA, VORTAC and the Pocket City, IN, VORTAC; and between the Bowling Green, KY, VORTAC and the Livingston, TN, VOR/Distance Measuring Equipment (VOR/DME). The airway segment between the Bowling Green, KY, VORTAC and the Livingston, TN, VOR/DME is removed. The unaffected portions of the existing airway remain as charted.

The NAVAID radials listed in the V–52 description below are unchanged and stated in True degrees.

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 will only affect air traffic procedures and air navigation, it is certified that this 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

The FAA has determined that this action of modifying VOR Federal airway V–52, due to the planned decommissioning of the VOR portion of the Bowling Green, KY, VORTAC, qualifies for categorical exclusion under the National Environmental Policy Act 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). As such, this action is not expected to result in 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 that 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).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–52 [Amended]

From Des Moines, IA; Ottumwa, IA; Quincy, IL; St. Louis, MO; Troy, IL; INT Troy 099° and Pocket City, IN, 311° radials; to Pocket City.

* * * * *

Issued in Washington, DC, on June 17, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–13531 Filed 6–25–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Parts 41 and 139

[Public Notice: 11106]

RIN 1400–AE56

Removal of Regulations Relating to the Irish Peace Process Cultural Exchange and Training Program

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: In accordance with Executive Orders 13771 and 13777, which direct federal agencies to review and eliminate outdated and unnecessary regulations, the Department of State (''Department'') is removing regulations related to an obsolete visa program. The Irish Peace Process and Cultural Training Program was established in 1998 and created what is commonly referred to as the Walsh Visa Program. This visa program expired on September 30, 2008, and the regulations for administering the program are obsolete. Accordingly, the Department is removing the regulations related to this visa program.

DATES: This rule is effective on June 26, 2020.

FOR FURTHER INFORMATION CONTACT: Taylor Beaumont, Acting Chief, Legislation and Regulations Division, Legal Affairs, Office of Visa Services, Bureau of Consular Affairs, 600 19th Street NW, Washington, DC 20522, 202–485–8910, *VisaRegs@state.gov.*

SUPPLEMENTARY INFORMATION: The Irish Peace Process Cultural and Training Program Act of 1998, Public Law 105–319, created what is commonly referred to as the Walsh Visa Program. This program allowed young people from disadvantaged areas of Northern Ireland and designated counties of the Republic of Ireland suffering from sectarian violence and high structural unemployment to temporarily enter the United States to develop job skills and conflict resolution abilities in a diverse, cooperative, peaceful, and prosperous environment. At the conclusion of their stay, these young people were expected to return to their homes better able to contribute toward economic regeneration and the Irish peace process.

The Department promulgated the regulations at 22 CFR part 139 to implement the Walsh Visa Program. At the same time, the Department promulgated the regulations in Part 41 related to the Q2 and Q3 nonimmigrant visa classifications for eligible individuals. This visa program ended on September 30, 2008. Initially established with a September 20, 2005,

end date, the visa program was extended through September 30, 2008, by Public Law 108–449. The regulations for administering the program became obsolete upon the expiration of the program in 2008. The Department is therefore removing the program-related regulations at 22 CFR part 139, and the corresponding visa regulations at 22 CFR part 41, including sections 41.57(b), 41.101(f), and the obsolete classification codes for Q2 and Q3 visas at 22 CFR 41.12.

Regulatory Findings

Administrative Procedure Act

This rule is issued without prior notice and opportunity to comment, with an immediate effective date, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b) and (d). Under 5 U.S.C. 553(b)(B), agencies are exempt from notice and comment rulemaking when an agency finds for good cause that ''notice and public procedures are impracticable, unnecessary, or contrary to the public interest.'' The APA also authorizes agencies to dispose of a 30-day delay in effective date and make a rule effective immediately upon a showing of good cause. 5 U.S.C. 553(d)(3). The Department finds that good cause exists both to waive prior notice and comment and the 30-day delay of effective date on this rule because public comment is unnecessary. This program ended on September 30, 2008, making this rule obsolete. The program to which the rule relates is no longer authorized. Therefore, in accordance with 5 U.S.C. 553(b) and (d), this rule is effective immediately and is not subject to the notice-and-comment rule making procedures set forth in 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined in 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866 and 13771: Reducing Regulation and Controlling Regulatory Costs

The Department does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order with the guidance therein. This rule withdraws defunct regulations and thus will not impose any costs on the public. This rule is an E.O. 13771 deregulatory action.

Executive Orders 12372 and 13132: Federalism

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose or revise any reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects

22 CFR Part 41

Aliens, Nonimmigrants, Passports, Visas.

22 CFR Part 139

Aliens, Passports, Visas.

Accordingly, for the reasons set forth in the preamble, 22 CFR parts 41 and 139 are amended as follows:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for Part 41 continues to read as follows:

Authority: 22 U.S.C. 2651a; 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

§ 41.12 [Amended]

■ 2. In § 41.12 amend the table by removing the classification symbols for Q2 and Q3.

■ 3. Amend § 41.57 by revising the section heading and removing and reserving paragraph (b) to read as follows:

§ 41.57 International cultural exchange visitors.

* * * * *

§ 41.101 [Amended]

■ 4. Amend § 41.101 by removing and reserving paragraph (f).

PART 139—[REMOVED AND RESERVED]

■ 5. Under the authority of Public Law 105–319, 112 Stat. 3013; 22 U.S.C. 2651a, remove and reserve part 139.

Carl C. Risch,

Assistant Secretary, Consular Affairs, Department of State.

[FR Doc. 2020–12649 Filed 6–25–20; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice: 11105]

RIN 1400–AE55

Removal of Regulations Related to Immigrant Visas for Certain Expatriates

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: In accordance with Executive Orders 13771 and 13777, which direct

federal agencies to review and eliminate outdated and unnecessary regulations, the Department of State (Department) is removing a regulation related to issuance of immigrant visas to women expatriates who lost citizenship as the result of marrying an alien prior to 1922.

DATES: This rule is effective on June 26, 2020.

FOR FURTHER INFORMATION CONTACT: Taylor Beaumont, Acting Chief, Legislation and Regulations Division, Legal Affairs, Office of Visa Services, Bureau of Consular Affairs, 600 19th Street NW, Washington, DC 20522, 202–485–8910, *VisaRegs@state.gov.*

SUPPLEMENTARY INFORMATION: The Department has identified a regulation relating to defunct immigrant visa classifications for certain former U.S. citizens that is unnecessary. As a result of Section 3 of the Act of March 2, 1907, 34 Stat. 1228, some U.S. citizen women lost their United States citizenship as a result of a marriage prior September 22, 1922. This provision was repealed by the Cable Act of 1922, 42 Stat. 1022.

Between 1907 and 1922, some U.S. citizen women lost their U.S. citizenship due to their marriage to an alien, or to a U.S. citizen who acquired another citizenship. Department regulations at 22 CFR 42.23(a) described an immigrant visa classification that was available to such women. The last visa issued in this category was issued in 1998, and it is unlikely that any person eligible for this category is still living. Therefore, the Department is removing this unnecessary regulation.

Regulatory Findings

Administrative Procedure Act

This rule is issued without prior notice and opportunity to comment, with an immediate effective date, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b) and (d). Under 5 U.S.C. 553(b)(B), agencies are exempt from notice and comment rulemaking when an agency finds for good cause that ''notice and public procedures are impracticable, unnecessary, or contrary to the public interest.'' The APA also authorizes agencies to dispose of a 30-day delay in effective date and make a rule effective immediately upon a showing of good cause. 5 U.S.C. 553(d)(3). The Department finds that good cause exists both to waive prior notice and comment and the 30-day delay of effective date on this rule because both are unnecessary. The last visa issued within this category was in 1998, and it is unlikely that eligible invdividualsindividuals are still living, making this rule both outdated and unnecessary. As a result, removal of this rule is insignificant in nature and impact, and inconsequential to the public. Therefore, in accordance with 5 U.S.C. 553(b) and (d), this rule is effective immediately and is not subject to the notice-and-comment rule making procedures set forth in 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined in 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866 and 13771: Reducing Regulation and Controlling Regulatory Costs

The Department does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order with the guidance therein. This rule withdraws defunct regulations and will not impose any costs on the public. This rule is an E.O. 13771 deregulatory action.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Passports, Visas.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 42 is amended as follows:

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105–277; Pub. L. 108–449; 112 Stat. 2681–795 through 2681–801; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901–14954, Pub. L. 106–279; Pub. L. 111–287; 8 U.S.C. 1101, 124 Stat. 3058; 8 U.S.C. 1154, Pub. Law 109–162.

§ 42.23 [Amended]

■ 2. Amend § 42.23 by removing and reserving paragraph (a).

* * * * *

Carl C. Risch,

Assistant Secretary, Consular Affairs, Department of State.

[FR Doc. 2020–12647 Filed 6–25–20; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 232

[Docket No. FR 6022–F–02]

RIN 2502–AJ46

Federal Housing Administration (FHA): Section 232 Healthcare Facility Insurance Program—Updating Section 232 Program Regulations for Memory Care Residents

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule updates the requirements for the location of bathrooms in board and care and assisted living facilities insured under HUD's Section 232 program, which insures mortgage loans to facilitate the construction, substantial rehabilitation, purchase, and refinancing of nursing homes, intermediate care facilities, board and care homes, and assisted-living facilities. The rule will allow providers to configure the facilities to meet the needs of memory care residents and allow for flexibility of the bathroom requirement when financing or refinancing existing facilities. This final rule follows publication of a September 13, 2019 proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* This final rule is effective July 27, 2020.

FOR FURTHER INFORMATION CONTACT: John M. Hartung, Director, Policy, Risk Analysis & Lender Relations Division, Office of Residential Care Facilities, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 1222 Spruce Street, St. Louis, MO 63103–2836; telephone number 314–418–5238 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—HUD's September 13, 2019 Proposed Rule

Under Section 232, 223(a)(7), and 223(f) of the National Housing Act (12 U.S.C. 1715w 12 U.S.C. 1715n(a)(7), and 12 U.S.C. 1715n (f)(4), respectively), FHA insures mortgages to finance the purchase or refinance of nursing homes, intermediate care facilities, board and care homes, and assisted living facilities (collectively, residential healthcare facilities). On September 13, 2019, HUD published a proposed rule in the **Federal Register**, at 84 FR 48321,[1] to revise the current regulation governing the Section 232 program. The proposed rule sought to amend the bathroom requirements to meet the needs of memory care residents. Memory care residents are those patients in assisted living or board and care settings that have cognitive impairments, such as Alzheimer's disease and other dementias who require care in a secure setting.

As described in the proposed rule, memory care residents are a significant and growing proportion of the residential healthcare facilities population.[2] Facilities must accommodate residents' cognitive and physical impairments, and appropriate design enhances the health and safety of persons with Alzheimer's disease or other forms of dementia. For insured facilities, HUD's Section 232 regulation requires a specific number of bathrooms per residents and specifies the physical configuration of a board and care home or an assisted living facility, prohibiting configurations where the access path from a bedroom to a bathroom passes through a public area. HUD's proposed rule, therefore, proposed revising the regulation to add flexibility for financing existing residential healthcare facilities where complying with § 232.7 requirements for number or configuration of bathrooms is not practicable or would not adequately serve memory care residents. This change would enable existing residential healthcare facilities that currently serve memory care residents to obtain Section 232 refinancing.

Specifically, HUD proposed an exemption from the current requirement for one full bathroom for every four residents, and from the current prohibition on bathroom access that passes through a public corridor or area. Additional details about the proposed rule may be found at 84 FR 48321 (September 12, 2019).

II. Final Rule

This final rule adopts the proposed rule without change. The final rule provides an exemption from the current requirement of one full bathroom for every four residents, and from the current prohibition on bathroom access that passes through a public corridor or area, only for memory care facilities whose financing is being insured pursuant to Section 223(f) or 223(a)(7) of the National Housing Act, and only when four considerations are satisfied: (1) Memory care residents must reside in a separate, secured, and locked area of the board and care home or assisted living facility; (2) any bathroom access from a memory care resident's bedroom or sleeping area that passes through a public corridor or area must be in that separate, secured, and locked area of the board and care home or assisted living facility; (3) memory care residents of such areas require full assistance or supervision when bathing; and (4) wards serving memory care residents have no more than two beds per unit and a half-bath in each unit. This exemption would not apply to new construction or substantial rehabilitation insured under Section 232, and those projects must continue to follow the long-standing bathroom requirements for board and care home or assisted living units.

This final rule does not change the requirement in § 232.2 that all facilities must still comply with any applicable Federal, State or local standards and requirements, including requirements specific to memory care facilities.[3]

III. Discussion of Public Comments Received on September 13, 2019, Proposed Rule

The public comment period for the rule closed on November 12, 2019. HUD received two public comments in response to the proposed rule. These comments were submitted by a private citizen and an independent living specialist who works with the residential healthcare facility industry. Commenters were generally supportive of HUD's rule, but one commenter recommended the rule be expanded to address the Section 232 program as it relates to other Federal and State programs and requirements, particularly Medicaid. The commenter requested that HUD work with the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) and States to implement CMS requirements for settings that are eligible for reimbursement for Medicaid home and community-based services. The commenter also requested that HUD clarify whether Medicaid enrollees will be able to use HUD programs to pay fair market rent or participate in rental

[1] HUD also published a September 26, 2019 proposed rule supplement, 84 FR 50805, correcting certain references in the September 13, 2019 proposed rule publication.

[2] See, Background on memory care residents at 84 FR 48321–48322.

[3] Federal civil rights statutes and regulations also contain accessibility and nondiscrimination requirements that apply, including regulations under the Fair Housing Act (24 CFR part 100), the Americans with Disabilities Act (28 CFR parts 35 (Title II) and 36 (Title III)), and Section 504 of the Rehabilitation Act (24 CFR part 8), as applicable.

assistance; and that HUD should address institutional bias related to Medicaid and housing systems. While HUD appreciates the comments, this final rule is limited to removing an impediment to providing needed mortgage insurance for existing memory care facilities.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made by the Office of Management and Budget regarding whether a regulatory action is significant and therefore subject to review in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule allows additional flexibility for the financing of residential healthcare facilities.

Executive Order 13771

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017. This final rule is expected to be an Executive Order 13771 deregulatory action by providing additional flexibility for healthcare facilities, as discussed above.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment was made prior to publication of the proposed rule, in accordance with HUD regulations at 24 CFR part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI remains applicable, and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This final rule does not impose any Federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

HUD believes that this final rule imposes no additional requirements on small businesses. Currently, HUD has a total of 3,738 residential healthcare facilities in its portfolio and completes approximately 300 firm commitments each year for 223(f) and 223(a)(7) refinances. HUD is providing waivers on 3 percent of those applications and waiver requests continue to increase. As noted in the preamble of the final rule, applicants have advised that the requirement regarding the number and location of bathrooms presented barriers to properly serving memory care residents, who need specialized support. HUD believes this final rule will resolve the inadequacy of the current bathroom requirements, thus, easing the existing burden on those entities seeking to accommodate memory care residents and entities seeking to finance or refinance facilities. Additionally, both owners, small and large, and memory care residents will benefit from the opportunity to finance their facility in compliance with this new framework.

Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits to the extent practicable and permitted by law, 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 relevant requirements of Section 6 of the Executive Order are met. This 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.

Congressional Review of Final Rules

The Office of Information and Regulatory Affairs has determined that this final rule is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking pursuant to the Congressional Review Act, Public Law 104–121, sec. 251, 110 Stat. 868, 873 (codified at 5 U.S.C. 804). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the Mortgage Insurance Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities is 14.129.

List of Subjects in 24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD amends 24 CFR part 232 as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES

■ 1. The authority citation for 24 CFR part 232 continues to read as follows:

Authority: 12 U.S.C. 1715b; 1715w; 1735d, and 1735f-19; 42 U.S.C. 3535(d).

■ 2. Revise § 232.7 to read as follows:

§ 232.7 Bathroom.

(a) *General requirement.* For a board and care home or assisted living facility to be eligible for insurance under this part:

(1) The board and care home or assisted living facility must have no less than one full bathroom provided for every four residents; and

(2) Bathroom access from any bedroom or sleeping area must not pass through a public corridor or area.

(b) *Exemption for existing projects providing memory care.* The following applies to a board and care home or assisted living facility that provides housing for residents in need of memory care, *i.e.,* care for residents who have cognitive impairments, such as Alzheimer's disease or other dementias:

(1) Subject to paragraph (b)(2) of this section, a project seeking insurance under subpart E, pursuant to section 223(f) or 223(a)(7) of the National Housing Act, may be eligible for insurance without meeting the general requirement in paragraph (a) of this section, if the project meets the following four requirements:

(i) Memory care residents are in a separate, secured, and locked area of the board and care home or assisted living facility;

(ii) Any bathroom access from a memory care resident's bedroom or sleeping area that passes through a public corridor or area is in a separate, secured, and locked area of the board and care home or assisted living facility prescribed in (b)(1)(i) of this section;

(iii) Memory care residents receive full assistance or supervision while bathing; and

(iv) Memory care residents reside in wards that contain no more than two beds per unit and have a half-bath in each unit.

(2) If a facility serving memory care residents also serves residents who are not in a separate, secured, and locked area of the board and care home or assisted living facility, this exemption applies only to the separate, secured, and locked area in which solely memory care residents reside.

Dated: June 11, 2020.

Brian D. Montgomery,

Deputy Secretary.

[FR Doc. 2020–13090 Filed 6–25–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT of EDUCATION

34 CFR Part 600

Institutional Eligibility Under the Higher Education Act of 1964, as Amended

CFR Correction

■ In Title 34 of the Code of Federal Regulations, Parts 400 to 679, revised as of July 1, 2019, on page 87, in § 600.9, paragraph (d) is reinstated to read as follows:

§ 600.9 State authorization.

* * * * *

(d) An additional location or branch campus of an institution that meets the requirements under paragraph (a)(1) of this section and that is located in a foreign country, *i.e.,* not in a State, must comply with §§ 600.8, 600.10, 600.20, and 600.32, and the following requirements:

(1) For any additional location at which 50 percent or more of an educational program (as defined in § 600.2) is offered, or will be offered, or at a branch campus—

(i) The additional location or branch campus must be legally authorized by an appropriate government authority to operate in the country where the additional location or branch campus is physically located, unless the additional location or branch campus is physically located on a U.S. military base, facility, or area that the foreign country has granted the U.S. military to use and the institution can demonstrate that it is exempt from obtaining such authorization from the foreign country;

(ii) The institution must provide to the Secretary, upon request, documentation of such legal authorization to operate in the foreign country, demonstrating that the foreign governmental authority is aware that the additional location or branch campus provides postsecondary education and that the government authority does not object to those activities;

(iii) The additional location or branch campus must be approved by the institution's recognized accrediting agency in accordance with §§ 602.24(a) and 602.22(a)(2)(viii), as applicable;

(iv) The additional location or branch campus must meet any additional requirements for legal authorization in that foreign country as the foreign country may establish;

(v) The institution must report to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State, the establishment or operation of each foreign additional location or branch campus; and

(vi) The institution must comply with any limitations the State places on the establishment or operation of the foreign additional location or branch campus.

(2) An additional location at which less than 50 percent of an educational program (as defined in § 600.2) is offered or will be offered must meet the requirements for legal authorization in that foreign country as the foreign country may establish.

(3) In accordance with the requirements of 34 CFR 668.41, the institution must disclose to enrolled and prospective students at foreign additional locations and foreign branch campuses the information regarding the student complaint process described in 34 CFR 668.43(b), of the State in which the main campus of the institution is located.

(4) If the State in which the main campus of the institution is located limits the authorization of the institution to exclude the foreign additional location or branch campus, the foreign additional location or branch campus is not considered to be legally authorized by the State.

[FR Doc. 2020–13899 Filed 6–25–20; 8:45 am]

BILLING CODE 1301–00–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2019–0623; FRL–10010–53–Region 8]

Approval and Promulgation of Implementation Plans; Wyoming; Regional Haze 5-Year Progress Report State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a regional haze progress report State Implementation Plan (SIP) revision submitted by the State of Wyoming on November 28, 2017. The revision addresses the requirements for states to submit periodic reports describing progress toward reasonable progress goals established for regional haze and a determination of adequacy of the State's existing regional haze SIP and federal implementation plan (FIP). The EPA is taking this action pursuant to section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on July 27, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2019–0623. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please call or email the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6252, *dobrahner.jaslyn@epa.gov.*

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

I. Background

Under the Regional Haze Rule, states are required to submit progress reports that evaluate progress towards the reasonable progress goals for each mandatory Federal Class I area within the state and in each Class I area outside the state that may be affected by emissions from within the state.[1] In addition, the provisions also require states to submit, at the same time as the progress report, a determination of the adequacy of the state's existing regional haze plan. The first progress report must be in the form of a SIP revision and is due 5 years after submittal of the initial regional haze SIP.

On November 28, 2017, Wyoming submitted a Progress Report SIP revision which: (1) Detailed the progress made toward achieving progress for improving visibility at Class I areas,[2] and (2) declared a determination of adequacy of the State's regional haze plan to meet reasonable progress goals.

On April 17, 2020, the EPA published a proposed rulemaking titled ''Approval and Promulgation of Implementation Plans; Wyoming; Regional Haze 5-Year Progress Report State Implementation Plan'' proposing to approve Wyoming's Progress Report SIP revision.[3] The rationale for the EPA's proposed action is explained in the proposed rulemaking and will not be restated here. The EPA is finalizing its proposed approval of the Progress Report as meeting the applicable regional haze requirements set forth in 40 CFR 51.309(d)(10).

II. Response to Comments

We did not receive any comments on our proposed rulemaking during the public comment period.

III. Final Action

The EPA is finalizing approval of Wyoming's November 28, 2017, Regional Haze Progress Report as meeting the applicable regional haze requirements set forth in 40 CFR 51.309(d)(10).

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

[1] 40 CFR 51.309(d)(10).

[2] 42 U.S.C. 7491(a). Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas whose visibility they consider to be an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this section, we mean a ''mandatory Class I Federal area.''

[3] 85 FR 21341 (April 17, 2020).

Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 12, 2020.

Gregory Sopkin,

Regional Administrator, Region 8.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart ZZ—Wyoming

■ 2. In § 52.2620, the table in paragraph (e) is amended by revising the entry ''(32) XXXII'' to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(e) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
*	*	*	*	*	*
(32) XXXII	Wyoming State Implementation Plan 5-Year Progress Report for Regional Haze.	11/17/2017	7/27/2020	[insert **Federal Register** citation], 6/26/2020.	
*	*	*	*	*	*

[FR Doc. 2020–13144 Filed 6–25–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2019–0220; FRL–10011–42–Region 1]

Air Plan Approval; Massachusetts; Negative Declaration for the Oil and Gas Industry; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of adverse comments, the Environmental Protection Agency (EPA) is withdrawing the May 18, 2020 direct final rule approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. Massachusetts' SIP revision provided a negative declaration for EPA's 2016 Control Technique Guideline for the oil and gas industry. This action is being taken in accordance with the Clean Air Act.

DATES: The direct final rule published at 85 FR 29628 on May 18, 2020 is withdrawn effective June 26, 2020.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Environmental Protection Specialist, Air and Radiation Division (Mail Code 05–2), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912; (617) 918–1660. *garcia.ariel@epa.gov.*

SUPPLEMENTARY INFORMATION: In the direct final rule, EPA stated that if adverse comments were submitted by June 17, 2020, the rule would be withdrawn and not take effect. EPA received adverse comments prior to the close of the comment period and, therefore, is withdrawing the direct final rule. EPA will address the comments in a subsequent final action based upon the proposed rule also published on May 18, 2020 (85 FR 29678). EPA will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 52

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

Dated: June 22, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ Accordingly, the amendments to 40 CFR 52.1120 published on May 18, 2020 (85 FR 29630), are withdrawn effective June 26, 2020.

[FR Doc. 2020–13788 Filed 6–25–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R08–OAR–2019–0690; FRL–10010–18–Region 8]

Air Quality State Implementation Plans; Approvals and Promulgations: Montana; Columbia Falls, Kalispell and Libby PM_{10} Nonattainment Area Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Limited Maintenance Plan (LMP) for the Columbia Falls, Kalispell and Libby nonattainment areas (NAAs) and the State's request to redesignate the Columbia Falls, Kalispell and Libby NAAs from nonattainment to attainment for the 1987 24-hour particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) National Ambient Air Quality Standard (NAAQS). Additionally, the EPA is determining that the Libby and Kalispell NAAs have attained the PM_{10} NAAQS based on monitoring data from calendar years 2016–2018. On January 31, 2011, the EPA determined that the Columbia Falls NAA attained the PM_{10} NAAQS. The EPA is also approving the Columbia Falls, Kalispell and Libby LMP as meeting the appropriate transportation conformity requirements. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: This rule is effective on July 27, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2019–0690. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kate Gregory, (303) 312–6175, *gregory.kate@epa.gov.* Mail can be directed to the Air and Radiation Division, U.S. EPA, Region 8, Mail-code 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado, 80202–1129.

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

I. Background

The Columbia Falls PM_{10} NAA is one of three NAAs in Flathead County. It is rectangularly shaped, and generally encompasses the downtown portion of Columbia Falls and the nearby surrounding areas. Columbia Falls was originally designated as a Group I area on August 7, 1987, meaning it was likely to violate the PM_{10} NAAQS, and was subsequently classified as a Moderate NAA for the 1987 24-hour PM_{10} NAAQS on November 6, 1991. *See* 56 FR 56694. States containing initial Moderate PM_{10} NAAs were required to submit, by November 15, 1991, a Moderate NAA State Implementation Plan (SIP) that, among other requirements, implemented Reasonably Available Control Measures (RACM) by December 10, 1993, and demonstrated whether it was practicable to attain the PM_{10} NAAQS by December 31, 1994. *See generally* 57 FR 13498 (April 16, 1992); *see also* 57 FR 18070 (April 28, 1992). The State of Montana submitted an initial PM_{10} SIP to the EPA on May 6, 1992, and subsequent submissions on August 26, 1994 and July 18, 1995. The State of Montana's SIP for the Columbia Falls Moderate NAA included, among other things: A comprehensive emissions inventory; RACM; a demonstration that attainment of the PM_{10} NAAQS would be achieved in Columbia Falls by December 31, 1994; Reasonable Further Progress (RFP) requirements; and control measures that satisfy the contingency measures requirement of section 172(c)(9) of the CAA. The EPA fully approved the Columbia Falls NAA PM_{10} attainment plan on March 19, 1996 (61 FR 11153).

The Libby PM_{10} NAA is one of three NAAs in Flathead County. It is an irregularly shaped portion of Lincoln County, comprising of the city of Libby, and the surrounding communities. The area was originally designated as a Group I area on August 7, 1987, meaning it was likely to violate the PM_{10} NAAQS, and was subsequently classified as a Moderate NAA for the 1987 24-hour PM_{10} NAAQS on November 6, 1991. *See* 56 FR 56694.

The State of Montana submitted an initial PM_{10} SIP to the EPA on November 25, 1991, with revisions and corrections submitted on May 24, 1993 and June 3, 1994. The State of Montana's SIP for the Libby Moderate PM_{10} NAA included, among other things: A comprehensive emissions inventory; RACM; a demonstration that attainment of the PM_{10} NAAQS would be achieved in Libby by December 31, 1994; RFP requirements; and control measures that satisfy the contingency measures requirement of section 172(c)(9) of the CAA. The EPA approved the Libby NAA PM_{10} attainment plan, with the exception of the contingency plan, on August 30, 1994 (59 FR 44627). Revisions to the contingency plan were submitted by Montana on March 15, 1995 and subsequently approved on September 30, 1996 (61 FR 51074).

The Kalispell PM_{10} NAA is one of three NAAs in Flathead County. It is irregularly shaped and generally encompasses the City of Kalispell and the nearby surrounding areas, including the unincorporated community of Evergreen. Kalispell was originally designated as a Group I area on August 7, 1987, meaning it was likely to violate the PM_{10} NAAQS, and was subsequently classified as a Moderate NAA for the 1987 24-hour PM_{10} NAAQS on November 6, 1991. *See* 56 FR 56694. The State of Montana submitted an initial PM_{10} SIP to the EPA on November 25, 1991 and submitted three additional SIP revisions between 1991 and 1994. The State of Montana's SIP for the Kalispell Moderate NAA included, among other things: A comprehensive emissions inventory; RACM; a demonstration that attainment of the PM_{10} NAAQS would be achieved in Kalispell by December 31, 1994; RFP requirements; and control measures that satisfy the contingency measures requirement of section 172(c)(9) of the CAA. The EPA fully approved the Kalispell NAA PM_{10} attainment plan on March 19, 1996 (61 FR 11153).

The factual and legal background for this action is discussed in detail in our March 20, 2020 (85 FR 16029) proposed approval of the Columbia Falls, Kalispell and Libby LMP as meeting the appropriate transportation conformity requirements, and concurrent redesignation of the Columbia Falls, Kalispell and Libby NAAs to attainment of the NAAQS for PM_{10}.

II. Response to Comments

The public comment period on the EPA's proposed rule opened on March 20, 2020, the date of its publication in the **Federal Register**, (85 FR 16029), and closed on April 20, 2020. During this time, the EPA received no comments.

III. Final Action

For the reasons explained in our proposed action, we are approving the LMP for the Columbia Falls, Kalispell and Libby NAAs and the State's request to redesignate the Columbia Falls, Kalispell and Libby NAAs from nonattainment to attainment for the 1987 24-hour PM_{10} NAAQS. Additionally, the EPA has determined that the Kalispell and Libby NAAs have attained the NAAQS for PM_{10}.[1] This determination is based upon monitored air quality data for the PM_{10} NAAQS during the years 2016–2018. The EPA is approving the Columbia Falls, Kalispell and Libby LMPs as meeting the appropriate transportation conformity requirements found in 40 CFR part 93, subpart A and general conformity requirements found in 40 CFR part 93, subpart B.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

[1] *See* January 31, 2011 (76 FR 5280) wherein the EPA determined that the Columbia Falls NAA attained the PM_{10} NAAQS.

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 29, 2020.

Gregory Sopkin,

Regional Administrator, Region 8.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 81 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart BB–Montana

■ 2. In § 52.1370:

■ a. In the table in paragraph (e):

■ i. Add the entries ''Columbia Falls 1987 PM_{10} Limited Maintenance Plan'' and ''Kalispell 1987 PM_{10} Limited Maintenance Plan'' in alphabetical order under the heading entitled ''(3) Flathead County''.

■ ii. Add the entry ''Libby 1987 PM_{10} Limited Maintenance Plan'' in alphabetical order under the heading entitled ''(5) Lincoln County''.

The additions read as follows:

§ 52.1370 Identification of plan.

* * * * *

(e) * * *

Title/subject	State effective date	Notice of final rule date	NFR citation
* * *	*	*	* *
(3) Flathead County			
* * *	*	*	* *
Columbia Falls 1987 PM_{10} Limited Maintenance Plan		6/26/20 2020	[insert **Federal Register** citation]
* * *	*	*	* *
Kalispell 1987 PM_{10} Limited Maintenance Plan		6/26/2020	[insert **Federal Register** citation]
* * *	*	*	* *
(5) Lincoln County			

Title/subject	State effective date	Notice of final rule date	NFR citation
* * *	*	*	* *
Libby 1987 PM_{10} Limited Maintenance Plan		6/26/2020	[insert **Federal Register** citation]
* * *	*	*	* *

■ 3. In § 52.1374, add paragraph (e) to read as follows:

§ 52.1374 Control strategy: Particulate matter.

* * * * *

(e) On July 23, 2019, the State of Montana submitted limited maintenance plans for the Columbia Falls, Kalispell and Libby PM_{10} nonattaiment areas and requested that these areas be redesignated to attainment for the PM_{10} National Ambient Air Quality Standards. The redesignation request and limited maintenance plans satisfy all applicable requirements of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 5. In § 81.327, amend the table entitled ''Montana—PM–10'' by revising the entries for ''Flathead County:'' and ''Lincoln County, Libby and vicinity'' to read as follows:

§ 81.327 Montana.

* * * * *

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*		*	*
Flathead County:				
The area bounded by lines from Universal Transmercator (UTM) co-ordinate 700000mE, 5347000mN, east to 704000mE, 5347000mN, south to 704000mE, 5341000mN, west to 703000mE, 5341000mN, south to 703000mE, 5340000mN, west to 702000mE, 5340000mN, south to 702000mE, 5339000mN, east to 703000mE, 5339000mN, south to 703000mE, 5338000mN, east to 704000mE, 5338000mN, south to 704000mE, 5336000mN, west to 702000mE, 5336000mN, south to 702000mE, 5335000mN, west to 700000mE, 5335000mN, north to 700000mE, 5340000mN, west to 695000mE, 5340000mN, north to 695000mE, 5345000mN, east to 700000mE, 5345000mN, north to 700000mE, 5347000mN.	7/27/2020	Attainment		
* * * *	*		*	*
Lincoln County, Libby and vicinity	7/27/2020	Attainment		
* * * *	*		*	*

* * * * *

[FR Doc. 2020–12077 Filed 6–25–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

Identification and Listing of Hazardous Waste

CFR Correction

■ In Title 40 of the Code of Federal Regulations, Parts 260 to 265, revised as of July 1, 2019, in part 261, remove appendix I to part 261 from above subpart I on page 155, and add it in numerical order after the last section in the part, above appendixes II–III to part 261.

[FR Doc. 2020–13903 Filed 6–25–20; 8:45 am]

BILLING CODE 1301–00–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2019–0617; FRL–10010–59–Region 1]

Maine: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting Maine final authorization for changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a Proposed Rule on December 20, 2019 and provided opportunity for public comment. EPA received one substantive and two non-substantive comments relevant to our proposed action.

DATES: This final authorization is effective June 26, 2020.

FOR FURTHER INFORMATION CONTACT: Sharon Leitch, RCRA Waste Management, UST and Pesticides Section; Land, Chemicals and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100 (Mail code 07–1), Boston, MA 02109–3912; telephone number: (617) 918–1647; fax

number (617) 918–0647; email address: *leitch.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Authorization of Revisions to Maine's Hazardous Waste Program

On October 16, 2019, Maine submitted a complete program revision application seeking authorization of changes to its hazardous waste program in accordance with 40 CFR 271.21. EPA now makes a final decision that Maine's hazardous waste program revisions that are being authorized are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. For a list of State rules being authorized with this Final Authorization, please see the proposed rule published in the **Federal Register** (84 FR 70135, December 20, 2019).

B. What comments were received on Maine's proposed authorization and how is EPA responding to these comments?

EPA received three (3) comments on its December 20, 2019, proposed authorization of Maine's hazardous waste program revisions. These comments are provided in the docket for today's final action. *See* Docket ID No. EPA–R01–RCRA–2019–0617 at *www.regulations.gov.* Two of the comments submitted are non-substantive and generally support EPA's proposed authorization. The third comment is substantive and it was submitted by Maine's Attorney General and the Maine Department of Environmental Protection (MDEP) Commissioner (collectively ''Maine'').

In Maine's comment, Maine states three points of disagreement with EPA's Proposed Authorization and provides EPA with three requests. Maine disagrees (1) with EPA's characterization of the scope of Maine's current hazardous waste program *submission;* (2) with EPA's characterization of the scope of Maine's current hazardous waste *program;* and (3) with EPA's characterization of Maine's environmental regulatory authority and jurisdiction. Maine requests that (1) EPA extend its authorization of Maine's hazardous waste program to include all lands within the State, including Indian country; (2) EPA expressly acknowledge that Maine has environmental regulatory authority and jurisdiction statewide, including in Indian country; and (3) EPA expressly acknowledge that MDEP's current hazardous waste program submission and supporting materials requests program authorization for all lands within the State, including Indian country.

As EPA noted in its proposed authorization, Maine did not explicitly identify Indian country as lands for which it was seeking authorization in its October 16, 2019 hazardous waste program submission. It was in its subsequent comments on EPA's proposed authorization that Maine was explicit that its submission seeks authorization of its hazardous waste program for Indian country.

EPA's RCRA regulations require Maine to seek authority from EPA over activities on Indian lands with ''an appropriate analysis of the State's authority'' in the Attorney General's statement that Maine must provide to EPA in its hazardous waste program submission. 40 CFR 271.7(b).

Additionally, under basic principles of federal Indian law, states generally lack civil regulatory jurisdiction within Indian country as defined in 18 U.S.C. Section 1151. *Alaska* v. *Native Village of Venetie Tribal Government,* 522 U.S. 520,527 n.1 (1998). Thus, EPA cannot presume a state has authority to regulate in Indian country, including with regard to RCRA activities. Instead, a state must demonstrate its jurisdiction, and EPA must determine that the state has made the requisite demonstration and expressly determine that the state has authority, before a state can implement a program in Indian country. Where the State did not expressly seek authorization for Indian country in this authorization package, EPA properly did not include such lands in the proposed authorization of program revisions.

Based on the unique jurisdictional framework established in the Act to Implement the Maine Indian Claims Settlement (''Maine Implementing Act'' or ''MIA''), 30 M.R.S. §§ 6201 to 6214, and the federal Maine Indian Claims Settlement Act (''MICSA''), 1980 Public Law 96–420 (Oct. 10, 1980), and the two companion laws for the Aroostook Band of Micmacs, EPA has previously determined that the State of Maine has civil regulatory jurisdiction in Indian country in two contexts. In 2012, EPA determined that the State of Maine has jurisdiction to issue National Pollutant Discharge Elimination System (''NPDES'') permits under the Clean Water Act in the territories of the Penobscot Indian Nation and Passamaquoddy Tribe. 77 FR 23481, 23482 (April 19, 2012); *see alsoMaine* v. *Johnson,* 498 F.3d 37 (1st Cir. 2007). In 2015, EPA determined that the State of Maine has authority to set water quality standards under the Clean Water Act for waters in Tribal lands. February 2, 2015, Letter from H. Curtis Spalding, EPA Regional Administrator, to Patricia W. Aho, Maine Department of Environmental Protection Commissioner, Re: Review and Decision on Water Quality Standards Revisions, available at *https://www.epa.gov/sites/production/files/2016-04/documents/me_let_020215.pdf.*

In recognition of the significant time and resources needed to address Maine's assertion of authority to regulate hazardous waste activities on Tribal lands and EPA's finding that Maine did not seek authority over activities on Indian lands through a required and appropriate analysis of the State's authority in its Attorney General's statement, EPA is not making a determination on such authority as part of this decision. This approach allows EPA to move forward with the approval of Maine's program. EPA will act on such assertion following the necessary consultation with the federally recognized Indian tribes directly impacted by Maine's assertion, consistent with Executive Order 13175 (Nov. 6, 2000) and EPA's Policy on Consultation and Coordination with Indian Tribes (May 4, 2011). Because Maine's submission for hazardous waste program approval did not explicitly seek authority on Indian lands, additional processes may be necessary and appropriate, including a public comment period, before EPA takes any action on the State's assertion over Indian lands.

Therefore, EPA grants Maine final approval to operate its hazardous waste program with the changes described in Maine's hazardous waste program submission and as outlined in the proposed authorization, except as it relates to hazardous waste activities on Indian lands. EPA grants Maine ''full'' program approval in accordance with 40 CFR part 271.1(h).

In response to Maine's remaining comments, it is EPA's position that it has never explicitly approved the State to regulate RCRA activities in Tribal lands. Nor can EPA simply presume that Maine has authority to implement its RCRA program in Indian country. Rather, the Agency must first consult with the affected federally recognized Indian tribes and carefully consider the applicable legal authorities before making an explicit determination as to the State's authority. Finally, Maine's hazardous waste program submission is not the appropriate forum for EPA to address the State's asserted civil regulatory jurisdiction in Indian country with regard to other, non-RCRA environmental statutes.

C. What is codification and is EPA codifying Maine's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not codifying the authorization of Maine's revisions as part of today's action.

D. Statutory and Executive Order Reviews

This final authorization revises Maine's authorized hazardous waste management program pursuant to Section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. For further information on how this authorization complies with applicable executive orders and statutory provisions, please see the proposed rule published in the **Federal Register** (84 FR 70135, December 20, 2019).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: June 4, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

[FR Doc. 2020–12537 Filed 6–25–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1068

General Compliance Provisions for Highway, Stationary, and Nonroad Programs

CFR Correction

■ In Title 40 of the Code of Federal Regulations, Part 1060 to end, revised as of July 1, 2019, on page 412, in § 1068.230, remove paragraphs (c)(1) and (c)(2).

[FR Doc. 2020–13900 Filed 6–25–20; 8:45 am]

BILLING CODE 1301–00–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 20–460; FRS 16754]

Implementing the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts final rules, as required by the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act), to enhance penalties and provide additional time for the Commission to pursue entities that violate the restrictions on robocalls. The TRACED Act directed the Commission to prescribe implementing regulations in accordance with section 3 of the TRACED Act within 270 days after enactment.

DATES: The rule is effective July 27, 2020.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Kimbarly Taylor of the Telecommunications Consumers Division, Enforcement Bureau, at *Kimbarly.Taylor@fcc.gov* or (202) 418–1188.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 20–460, adopted on May 1, 2020 and released on May 1, 2020, which is the subject of this rulemaking. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554, or online at *https://docs.fcc.gov/public/attachments/DA-20-460A1.pdf.* To request this document in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In crafting the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act), Congress acknowledged the need for enhanced penalties and additional time for the Commission to pursue entities that violate the restrictions on robocalls. In this Order, the Federal Communications Commission (Commission) adopts final rules to implement section 3 of the TRACED Act (Section 3).

2. Accordingly, this Order amends section 1.80 of the Commission's rules. We move directly to an order here because implementation of Section 3 entails no exercise of our administrative discretion and, therefore, notice and comment procedures are unnecessary under the ''good cause'' exception to the Administrative Procedure Act (APA).

3. Section 227 of the Communications Act of 1934, as amended (the Communications Act) is designed to protect consumers from unsolicited, unlawful calls by restricting autodialed or pre-recorded message calls and unsolicited facsimiles, and by minimizing transmission of misleading or inaccurate caller ID information. Section 227 of the Communications Act is known as the Telephone Consumer Protection Act (TCPA).

4. Section 227(b) restricts calls using an automatic telephone dialing system or an artificial or prerecorded voice. It prohibits calls to residential phones if the call uses an artificial or prerecorded voice message, unless the called party consents or the call is for an emergency purpose. Absent coverage by a relevant exception, such practices are known colloquially as illegal ''robocalling.'' The provision also prohibits unsolicited advertisements to facsimile machines unless the party receiving the facsimile has a preexisting business relationship with the sender, has consented to receive the facsimile, or has agreed to make available its facsimile number for public distribution.

5. Section 227(e), also known as the Truth in Caller ID Act, prohibits ''caus[ing] any caller identification service'' in connection with any voice service or text message service to ''knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm or wrongfully obtain anything of value[.]'' Such practices are known colloquially as ''spoofing.''

6. Section 3 of the TRACED Act amends section 227(b) of the TCPA in several respects. First, it removes the requirement that the Commission issue a citation, or warning, pursuant to

section 503(b)(5) of the Communications Act before the Commission may propose a monetary forfeiture under section 227(b). Second, Section 3 prescribes an additional potential monetary penalty for violations of section 227(b) if the Commission determines that the person violated section 227(b) ''with the intent to cause such violation.'' Third, Section 3 sets a four-year statute of limitations period in which the Commission may take enforcement action against intentional violations of section 227(b); previously the statute of limitations was one year. Fourth, Section 3 sets a four-year statute of limitations period in which the Commission may take enforcement action against violations of section 227(e); previously the statute of limitations was two years.

7. We amend section 1.80 of our rules to implement Section 3. *First,* consistent with the amendments that Section 3 makes to section 227(b) of the Communications Act, we amend section 1.80 of our rules to provide that the Commission may in the first instance impose a penalty against any person or entity that violates Section 227(b), as amended. The TRACED Act removes the requirement that the Commission must first issue a citation to any person or entity that violates section 227(b) if that person or entity not hold any license, permit, certificate, or other authorization issued by the Commission, or is not an applicant for any license, permit, certificate, or other authorization issued by the Commission.

8. *Second,* we amend section 1.80 of our rules to augment existing penalties for those violators that commit intentional violations of section 227(b). Under the amended rule, the Commission has the authority to impose a penalty of up to $10,000 per intentional unlawful robocall in addition to the forfeiture penalty amount that may be proposed under section 503(b) of the Communications Act.

9. *Third,* we amend section 1.80 of our rules to extend the statute of limitations period to four years for intentional violations of section 227(b). By extending the enforcement period for intentional violations, Congress granted the Commission additional time to pursue violators that intentionally violate laws restricting the use of prerecorded or artificial voice messages and/or automatic telephone dialing systems.

10. *Fourth,* we amend section 1.80 of our rules to extend the statute of limitations period to four years for violations under section 227(e) of the Act.

11. Consistent with previous decisions, we amend our rules as set forth above without providing for prior public notice and comment. Our action here is largely ministerial because it simply effectuates regulations established by legislation and requires no exercise of administrative discretion. For this reason, we conclude that prior notice and comment would serve no useful purpose and are unnecessary. We therefore find that this action comes within the ''good cause'' exception to the notice and comment requirements of the APA.

12. The Enforcement Bureau is responsible for, among other things, rulemaking proceedings regarding general enforcement policies and procedures. In the TRACED Act, Congress mandated the Commission to prescribe implementing regulations for Section 3 within 270 days after enactment. Therefore, action on delegated authority is properly taken in this Order amending section 1.80 of our rules, which is part of the Commission's general enforcement policies and procedures. In addition, because a notice of proposed rulemaking is not required for these rule changes, no regulatory flexibility analysis is required.

13. Paperwork Reduction Act of 1995 Analysis. The Order does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, the Order does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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

15. Accordingly, *it is ordered,* pursuant to sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 227, sections 0.111(a)(22) and 0.311(a)(1) of the Commission's rules, 47 CFR 0.111(a)(22), 0.311(a)(1), and section 3 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Public Law 116–105, 133 Stat. 3274, that this Order *is adopted.*

16. *It is further ordered* that section 1.80 of the Commission's rules, 47 CFR 1.80, is AMENDED as set forth in the Appendix below.

17. *It is further ordered* that this Order and the foregoing amendments to the Commission's rules *shall be effective* thirty (30) days after the date of publication in the **Federal Register**. *It is further ordered* that the Enforcement Bureau shall coordinate with the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, TO SEND a copy of this Order 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 1

Administrative Procedure, Penalties.

Federal Communications Commission.

Lisa Gelb,

Deputy Chief, Enforcement Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Amend § 1.80 by:
■ a. Revising paragraph (a)(4);
■ b Redesignating paragraphs (b)(5) through (9) as paragraphs (b)(6) through (10).and adding a new paragraph (b)(5);
■ c. Revising paragraph (c)(3);
■ d.Redesignating paragraph (c)(4) as (c)(5) and adding a new paragraph (c)(4); and
■ e. Revising paragraph (d) introductory text.

The revisions and additions read as follows:

§ 1.80 Forfeiture proceedings.

(a) * * *

(4) Violated any provision of sections 227(b) or (e) of the Communications Act or of the rules issued by the Commission under sections 227(b) or (e) of that Act; or

* * * * *

(b) * * *

(5) Any person determined to have violated section 227(b)(4)(B) of the Communications Act or the rules issued by the Commission under section 227(b)(4)(B) of the Communications Act

shall be liable to the United States for a forfeiture penalty determined in accordance with paragraphs (A)–(F) of section 503(b)(2) plus an additional penalty not to exceed $10,000.

* * * * *

(c) * * *

(3) In the case of a forfeiture imposed under section 227(e), no forfeiture will be imposed if the violation occurred more than 4 years prior to the date on which the appropriate notice was issued.

(4) In the case of a forfeiture imposed under section 227(b)(4)(B), no forfeiture will be imposed if the violation occurred more than 4 years prior to the date on which the appropriate notice is issued.

* * * * *

(d) *Preliminary procedure in some cases; citations.* Except for a forfeiture imposed under sections 227(b) and 227(e)(5) of the Act, no forfeiture penalty shall be imposed upon any person under this section of the Act if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the issuance of the appropriate notice, such person:

* * * * *

[FR Doc. 2020–11252 Filed 6–25–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CG Docket 17–59, FCC 18–177; FRS 16881]

Advanced Methods To Target and Eliminate Unlawful Robocalls

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of compliance date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved the information collection associated with rules governing information to be provided to the Reassigned Numbers Database in the 2018 Second Report and Order, FCC 18–177, in CG Docket No. 17–59. The Commission also announces that compliance with the rules for aging numbers and maintaining records of the most recent date of permanent disconnection is now required. The Commission will publish another document in the **Federal Register** announcing the compliance date for reporting the information. This document is consistent with the *2018 Second Report and Order,* which states the Commission will publish a document in the **Federal Register** announcing a compliance date for the rule sections and revise the rules accordingly.

DATES: Compliance with 47 CFR 52.15(f)(1)(ii) and (f)(8), 52.103(d), and 64.1200(l)(1), published at 84 FR 11226 on March 26, 2019 is required as of July 27, 2020.

FOR FURTHER INFORMATION CONTACT: Karen Schroeder of the Consumer and Governmental Affairs Bureau, Consumer Policy Division, at (202) 418–0654 or *Karen.Schroeder@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the information collection requirement in §§ 52.15(f)(1)(ii) and (f)(8), 52.103(d), and 64.1200(l)(1) and (2) on June 2, 2020.

The Commission publishes this document as an announcement of the compliance date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW, Washington, DC 20554, regarding OMB Control Number 3060–1273. Please include the applicable OMB Control Number in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on June 2, 2020, for the information collection requirements contained in §§ 52.15(f)(1)(ii) and (f)(8), 52.103(d), and 64.1200(l)(1) and (2). Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number.

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

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

OMB Control Number: 3060–1273.

OMB Approval Date: June 2, 2020.

OMB Expiration Date: June 30, 2023.

Title: Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17–59.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents and Responses: 3,666 respondents; 15,375,326 responses.

Estimated Time per Response: .004 hours (15 seconds) to 32 hours.

Frequency of Response: Monthly, one time, and on-occasion reporting requirements; recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 227 and 251(e)(1) of the Telecommunications Act of 1996.

Total Annual Burden: 290,233 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On December 12, 2018, the Commission adopted rules in FCC 18–177, *2018 Second Report and Order,* published at 84 FR 11226, March 26, 2019, which contain new information collection requirements. Specifically, the Commission concluded that the obligation to provide permanent disconnect information will apply to all reporting carriers as defined in the Commission's numbering rules, which include wireless, wireline, and interconnected Voice over internet Protocol providers that obtain numbers from the North American Numbering Plan Administrator. As part of the Commission reporting requirements, reporting carriers must provide, among other things, the most recent date each North American Numbering Plan telephone number allocated or ported to the reporting carrier was permanently disconnected. The telephone number and date of permanent disconnection

will allow voluntary users of the database to determine whether a number has been permanently disconnected prior to calling that number, thereby protecting against unwanted calls to consumers and potential Telephone Consumer Protection Act liability for callers. Reporting carriers and voluntary users of the reassigned numbers database may also need to provide contact information, including names, address, and telephone number, to enable the database administrator to contact the reporting carrier in case there are any issues with their submission.

The Commission has referred to the North American Numbering Council the development of a technical requirements document for the reassigned numbers database for review by the Commission. The technical requirements document will contain a single, unified set of functional and interface requirements for: Technical interoperability and operational standards; the user interface specifications and data format for service providers to report to the Administrator; the user interfaces and other means by which callers may submit queries, including providing callers the abilities for high-volume and batch processing or to submit individual queries; appropriate safeguards to protect the privacy and security of subscribers, protect the database from unauthorized access, and ensure the security and integrity of the data; and keeping records of service providers' reporting and accounting.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–13748 Filed 6–25–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58, 07–135, CC Docket No. 01–92; FCC 18–176, FCC 19–8; FRS 16878]

Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing a Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the rules for the Connect America Fund contained in the Commission's *Rate-of-Return Order,* FCC 18–176 and the *Connect America Fund (CAF) Phase II Transitions Order,* FCC 19–8. This document is consistent with the *Rate-of-Return and CAF Phase II Transitions Orders,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the new information collection requirements.

DATES: The amendments to § 54.313(f)(1)(i) and (m) published at 84 FR 4711, February 19, 2019, and 84 FR 8619, March 11, 2019, are effective June 26, 2020.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484. For additional information concerning the Paperwork Reduction Act information collection requirements contact Nicole Ongele at (202) 418–2991 or via email: *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission submitted revised information collection requirements for review and approval by OMB, as required by the Paperwork Reduction Act (PRA) of 1995, on May 13, 2020, which were approved by OMB on June 15, 2020. The information collection requirements are contained in the Commission's *Rate-of-Return Order,* FCC 18–176 published at 84 FR 4711, February 19, 2019 and *CAF Phase II Transitions Order,* FCC 19–8 published at 84 FR 8619, March 11, 2019. The OMB Control Number is 3060–0986. If you have any comments on the burden estimates listed in the following, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW, Washington, DC 20554. Please include the OMB Control Number, 3060–0986, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on June 15, 2020 for the information collection requirements contained in 47 CFR 54.313(f)(1)(i) and (m) published at 84 FR 4711, February 19, 2019 and 84 FR 8619, March 11, 2019. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0986.

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

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

OMB Control Number: 3060–0986.

OMB Approval Date: June 15, 2020.

OMB Expiration Date: June 30, 2023.

Title: High-Cost Universal Service Support.

Form Number: FCC Form 481 and FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government.

Number of Respondents and Responses: 2,034 respondents; 12,729 responses.

Estimated Time per Response: 0.1–15 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 54,519 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission notes that the Universal Service Administrative Company (USAC) must preserve the confidentiality of all data obtained from respondents and contributors to the universal service support program

mechanism; must not use the data except for purposes of administering the universal service program; must not use the data except for purposes of administering the universal support program; and must not disclose data in company-specific form unless directed to do so by the Commission. Parties may submit confidential information in relation pursuant to a protective order. Also, respondents may request materials or information submitted to the Commission or to the Administrator believed confidential to be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: On November 18, 2011, the Commission adopted an order reforming its high-cost universal service support mechanisms. *Connect America Fund; A National Broadband Plan for Our Future; Establish Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund,* WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (76 FR 73830 (Nov. 29, 2011) and 76 FR 78384 (Dec. 16, 2011)) (2011) (*USF/ICC Transformation Order*), and the Commission and Wireline Competition Bureau have since adopted a number of orders that implement the *USF/ICC Transformation Order; see also Connect America Fund et al.,* WC Docket No. 10–90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622 (77 FR 30904 (May 24, 2012)) (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 27 FCC Rcd 605 (77 FR 14297 (March 9, 2012)) (Wireline Comp. Bur. 2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549 (78 FR 3837 (Jan. 17, 2013)) (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 2051 (78 FR 22198 (April 15, 2013)) (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 7227 (78 FR 70881 (Nov. 27, 2013)) (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7766 (78 FR 38227 (June 26, 2013)) (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7211 (78 FR 32991 (June 3, 2013)) (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 10488 (78 FR 48622 (Aug. 9, 2013)) (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (81 FR 24282 (April 25, 2016) and 81 FR 21511 (April 12, 2106)) (2016); *Connect America Fund et al.,* WC Docket Nos. 10–90, 16–271; WT Docket No. 10–208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (81 FR 69696 (Oct. 7, 2016) and 81 FR 69772 (Oct. 7, 2016)) (2016); *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Report and Order, 32 FCC Rcd 5944 (82 FR 39966 (Aug. 23, 2017)) (2017). The Commission has received OMB approval for most of the information collections required by these orders.

More recently, through several orders, the Commission has changed or modified reporting obligations for high-cost support. In the *CAF Phase II Auction Order,* the Commission adopted rules requiring Connect America Phase II auction support recipients to certify the networks they operated in the prior year meet the Commission's performance requirements, to identify the total amount of support, if any, that was used for capital expenditures in the previous calendar year, and to certify they have available funds for all project costs that will exceed the amount of support to be received from the authorization stemming from the Phase II auction for the next calendar year. *Connect America Fund, et al.,* WC Docket No. 10–90, et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (81 FR 44414 (July 7, 2016) and 81 FR 40235 (June 21, 2016)) (*CAF Phase II Auction Order*).

In the *New York Waiver Order,* the Commission extended to New York carriers who receive Connect America Phase II support in conjunction with the State's New NY Broadband Program the same annual reporting requirements adopted for Phase II auction recipients, as well as the requirement for the State public service commission to certify annually that those carriers' high cost support ''was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'' *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Order, 32 FCC Rcd 968 (2017) (*New York Waiver Order*).

In the *December 2018 Rate-of-Return Order,* the Commission modified the reasonable request certification rule applicable to rate-of-return ETCs to (1) require Connect America Fund-Alternative Connect America Cost Model (CAF–ACAM) support recipients to certify that they are meeting the relevant reasonable request standard and (2) require rate-of-return ETCs receiving legacy high-cost support to certify that they are meeting a 25 Mbps/3 Mbps reasonable request standard. *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18–176, at 19–20, para. 17 (84 FR 4711 (Feb. 19, 2019) and 84 FR 2132 (Feb. 6, 2019)) (Dec. 13, 2018) (*December 2018 Rate-of-Return Order*). *See also* 47 CFR 54.313(f)(1)(i).

In the *CAF Phase II Transitions Order,* the Commission adopted rules requiring price cap or fixed competitive eligible communications carriers receiving phase-down support to certify that the phase-down support they received in the previous year was used to provide voice service to high-cost and extremely high-cost census blocks where they continue to have federal obligation to provide such services. *Connect America Fund,* WC Docket 10–90, Report and Order, FCC 19–8, at 11, para. 25 (84 FR 8619 (March 11, 2019)) (Feb. 15, 2019).

The Commission therefore revises this information collection, as well as Form 481 and its accompanying instructions, to reflect these new and revised requirements. We also increased the burdens associated with existing reporting requirements to account for additional carriers that will be subject to those requirements.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–13632 Filed 6–25–20; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 504, 522, 552, and 570

[GSAR–TA–2020–01; Docket No. GSA–GSAR–2020–0010; Sequence No. 1]

General Services Administration Acquisition Regulation; Technical Amendments for URL Corrections

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

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing this final rule to amend the General Services Administration Acquisition Regulation (GSAR) to make needed technical amendments. These technical amendments are to update the General Services Administration Acquisition Regulation (GSAR) to correct several outdated website addresses (*i.e.* URL addresses) and, if applicable, make corresponding editorial changes.

DATES: *Effective:* July 27, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, at 202–445–0390 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite GSAR–TA–2020–01.

SUPPLEMENTARY INFORMATION: This final rule amends the General Services Administration Acquisition Regulation (GSAR) to make needed technical amendments. As part of GSA's regulatory reform efforts, GSA has been performing a comprehensive review of the requirements in the GSAR. GSA identified several instances where the website address (*i.e.,* URL) needed to be updated. The update to these URLs in some cases require additional corresponding editorial changes as well.

URLs are being updated, along with corresponding editorial changes, if applicable, within the following GSAR sections: 504.604 Responsibilities; 504.1103 Procedures; 522.804–2 Construction; 522.805 Procedures; 570.106 Advertising, Publicizing, and Notifications to Congress; 570.106–1 Synopsis of Lease Awards; and 570.306 Evaluating Offers. URLs are also being updated, along with corresponding editorial changes, if applicable, within the following GSAR clauses: 552.204–9 Personal Identity Verification Requirements, 552.238–80 Industrial Funding Fee and Sales Reporting.

List of Subjects in 48 CFR Parts 504, 522, 552 and 570

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Governmentwide Policy, General Services Administration.

Therefore, GSA amends 48 CFR parts 504, 522, 552, and 570 as set forth below:

■ 1. The authority citation for 48 CFR parts 504, 522, 552, and 570 continues to read as follows:

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

PART 504—ADMINISTRATIVE MATTERS

504.1103 [Amended]

■ 2. Amend section 504.1103 in paragraph (a) by removing ''Data Universal Number System (DUNS) number or DUNS+4 number'' and adding ''unique entity identifier'' in its place and removing ''The SAM information can be accessed through the SAM website (*www.sam.gov*) by creating a user account.''

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 3. Revise section 522.804–2 to read as follows:

522.804–2 Construction.

Construction contractors and subcontractors are required to set trade participation goals for minorities and women based on percentages established by the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor. The goals can be found on OFCCP's website at *https://www.dol.gov/agencies/ofccp/construction.*

■ 4. Amend section 522.805 by revising paragraphs (b) and (c) to read as follows:

522.805 Procedures.

* * * * *

(b) Contracting officers shall submit preaward clearance requests directly to the appropriate OFCCP regional office. A list of OFCCP regional offices can be found on OFCCP's website at *https://ofccp.dol-esa.gov/preaward/pa_reg.html.*

(c) The EEO poster required by FAR 22.805(b) can be found at: *https://www.dol.gov/agencies/ofccp/posters.*

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 552.204–9 by revising the date of the clause and paragraph (a) to read as follows:

552.204–9 Personal Identity Verification requirements.

* * * * *

Personal Identity Verification Requirements (JUL 2020)

(a) The Contractor shall comply with GSA personal identity verification requirements, available at *https://www.gsa.gov/hspd12,* if Contractor employees require access to GSA controlled facilities or information systems to perform contract requirements.

* * * * *

■ 6. Amend section 552.238–80 by revising the date of the clause and removing from paragraph (b)(2) ''*https://72a.gsa.gov/*'' and adding ''*https://srp.fas.gsa.gov/*'' in its place.

The revision reads as follows:

552.238–80 Industrial Funding Fee and Sales Reporting.

* * * * *

Industrial Funding Fee and Sales Reporting (JUL 2020)

* * * * *

PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

570.106 [Amended]

■ 7. Amend section 570.106 by—

■ a. Removing from paragraph (a) ''*http://www.FBO.gov*'' and adding ''the Governmentwide Point of Entry (GPE) at *https://beta.sam.gov* or successor system'' in its place; and

■ b. Removing from paragraphs (b), (c), (d), and (f) ''*http://www.FBO.gov*'' and adding in its place ''the GPE''.

570.106–1 [Amended]

■ 8. Amend section 570.106–1 by—

■ a. Removing from paragraph (a) ''section'' and adding in its place ''subsection'' and removing ''*http://www.FBO.gov*'' and adding in its place and ''the GPE''; and

■ b. Removing from paragraphs (b)(2)(ii) and (c) ''*http://www.FBO.gov*'' and adding its place ''the GPE''.

570.306 [Amended]

■ 9. Amend section 570.306 in paragraph (c)(4) by removing ''Past Performance Information Retrieval System (PPIRS) at *http://www.ppirs.gov*'' and adding ''Contractor Performance Assessment Reporting System at *https://www.cpars.gov/,* or successor system'' in its place.

[FR Doc. 2020–12355 Filed 6–25–20; 8:45 am]

BILLING CODE 6820–61–P

Proposed Rules

Federal Register
Vol. 85, No. 124
Friday, June 26, 2020

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0574; Product Identifier 2019–CE–015–AD]

RIN 2120–AA64

Airworthiness Directives; Aerostar Aircraft Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Aerostar Aircraft Corporation Model PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) airplanes. This proposed AD was prompted by reports of corrosion on the elevator and aileron balance tubes. This proposed AD would require repetitively inspecting the elevator and aileron balance tubes for corrosion and rust and replacing the tube. The FAA is issuing this proposed AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 10, 2020.

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

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

For service information identified in this NPRM, contact Aerostar Aircraft Corporation, 2265 West Aerostar Way, Hayden Lake, ID 83835; telephone: (208) 762–0338; fax: (208) 762–8349; internet: *https://aerostaraircraft.com.* You may view this service information at the FAA, You may review this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0574; 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, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: David Herron, Aerospace Engineer, Seattle ACO Branch, FAA, 2200 S 216th St, Des Moines, WA 98198; phone: (206) 231–3544; email: *david.herron@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0574; Product Identifier 2019–CE–015–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

The FAA received reports of corrosion on the elevator and aileron balance tubes. Aerostar Aircraft Corporation (Aerostar) reported that, during repair of a Model PA–60–601P airplane, corrosion was found on the balance tubes used in the elevator and aileron systems. Corrosion on balance tubes in the elevator and aileron system may be hidden by rubber boots. These balance tubes counteract the effects of cabin pressurization. The majority of the Aerostar PA–60 airplane fleet have pressurized cabins. After the finding on the first airplane, Aerostar inspected four additional airplanes in the PA–60 fleet. Aerostar reported four out of these five airplanes had corrosion on both the aileron and elevator balance tubes. This condition, if not addressed, could result in failure of the aileron and elevator balance tubes. This failure could cause the aileron and/or elevator balance tubes to jam and result in loss of control of the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Aerostar Service Bulletin SB600–138, dated August 30, 2018. The service bulletin contains procedures for repetitively inspecting the elevator and aileron balance tubes for corrosion and rust and replacing the tubes at a specified time and repetitively if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

The FAA is proposing this AD because it evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

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

Differences Between This Proposed AD and the Service Information

This proposed AD would not require completing the reply card and returning it to Aerostar as specified in Step 13 of Part II of the service information.

Costs of Compliance

The FAA estimates that this proposed AD affects 404 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect elevator and aileron balance tubes.	1 work-hour × $85 per hour = $85 per inspection cycle.	Not Applicable	$85 per inspection cycle.	$34,340 per inspection cycle.
Replace elevator and aileron balance tubes.	8 work-hours × $85 per hour = $680 ..	$1,187	$1,867	$754,268.

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the proposed repetitive inspections, assuming separate replacement intervals. The FAA has no way of determining the number of airplanes that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace elevator balance tube	8 work-hours × $85 per hour = $680	$594	$1,274
Replace aileron balance tube	8 work-hours × $85 per hour = $680	594	1,274

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerostar Aircraft Corporation: Docket No. FAA–2020–0574; Product Identifier 2019–CE–015–AD.

(a) Comments Due Date

The FAA must receive comments by August 10, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Aerostar Aircraft Corporation Model PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27; Flight Controls.

(e) Unsafe Condition

This AD was prompted by reports of corrosion on the elevator and aileron balance tubes. The FAA is issuing this AD to detect corrosion on the elevator and aileron balance tubes. The unsafe condition, if not addressed, could result in failure of the aileron and elevator balance tubes, jamming of the aileron and/or elevator balance tubes, and loss of control of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

Within 10 hours time-in-service after the effective date of this AD, inspect the elevator and aileron balance tubes for corrosion (pitting and flaking) and rust (discoloration) by following steps 1. through 3. of Part I (Inspection) of the Instructions in Aerostar Aircraft Corporation Service Bulletin SB600–138, dated August 30, 2018 (Aerostar SB600–138). For each tube replaced as required by paragraph (h) of this AD, using a borescope, repeat the inspection within 10 years after replacing the tube and thereafter as follows:

(1) At intervals not to exceed 10 years as long as no rust is found.

(2) At intervals not to exceed 2 years if only rust is found (without any signs of corrosion).

(h) Replacements

At the following compliance times, replace each elevator and aileron balance tube by following Part II (Replacement) of the Instructions in Aerostar SB600–138, except you are not required to report information to the manufacturer:

(1) Before further flight if corrosion or rust is found (inside or outside the tubes) during the initial inspection required by paragraph (g) of this AD.

(2) At the next 100-hour inspection or at the next annual inspection, whichever occurs first, if no corrosion and no rust is found (inside or outside the tubes) during the initial inspection required by paragraph (g) of this AD.

(3) Before further flight if corrosion is found (inside or outside the tubes) during any repetitive inspection required by paragraph (g) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact David Herron, Aerospace Engineer, Seattle ACO Branch, FAA, 2200 S 216th St., Des Moines, WA 98198; phone: (206) 231–3544; email: *david.herron@faa.gov.*

(2) For service information identified in this AD, contact Aerostar Aircraft Corporation, 2265 West Aerostar Way, Hayden Lake, ID 83835; telephone: (208) 762–0338; fax: (208) 762–8349; internet: *https://aerostaraircraft.com.* You may view this service information at the FAA, You may review this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on June 17, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–13662 Filed 6–25–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0505; Airspace Docket No. 20–ASW–1]

RIN 2120–AA66

Proposed Amendment of V–63 in the Vicinity of Texoma, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airway V–63 due to the planned decommissioning of the VOR portion of the Texoma, OK, VOR/Distance Measuring Equipment (VOR/DME) navigation aid (NAVAID). The Texoma VOR provides navigation guidance for a portion of V–63 and is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before August 10, 2020.

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–2020–0505; Airspace Docket No. 20–ASW–1 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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 National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

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–2020–0505; Airspace Docket No. 20–ASW–1) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0505; Airspace Docket No. 20–ASW–1.'' 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 *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

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

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D 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 VOR portion of the Texoma, OK, VOR/DME in December 2020. The Texoma 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 Texoma VOR/DME NAVAID is planned for decommissioning, the DME portion of the NAVAID is being retained to support Next Generation Air Transportation System (NextGen) Performance Based Navigation (PBN) flight procedure requirements. The only Air Traffic Service (ATS) route dependency to the Texoma VOR is VOR Federal airway V–63.

With the planned decommissioning of the Texoma VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of V–63. As such, the proposed amendment to the airway would result in the airway segment supported by the Texoma VOR being removed and the airway beginning at the Razorback, AR, VOR/Tactical Air Navigation (VORTAC) NAVAID. To overcome the loss of the affected airway segment, instrument flight rules (IFR) pilots could use adjacent VOR Federal airways, including V15, V–16, V–114, V–124, V–278, and V–583, or could request air traffic control radar vectors to fly through or circumnavigate the affected area. IFR pilots equipped with area navigation (RNAV) PBN could also navigate point to point using the existing fixes that will remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the airways through the affected area could also take advantage of the air traffic services previously listed.

Prior to this NPRM, the FAA published a rule for Docket No. FAA–2020–0010 in the **Federal Register** (85 FR 27114; May 7, 2020), amending VOR Federal airway V–63 by removing the airway segment between the Texoma, OK, VOR/DME and the Razorback, AR, VORTAC. The airway amendment, effective July 16, 2020, is included in this NPRM.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend VOR Federal airway V–63 due to the planned decommissioning of the VOR portion of the Texoma, OK, VOR/DME. The proposed VOR Federal airway action is described below.

V–63: V–63 currently extends between the Bowie, TX, VORTAC and the Texoma, OK, VOR/DME; between the Razorback, AR, VORTAC and the Oshkosh, WI, VORTAC; and between the Wausau, WI, VORTAC and the Houghton, MI, VOR/DME. The FAA proposes to remove the airway segment between the Bowie, TX, VORTAC and the Texoma, OK, VOR/DME. The unaffected portions of the existing airway would remain as charted.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be subsequently published in the Order.

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 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 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–63 [Amended]

From Razorback, AR; Springfield, MO; Hallsville, MO; Quincy, IL; Burlington, IA; Moline, IL; Davenport, IA; Rockford, IL; Janesville, WI; Badger, WI; to Oshkosh, WI. From Wausau, WI; Rhinelander, WI; to Houghton, MI. Excluding that airspace at and above 10,000 feet MSL from 5 NM north to 46 NM north of Quincy, IL, when the Howard West MOA is active.

* * * * *

Issued in Washington, DC, on June 18, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–13658 Filed 6–25–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0852; Airspace Docket No. 19–ANM–26]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Torrington, WY

AGENCY: Federal Aviation Administration (FAA), 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 Torrington Municipal Airport, Torrington, WY, to accommodate new area navigation (RNAV) procedures at the airport. This action would ensure the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before August 10, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0852; Airspace Docket No. 19–ANM–26, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA 98198–6547; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

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–2019–0852; Airspace Docket No. 19–ANM–26''. 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 *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *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 98198–6547.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D 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 Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying the Class E airspace extending upward from 700 feet above the surface at Torrington Municipal Airport, Torrington, WY. In addition to the airspace within 7.7 miles of the airport, additional airspace is being proposed to accommodate two new RNAV approaches. A rectangular segment east of the airport 7 miles each side of the 109° bearing extending 27 miles from the airport, and an area northwest of the airport 2 miles each side of the 295° bearing extending from

the 7.7-mile radius to 11 miles northwest of the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. 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, 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 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

ANM WY E5 Torrington, WY [Amend]

Torrington Municipal Airport, WY
(Lat. 42°03′52″ N, long. 104°09′10″ W)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the Torrington Municipal Airport, and that airspace 2 miles each side of the 295° bearing extending from the 7.7-mile radius to 11 miles northwest of the airport, and that airspace 7 miles each side of the 109° bearing extending from the 7.7-mile radius to 27 miles east from the airport.

Issued in Seattle, Washington, on June 18, 2020.

Shawn M. Kozica,

Manager, Operations Support Group Western Service Center

[FR Doc. 2020–13542 Filed 6–25–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0500; Airspace Docket No. 20–AGL–9]

RIN 2120–AA66

Proposed Amendment of V–221 and V–305 in the Vicinity of Bloomington, IN

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–221 and V–305 in the vicinity of Bloomington, IN. The amendments are due to the planned decommissioning of the VOR portion of the Hoosier, IN, VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID) which provides navigation guidance for portions of the affected airways. The Hoosier VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before August 10, 2020.

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–2020–0500; Airspace Docket No. 20–AGL–9 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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 National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

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–2020–0500; Airspace Docket No. 20–AGL–9) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0500; Airspace Docket No. 20–AGL–9.'' 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 *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

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

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D 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 VOR portion of the Hoosier, IN, VORTAC in December 2020. The Hoosier 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 Hoosier VORTAC NAVAID is planned for decommissioning, the DME portion of the NAVAID is being retained to support Next Generation Air Transportation System (NextGen) Performance Based Navigation (PBN) flight procedure requirements.

The VOR Federal airway dependencies to the Hoosier VOR are V–221 and V–305. With the planned decommissioning of the Hoosier VOR, the proposed modifications to the dependent airways would result in airway segments supported by the Hoosier VOR being removed; creating gaps in V–221 and V–305. To overcome the gaps created in V–221 and V–305, instrument flight rules (IFR) pilots could use adjacent VOR Federal airways, including V–11, V–12, V–53, and V–171, or could request air traffic control (ATC) radar vectors to fly through or circumnavigate the affected area. IFR pilots equipped with area navigation (RNAV) PBN could also navigate point to point using the existing fixes that will remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the airways through the affected area could also take advantage of the air traffic services previously listed.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify VOR Federal airways V–221 and V–305 due to the planned decommissioning of the VOR portion of the Hoosier, IN, VORTAC. The proposed VOR Federal airway actions are described below.

V–221: V–221 currently extends between the Bible Grove, IL, VORTAC and the intersection of the Fort Wayne, IN, VORTAC 016° and Goshen, IN, VORTAC 092° radials. The FAA proposes to remove the airway segment between the Bible Grove, IL, VORTAC and the Shelbyville, IN, VOR/Distance Measuring Equipment (VOR/DME). The unaffected portions of the existing airway would remain as charted.

V–305: V–305 currently extends between the El Dorado, AR, VOR/DME and the Kokomo, IN, VORTAC. The FAA proposes to remove the airway segment between the Pocket City, IN, VORTAC and the Brickyard, IN, VORTAC. The unaffected portions of the existing airway would remain as charted.

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

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document would be subsequently published in the Order.

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 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 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–221 [Amended]

From Shelbyville, IN; Muncie, IN; Fort Wayne, IN; to INT Fort Wayne 016° and Goshen, IN, 092° radials.

* * * * *

V–305 [Amended]

From El Dorado, AR; Little Rock, AR; Walnut Ridge, AR; Malden, MO; Cunningham, KY; to Pocket City, IN. From Brickyard, IN; INT Brickyard 038° and Kokomo, IN, 182° radials; to Kokomo.

* * * * *

Issued in Washington, DC, on June 18, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–13657 Filed 6–25–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2020–0006; Notice No. 191]

RIN 1513–AC69

Proposed Establishment of the Tehachapi Mountains Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 58,000-acre ''Tehachapi Mountains'' viticultural area in Kern County, California. The proposed viticultural area is not located within, nor does it contain, any established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by August 25, 2020.

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2020–0006 as posted on *Regulations.gov* (*https://www.regulations.gov*), the Federal e-rulemaking portal. Please see the ''Public Participation'' section of this document below for full details on how to comment on this proposal via *Regulations.gov*, U.S. mail, or hand delivery, and for full details on how to view or obtain copies of this document, its supporting materials, and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes the standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally

or locally known by the AVA name specified in the petition;

- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Tehachapi Mountains Petition

TTB received a petition from Julie Bell of Per la Vita, LLC, on behalf of local vineyard owners and winemakers, proposing the establishment of the ''Tehachapi Mountains'' AVA. The proposed Tehachapi Mountains AVA is located in Kern County, California, and is not within any established AVA. The proposed Tehachapi Mountains AVA contains approximately 58,000 acres and has 6 commercially-producing vineyards covering a total of 25 acres, as well as 1 winery.

According to the petition, the distinguishing features of the proposed Tehachapi Mountains AVA include its topography and climate. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this document are from the petition for the proposed Tehachapi Mountains AVA and its supporting exhibits.

Name Evidence

The proposed Tehachapi Mountains AVA takes its name from a pass within the Tehachapi Mountains range, which partly lie within the proposed AVA. The Tehachapi Mountains are a smaller range of mountains within the Sierra Nevada Mountains. The petitioner states the ''Tehachapi'' name is unique to the area within the boundaries of the proposed AVA. Further, while the origin of ''Tehachapi'' is unknown, the petitioner notes nineteenth century texts show ''Tehachapi'' may derive from a Native American name for the pass within the Tehachapi Mountains and a creek draining from this pass. The petitioner originally proposed the name ''Tehachapi,'' which is the name of a town within the proposed AVA, but later requested changing the name to ''Tehachapi Mountains'' to avoid a potential conflict with label holders using the name ''Tehachapi'' or the grape varietal ''Tehachapi Clone'' on their labels. Although there is a peak in the range called ''Tehachapi Mountain,'' the petitioner chose to the name the proposed AVA after the entire range because while parts of the range are within AVA, the peak called ''Tehachapi Mountain'' is not within the proposed AVA.

The petition provided examples of the use of the words ''Tehachapi,'' ''Tehachapi Mountain,'' and ''Tehachapi Mountains'' to describe the region of the proposed AVA. The Tehachapi Mountains are clearly labeled on the USGS 30 x 60 minute series map titled ''Tehachapi, CA,'' as shown in Supplemental Exhibit B to the petition. The Tehachapi Mountains Birding Club is described as ''the only club dedicated to local wildlife within the Tehachapi Mountains.'' [1] The city of Tehachapi, which is within the proposed AVA, celebrates the Tehachapi Mountain Festival each year. The geologic feature called the Tehachapi Pass is located within the proposed AVA and provides passage through the mountain range. The California Department of Transportation's project to improve rail lines within the region of the proposed AVA is called the Tehachapi Rail Improvement Project. Tehachapi Boulevard is a major road running through the proposed AVA. Finally, the proposed AVA is served by the Tehachapi Valley Healthcare District, the Tehachapi Unified School District, and the Tehachapi Municipal Airport.

Boundary Evidence

The proposed Tehachapi Mountains AVA roughly extends from the summit of Tehachapi Pass to the Tehachapi Valley, which includes the city of Tehachapi. The proposed boundary was drawn to separate the proposed AVA from the higher elevations farther within the Sierra Nevada Mountains range and from the lower elevations of the Mojave Desert and the San Joaquin Valley. The northern and southern boundaries follow a series of elevation contours and straight lines drawn between elevation contours that range from 4,200 to 5,400 feet in order to separate the proposed AVA from the higher elevations of the Piute Mountains (to the north) and the Tehachapi Mountains (to the south) that are inhospitable to grape growing. The eastern boundary follows a series of roads to separate the proposed AVA from the lower elevations and warmer climate of the Mojave Desert. The western boundary generally follows the 3,600-foot elevation contour to separate the proposed AVA from the lower, warmer region of the San Joaquin Valley.

Distinguishing Features

The distinguishing features of the proposed Tehachapi Mountains AVA are its topography and climate.

Topography

The proposed Tehachapi Mountains AVA is situated at the summit of the southernmost pass in the Sierra Nevada mountain range. The petition describes the proposed AVA as a broad, saddle-shaped region of mountain foot slopes, high valleys, and rolling hills. The proposed AVA has an east-west orientation, and the terrain at the east and west ends of the ''saddle'' rise to rugged hills before sharply falling away to lower elevations. However, these hills are not high enough to prevent warm air from the neighboring San Joaquin Valley and Mojave Desert from entering the proposed AVA. Slope angles within the proposed Tehachapi Mountains AVA average between 3 and 11 degrees. Elevations are between 3,600 and 5,400 feet, with the majority of the area situated between 3,800 and 4,600 feet.

To the north of the proposed AVA are the steep, high, rugged slopes of the Piute Mountains. Slope angles in this region rise to over 30 degrees, and the mountain summits reach over 6,000 feet, with nearby Bear Mountain reaching 6,913 feet. To the east, the land falls away at slope angles over 30 degrees until it reaches the relatively flat valley floor of the Mojave Desert. Elevations to the east of the proposed AVA average 2,600 feet. To the south of the proposed AVA, slope angles are also over 30 degrees as the land rises to the summits of the Tehachapi Mountains, with elevations rising over 7,700 feet at the peak of Cummings Mountain. West of the proposed AVA, the terrain drops sharply at angles over 30 degrees to elevations below 500 feet near the city of Bakersfield in the San Joaquin Valley.

The topography of the proposed AVA has an effect on viticulture. According to the petition, the proposed Tehachapi Mountains AVA's location in a mountain pass allows for successful viticulture, even at high altitudes. The petition notes that wine grapes are generally grown below 3,000 feet within the United States and around the world, due to colder temperatures at higher elevations. However, prevailing west winds from the San Joaquin Valley and

[1] *http://www.tehachapinews.com/lifestyle/jon-hammond-teaching-the-public-about-birds-and-nature/article_9d41d885-8528-5bba-8def-2f6b08809356.html.*

east winds off the Mojave Desert allow temperatures to be sufficiently warm within the proposed AVA for grapes to be grown at elevations over 4,000 feet. Also within the proposed AVA, gentle slope angles reduce the risk of erosion and allow cold air to drain away from vineyards. Finally, the petition notes that the intensity of sunlight, especially in the short ultraviolet wavelengths, increases with altitude. As a result, grapes growing at high altitudes within the proposed AVA are exposed to higher intensity ultraviolet light, which stimulates synthesis of phenolic molecules. These molecules allow grapes to develop deep colors and thick skins, which leads to more concentrated, tannic wines.

Climate

The petition states that the altitude at which wine grapes can be grown successfully is limited by events that can permanently damage or kill vines, such as spring and fall frost events and low winter temperatures. *Vitis vinifer*a grapevines suffer permanent damage at temperatures below about 0 to −5 degrees Fahrenheit (F). The petition states that typical winter lows within the proposed Tehachapi Mountains AVA range from 35 to 26 degrees F. Further, the petitioner provided data from 2007 through 2016 showing that there was only one year where the minimum temperature within the proposed AVA dropped below 10 degrees F, and that for five other years the minimum temperature within the proposed AVA was 15 degrees F or more. However, the petition states that the number of hours per day spent at the maximum daily temperature is typically longer than the number of hours spent at the minimum daily temperature, as warmer winds from the Mojave Desert and San Joaquin Valley increase after dawn. As a result, vineyards in the proposed AVA have been able to fully ripen late season varietals such as zinfandel, syrah, and cabernet sauvignon.

The petition included the following climate data from within the proposed AVA and locations to the west, east, north-northeast, and north-northwest of the proposed AVA. The data was collected between 2007 and 2016. Data was not available from stations due north, or to the south, of the proposed AVA.

TABLE—AVERAGE CLIMATE DATA

Weather station location (direction from proposed AVA)	Elevation (in feet)	Lowest minimum temperature (degrees Fahrenheit)	Highest maximum temperature (degrees Fahrenheit)	Average length of growing season (days) [2]	Average growing degree day accumulations [3]
Tehachapi (within)	4,220	8	101	198	2,762
Bakersfield Airport (west)	489	25	112	349	5,521
Edwards Air Force Base (East)	2,283	3	128	231	4,881
Walker Pass (north-northeast)	5,572	10	106	216	3,834
Five Mile (north-northeast)	4,150	18	109	318	5,522
Johnsondale (north-northwest)	4,700	-5	104	139	2,149
Hot Springs (north-northwest)	3,720	15	109	245	3,529

The proposed Tehachapi Mountains AVA has cooler temperatures, a shorter growing season, and fewer growing degree days than the Bakersfield location to the west, the Edwards Air Force Base location to the east, the Hot Springs station to the north-northwest, and the Five Mile station to the north-northeast. This is to be expected, since the proposed AVA is at higher elevations than all four of these locations. The proposed AVA has warmer temperatures, a longer growing season, and more growing degree days than the Johnsondale location to the north-northwest, which is at higher elevations and is also more sheltered from the warm air of both the San Joaquin Valley and the Mojave Desert.

The petition states, however, that elevation alone does not explain the differences in temperature and growing degree day accumulations. Proximity to warm air from the Mojave Desert and, to a lesser extent, the San Joaquin Valley plays an important role. For example, the petition states that temperature generally falls as elevation rises. As the Walker Pass weather station, to the north-northeast of the AVA, is at significantly higher elevations than the proposed AVA, it should therefore have lower average temperatures than the proposed AVA, which would generally lead to a shorter growing season and fewer growing degree accumulations than the proposed AVA. However, because the Walker Pass station is on the eastern flank of a mountain range and is directly exposed to warm air rising from the Mojave Desert, it has warmer temperatures, a longer growing season, and greater growing degree accumulations than the proposed AVA.

According to the petition, the proposed Tehachapi Mountains AVA's proximity to the San Joaquin Valley and Mojave Desert affects viticulture. Winter temperatures are well above vine-killing temperatures, and the growing season length and growing degree day accumulations are sufficient to ripen late season varietals.

Summary of Distinguishing Features

In summary, the topography and climate of the proposed Tehachapi Mountains AVA distinguish it from the surrounding regions. The proposed AVA has lower elevations than the regions to the north and south, and higher elevations than the regions to the east and west. The proposed AVA has gentler slope angles than are found in each of the surrounding regions. The proposed AVA has warmer temperatures and a longer growing season than a higher, more isolated region to the north-northwest, and lower temperatures and a shorter growing season than lower-elevation regions to the east, west, north-northeast, and a region in the north-northwest. The proposed AVA is cooler and has a shorter growing season than Walker Pass to the north-northeast, which is at higher elevations but is more directly exposed to warm winds from the Mojave Desert.

[2] Base 30 degrees F.

[3] *See* Albert J. Winkler et al., *General Viticulture* (Berkeley: University of California Press, 2nd ed. 1974), pages 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDDs, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth.

TTB Determination

TTB concludes that the petition to establish the 58,000-acre Tehachapi Mountains AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for AVA in the proposed regulatory text published at the end of this proposed rule.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed Tehachapi Mountains AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, ''Tehachapi Mountains,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using the name ''Tehachapi Mountains'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if this proposed rule is adopted as a final rule.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed AVA. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, soils, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Tehachapi Mountains AVA on wine labels that include the term ''Tehachapi Mountains'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed AVA name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the AVA.

Submitting Comments

You may submit comments on this notice by using one of the following methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2020–0006 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 191 on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the ''Help'' tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 191 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2020–0006 on the Federal e-rulemaking portal, *Regulations.gov*, at *https://www.regulations.gov.* A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 191. You may also reach the relevant docket through the *Regulations.gov* search page at *https://www.regulations.gov.* For information on how to use *Regulations.gov*, click on the site's ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also obtain copies of this proposed rule, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal at 20 cents per 8.5- x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or any similarly-sized documents that may be included as part of the AVA petition. Contact TTB's Regulations and Rulings Division

by email using the web form at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–1039, ext. 175, to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this notice of proposed rulemaking.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.____ to read as follows:

§ 9.____ Tehachapi Mountains.

(a) *Name.* The name of the viticultural area described in this section is ''Tehachapi Mountains''. For purposes of part 4 of this chapter, ''Tehachapi Mountains'' is a term of viticultural significance.

(b) *Approved maps.* The 8 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Tehachapi Mountains viticultural area are titled:

(1) Bear Mountain, CA, 2015;
(2) Keene, CA, 2015;
(3) Cummings Mountain, CA, 2015;
(4) Tehachapi North, CA, 2015;
(5) Tehachapi NE, CA, 2015;
(6) Monolith, CA, 2015;
(7) Tehachapi South, CA, 2015; and
(8) Tejon Ranch, CA, 2015.

(c) *Boundary.* The Tehachapi Mountains viticultural area is located in Kern County, California. The boundary of the Tehachapi Mountains viticultural area is as described below:

(1) The beginning point is on the Bear Mountain map at the intersection of the 4,800-foot elevation contour and an unnamed road known locally as Skyline Drive. From the beginning point, proceed easterly along the 4,800-foot elevation contour, crossing onto the Keene map, to the intersection of the 4,800-foot elevation contour and Horizon Court; then

(2) Proceed south along Horizon Court to its intersection with the 4,600-foot elevation contour; then

(3) Proceed east, then north along the meandering 4,600-foot elevation contour to its intersection with Shenandoah Place; then

(4) Proceed southeast in a straight line to the 4,400-foot elevation contour south of an unnamed road known locally as Big Sky Court; then

(5) Proceed east, then north along the meandering 4,400-foot elevation contour to its intersection with Bear Valley Road; then

(6) Proceed east in a straight line to the 4,600-foot elevation contour; then

(7) Proceed southeasterly along the 4,600-foot elevation contour, crossing onto the Cummings Mountain map and continuing southeasterly, then northerly along the 4,600-foot elevation contour, crossing back onto the Keene map, and continuing northerly along the 4,600-foot elevation contour to a point due west of the intersection of Marcel Drive and an unnamed road known locally as Woodford-Tehachapi Road; then

(8) Proceed east in a straight line to the intersection of Woodford-Tehachapi Road and Marcel Drive; then

(9) Proceed east in a straight line, crossing onto the Tehachapi North map and crossing Tehachapi Creek, to the 4,400-foot elevation contour northeast of the community of Cable, California; then

(10) Proceed easterly along the 4,400-foot elevation contour, crossing onto the Tehachapi NE map, and continuing southeasterly along the 4,400-foot elevation contour to a point due west of the terminus of Zephyr Court; then

(11) Proceed east in a straight line to the terminus of Zephyr Court; then

(12) Proceed east in a straight line to Sand Canyon Road; then

(13) Proceed south along Sand Canyon Road, crossing onto the Monolith map, to its intersection with East Tehachapi Boulevard; then

(14) Proceed southwesterly in a straight line, crossing the railroad tracks and State Route 58, to the 4,200-foot elevation contour; then

(15) Proceed westerly along the 4,200-foot elevation contour to its intersection with an unnamed intermittent creek; then

(16) Proceed southwest in a straight line to the 4,400-foot elevation contour; then

(17) Proceed west along the 4,400-foot elevation contour, crossing onto the Tehachapi South map, to its intersection with Tehachapi-Willow Springs Road; then

(18) Proceed south along Tehachapi-Willow Springs Road to its intersection with the 4,520-foot elevation contour; then

(19) Proceed west in a straight line to the intersection of the 4,840-foot elevation contour and Snowshoe Lane; then

(20) Proceed north in a straight line to the 4,800-foot elevation contour; then

(21) Proceed westerly along the 4,800-foot elevation contour, crossing onto the Cummings Mountain map and over two unnamed intermittent streams, and continuing to the intersection of the 4,800-foot elevation contour and a third unnamed intermittent stream; then

(22) Proceed south in a straight line to the 5,200-foot elevation contour; then

(23) Proceed southerly along the 5,200-foot elevation contour to a point northeast of the southern terminus of Arosa Road; then

(24) Proceed east in a straight line, crossing onto the Tehachapi South map and over an unnamed road known locally as Water Canyon Road, to the 5,400-foot elevation contour; then

(25) Proceed southeasterly, then south, then southwesterly along the 5,400-foot elevation contour, crossing onto the Cummings Mountain map and continuing to the intersection of the 5,400-foot elevation contour with an unnamed road known locally as Matterhorn Drive; then

(26) Proceed west in a straight line, crossing Mountain Climber Way, to the 4,600-foot elevation contour; then

(27) Proceed westerly along the 4,600-foot elevation contour to its intersection with High Gun Drive; then

(28) Proceed south in a straight line to the second intersection of the line with the 5,000-foot elevation contour; then

(29) Proceed west in a straight line, crossing onto the Tejon Ranch map, to the line's intersection with an unnamed 4-wheel drive road; then

(30) Proceed northwesterly along the 4-wheel drive road to its intersection with the southern terminus of an unnamed road known locally as Carlisle Drive; then

(31) Proceed southwesterly in a straight line to an unmarked 4,680-foot summit; then

(32) Proceed north in a straight line to the 3,640-foot elevation contour; then

(33) Proceed west in a straight line to the 3,600-foot elevation contour; then

(34) Proceed west, then northwesterly along the 3,600-foot elevation contour to its intersection with an unnamed intermittent stream northwest of Jack Springs Road; then

(35) Proceed northeast in a straight line, crossing onto the Bear Mountain map, and continuing to the intersection of the 4,800-foot elevation contour and an unnamed intermittent creek west of Rockspring Court; then

(36) Proceed north along the 4,800-foot elevation to a point due west of the intersection of the 4,800-foot point and an unnamed road known locally as Skyline Drive; then

(37) Proceed east in a straight line to the beginning point.

Signed: March 16, 2020.

Mary G. Ryan,

Acting Administrator.

Approved: June 9, 2020.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2020–13138 Filed 6–25–20; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BD32

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Fishery Management Plans for Puerto Rico, St. Thomas and St. John, and St. Croix

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability (NOA); request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) has submitted three fishery management plans (FMPs) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, the new FMPs (island-based FMPs) would replace the existing U.S. Caribbean-wide FMPs and transition the management of Federal fisheries in the U.S. Caribbean exclusive economic zone (EEZ) from a U.S. Caribbean-wide approach to an island-based approach. By developing island-based FMPs, NMFS and the Council would better account for differences among the U.S. Caribbean islands with respect to culture, markets, fishing gear used, seafood preferences, and ecological impacts.

DATES: Written comments on the FMPs must be received by August 25, 2020.

ADDRESSES: You may submit comments on the FMPs, identified by ''NOAA–NMFS–2019–0155'', by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0155,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit all written comments to Sarah Stephenson, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

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).

Electronic copies of the FMPs may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/southeast/sustainable-fisheries/sustainable-fisheries-caribbean.* Each FMP includes an environmental assessment (EA), regulatory impact review, and fishery impact statement.

FOR FURTHER INFORMATION CONTACT: María del Mar López, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *maria.lopez@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The Council has submitted three FMPs for review, approval, and implementation by NMFS. The FMPs are the Comprehensive FMP for the Puerto Rico EEZ (Puerto Rico FMP), the Comprehensive FMP for the St. Thomas and St. John EEZ (St. Thomas and St. John FMP), and the Comprehensive FMP for the St. Croix EEZ (St. Croix FMP). If approved, the island-based FMPs would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

Currently, the Council manages fisheries under its authority under four U.S. Caribbean-wide FMPs: the FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (USVI) (Reef Fish FMP), the FMP for the Spiny Lobster Fishery of Puerto Rico and the USVI (Spiny Lobster FMP), the FMP for the Queen Conch Resources of Puerto Rico and the USVI (Queen Conch FMP), and the FMP for the Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the USVI (Coral FMP) through regulations implemented by NMFS at 50 CFR part 622.

NMFS implemented the Spiny Lobster FMP in 1984 (49 FR 50049, December 26, 1984), the Reef Fish FMP in 1985 (50 FR 34850, August 28, 1985), the Coral FMP in 1995 (60 FR 58221, November 27, 1995), and the Queen Conch FMP in 1996 (61 FR 65481, December 13, 1996). Each FMP has been amended on several occasions. Under these FMPs, the Council and NMFS manage fisheries across the entire U.S. Caribbean. However, the Council applies certain management measures separately within Federal waters of Puerto Rico, St. Thomas and St. John, and St. Croix based on the availability of island-specific data. For example, the final rule implementing Amendment 5 to the Reef Fish FMP and Amendment 2 to the Queen Conch FMP (2010 Caribbean Annual Catch Limit (ACL) Amendment) (76 FR 82404, December 30, 2011) defined the fishery management boundaries of the U.S. Caribbean EEZ for Puerto Rico, St. Thomas and St. John, and St. Croix, and established separate, island-specific ACLs and accountability measures (AM) for species addressed in those FMP amendments.

In 2012, the Council initiated public discussion of an island-based approach to the management of fisheries in the U.S. Caribbean EEZ to address requests from fishermen, fishing community representatives, and the governments of Puerto Rico and the USVI (St. Thomas, St. John, and St. Croix) that the Council consider the differences among the islands when addressing fisheries management in the U.S. Caribbean. These entities highlighted the unique characteristics of the fishery resources within each island or island group, and the communities that are dependent on those resources. For example, there are different species that are economically or ecologically important in Federal waters around each island or island groups, and the island-based approach provides a better mechanism to identify those species and to establish related management measures for those species (*e.g.,* bag limits, trip limits, closed areas, and closed seasons). By developing island-based FMPs, NMFS and the Council would better account for differences among the U.S. Caribbean islands with respect to culture, markets, fishing gear used, seafood preferences, and the ecological impacts.

The Council responded to these public requests by deciding to shift from a U.S. Caribbean-wide management approach to an island-based management approach and developing FMPs for Puerto Rico, St. Thomas and St. John, and St. Croix, respectively. The Council's decision was supported by an EA completed in 2014, which analyzed transitioning from U.S. Caribbean-wide to island-based management. The EA evaluated the impact of incorporating the regulations in effect at that time under the U.S. Caribbean-wide FMPs into FMPs for different island management areas. For example, the Council evaluated subdividing the island management zones into a two, three, or four island-group approach. The EA provided the public with the expected and potential impacts of such a shift in Federal fisheries management in the U.S. Caribbean. Based on the 2014 EA, the Council decided to develop FMPs for three island areas, the Puerto Rico FMP, the St. Thomas and St. John FMP, and the St. Croix FMP, that are noticed here. Each island-based FMP is analyzed separately in an EA.

If approved, the Puerto Rico FMP, the St. Thomas and St. John FMP, and the St. Croix FMP, in combination, would replace the existing U.S. Caribbean-wide FMPs. Each individual FMP would establish management measures for the EEZ around each island. The U.S. Caribbean EEZ, also referred to as Federal waters, begins 9 nautical miles (nm) from shore off Puerto Rico and 3 nm from shore off the USVI, and the EEZ extends up to 200 nm from shore. Federal waters around Puerto Rico, St. Thomas and St. John, and St. Croix are defined as the respective island management areas under the island-based FMPs. Each island-based FMP would retain most of the current management measures established under the U.S. Caribbean-wide FMPs that apply to the respective island management area, including seasonal and area closures, minimum size limits, and recreational bag limits. In addition, each island-based FMP would revise other management measures such as the species included for Federal management, and ACLs and AMs. Thus, Federal fisheries within each island management area would be managed by provisions within the respective island-based FMP and fisheries management would be adapted to the individual characteristics of Puerto Rico, St. Thomas and St. John, and St. Croix.

Actions Contained in Each FMP

Each of the FMPs for Puerto Rico, St. Thomas and St. John, and St. Croix contain an EA that considers whether to make the transition from U.S. Caribbean-wide management to management at the particular island management area level. After deciding to make the transition, each EA considers alternatives for many of the management measures to be applied at the island management area level. The island-based FMPs would incorporate fishery management measures presently included in the current Spiny Lobster, Reef Fish, Queen Conch, and Coral FMPs that are applicable to the EEZ around each of the island management areas and would modify the specific management measures as needed. The island-based FMPs would revise the list of species to be managed and modify the stock or stock complexes under which those species are managed; revise status determination criteria (SDC), management reference points, and AMs; incorporate descriptions of essential fish habitat (EFH) for species new to Federal management; and update FMP framework procedures.

Each EA associated with an island-based FMP contains the same set of management actions, as described below. For each management action, information applicable to all three island management areas is described first, followed by island area-specific information where applicable.

Island-Based Management

For each island management area, the corresponding island-based FMP would replace the four U.S. Caribbean-wide FMPs currently in place as they apply to the particular island management area. Management measures within those U.S. Caribbean-wide FMPs would be reorganized at the level of each island management area. Each island-based FMP would include only those management measures applicable to that island management area. For example, minimum size limits applicable to the harvest of certain parrotfish species in the St. Croix management area would only be included in the St. Croix FMP.

Selection of Stocks To Be Managed

The stocks currently managed in the U.S. Caribbean EEZ under the Reef Fish, Spiny Lobster, Queen Conch, and Coral FMPs are composed of 81 species of reef fish, 58 species of aquarium trade fish, spiny lobster, queen conch, 94 genera or species of corals, and 63 genera or species of aquarium trade invertebrates (see Table 1 to appendix A of 50 CFR part 622). For each island management area, the island-based FMPs would designate a unique list of species to be managed based on the specific characteristics of each island management area. The Council's Scientific and Statistical Committee (SSC) and the District Advisory Panel from each island management area provided input and recommendations on the criteria used for the Council to select the species to be included in each respective FMP. As described in greater detail in the FMPs, the inclusion or exclusion of species for management was determined using five sequential principles applied to species for which landings are available, beginning with those in greatest need of conservation and management (*e.g.,* overfished, prohibited harvest, *etc.*). Among the species considered for management are those retained from the four U.S. Caribbean-wide FMPs as well as non-managed species for which the Southeast Fisheries Science Center (SEFSC) had data indicating that the species had been landed in the particular island area. For all of these species considered for management, the Council used a stepwise application of the five criteria to determine if a species should be included for management in each island-based FMP. Table 2.2.6 in each island-based FMP lists the stocks proposed for Federal management.

Puerto Rico Stocks for Management

Following the stepwise species selection process, spiny lobster, queen conch, 63 species of fish, and all species of corals, sea urchins, and sea cucumbers that occur within the Puerto Rico management area are proposed for

management in the Puerto Rico FMP. Eighteen fish species would be new to Federal management under the Puerto Rico FMP.

St. Thomas and St. John Stocks for Management

Following the stepwise species selection process, spiny lobster, queen conch, 47 species of fish, and all species of corals, sea urchins, and sea cucumbers that occur within the St. Thomas and St. John management area are proposed for management in the St. Thomas and St. John FMP. Three fish species would be new to Federal management under the St. Thomas and St. John FMP.

St. Croix Stocks for Management

Following the stepwise species selection process, spiny lobster, queen conch, 43 species of fish, and all species of corals, sea urchins, and sea cucumbers that occur within the St. Croix management area are proposed for management in the St. Croix FMP. Two fish species would be new to Federal management under the St. Croix FMP.

Stock Complex Organization and Selection of Indicator Stocks

After establishing the list of species proposed for management under each island-based FMP, the Council determined whether those species would be managed as individual stocks or in stock complexes. For those managed in stock complexes, the Council determined if one or more indicator stocks should be assigned to the stock complex. This action would result in a new organization of stocks, and therefore a new number of stocks and stock complexes would be managed under each island-based FMP relative to the U.S. Caribbean-wide FMPs. Table 5.13.3 in each island-based FMP lists the proposed stocks complexes and indicator stocks.

Puerto Rico Stock Organization

Species proposed for management under the Puerto Rico FMP would be managed as 18 individual stocks and 19 stock complexes and would include 7 indicator stocks.

St. Thomas and St. John Stock Organization

Species proposed for management under the St. Thomas and St. John FMP would be managed as 12 individual stocks and 14 stock complexes and would include 9 indicator stocks.

St. Croix Stock Organization

Species proposed for management under the St. Croix FMP would be managed as 13 individual stocks and 13 stock complexes and would include 6 indicator stocks.

Management Reference Points and Status Determination Criteria

The Magnuson-Stevens Act requires that FMPs specify a number of reference points for managed fish stocks, including maximum sustainable yield (MSY) or MSY proxy, ACL, as well as stock SDC including overfished and overfishing thresholds. These reference points and SDC, and other provisions from which they are derived, such as acceptable biological catch (ABC), are intended to provide the means to measure the status and performance of fisheries relative to established goals.

The current SDC and management reference points for stocks managed under the four U.S. Caribbean-wide FMPs were established by the final rules for the Caribbean Sustainable Fisheries Act Amendment (70 FR 62073, October 28, 2005), and the ABC control rules included in the 2010 Caribbean ACL Amendment and the final rule implementing Amendment 6 to the Reef Fish FMP, Amendment 5 to the Spiny Lobster FMP, Amendment 3 to the Queen Conch FMP, and Amendment 3 to the Coral FMP (76 FR 82414, December 30, 2011) (2011 Caribbean ACL Amendment).

The ABC control rules contained in each island-based FMP would replace the current ABC control rules included in the 2010 Caribbean ACL Amendment and 2011 Caribbean ACL Amendment, as applicable. The island-based FMPs would provide a complete revision of reference points and SDC for stocks and stock complexes included for management following a three-step process.

Step 1 adopts and applies a newly devised, 4-tiered, ABC control rule to specify SDC and ABC recommendations depending on differing levels of data availability. Beginning with Tier 4 and moving up the tier levels (lower tier numbers), successful application of each tier requires an increasing amount of information. Tier 4 is applicable in situations where an accepted quantitative assessment is not available, which is the present case for all stocks proposed for management in the Puerto Rico, St. Thomas and St. John, and St. Croix FMPs. In Tier 4, the most data-limited of the options, an MSY proxy, maximum fishing mortality threshold, and MSST are defined with respect to assumptions about fishing mortality rate and biomass, but cannot be quantified due to data limitations. In addition, Tier 4 introduces a new reference point, the sustainable yield level (SYL). The SYL is a level of landings that can be sustained over the long term. SYL is intended to be used when quantitative guidance with which to set MSY or an MSY proxy is not available. The SYL would serve as a proxy for the OFL and a minimum estimate of MSY where MSY is greater than or equal to SYL, and thus SYL also is an MSY proxy.

Step 2 establishes a proxy to use when F_{MSY} cannot be determined, as in Tier 4 of the ABC control rule. For all three island management areas, the Council established a proxy equal to 30 percent of the maximum spawning potential of a stock under conditions of no fishing mortality ($F_{30\%SPR}$).

Step 3 applies a reduction factor, reflecting the Council's estimate of management uncertainty, to the recommended ABC for each stock or stock complex to specify the ACL for the stock or stock complex. The OY would be set equal to the ACL for each stock or stock complex. All reference points are defined in terms of round weight in pounds.

The tiered approached to the ABC control rule better positions the Council to take advantage of future improvements in data and analytical methodologies. Revising the reference points and SDC based on recent landings data ensures to the greatest extent practicable that an appropriate period of stable and sustainable landings is identified and used for setting management reference points and SDC.

Puerto Rico Stock Evaluation

For the Puerto Rico FMP, sector-specific landings data for Council-managed fish (reef fish, pelagic fish, and rays) were available for the commercial and recreational fishing sectors operating in EEZ waters around Puerto Rico. These landings data were used to determine and establish reference points and SDC for fish stocks and stock complexes (Step 1 of the three-step process used to revise reference points and SDCs described above), and set ACLs by sector with available data (Step 3 of the process described above). For spiny lobster, only commercial landings data are collected as recreational data are not available. Because sector-specific landings data are not available, reference points and SDC for spiny lobster derived in Steps 1 and 3 are based on commercial landings. The SSC determined that some species proposed for management under the Puerto Rico FMP were more vulnerable to overfishing and recommended that the ABC be set at zero (the corresponding ACL and OY would also equal zero). These included queen conch, Nassau

grouper, goliath grouper, blue, midnight, and rainbow parrotfishes, giant manta ray, spotted eagle ray, southern stingray, sea cucumbers, sea urchins, and corals. The Council also determined an MSY proxy, MFMT, and MSST based on the fishing mortality rate in Step 2 of the three-step process used to revise reference points and SDCs stated earlier. To determine the ACL for those stocks and stock complexes for which harvest is not prohibited (*i.e.,* for which the ABC is greater than zero), the Council proposed an uncertainty buffer of 0.85 for the angelfish, parrotfish, and surgeonfish stock complexes and an uncertainty buffer of 0.95 for all remaining stocks and stock complexes. The ABC for each of those stocks or stock complexes was multiplied by the buffer to determine the ACL for each stock and stock complex proposed for management. For fish stocks and stock complexes, OY would equal the total (commercial and recreational) ACL when data from both sectors are available. In the event that landings for one sector are not available for the averaging period, the sector would not be managed by a separate sector ACL. The ACL for the sector with available data would be the applicable ACL for the stock or stock complex. For spiny lobster, the OY would equal the commercial ACL, as the ACL is based on commercial landings. This ACL applies to all harvest of spiny lobster, whether commercial or recreational.

St. Thomas and St. John Stock Evaluation

For the St. Thomas and St. John FMP, recreational landings data were not available, thus management reference points and SDC (*e.g.,* SYL, ABC, and ACL) for the stocks and stock complexes proposed for management were derived using commercial landings in Steps 1 and 3 of the three-step process used to revise reference points and SDC. The SSC determined that some species proposed for management under the St. Thomas and St. John FMP were more vulnerable to overfishing and recommended that the ABC be set at zero pounds (the corresponding ACL and OY would also equal zero). These included queen conch, Nassau grouper, goliath grouper, blue, midnight, and rainbow parrotfishes, sea cucumbers, sea urchins, and corals. The Council also determined an MSY proxy, MFMT, and MSST based on the fishing mortality rate in Step 2 of the three-step process used to revise reference points and SDCs. To determine the ACL for those stocks and stock complexes for which harvest is not prohibited (*i.e.,* for which the ABC is greater than zero), in Step 3, the Council proposed an uncertainty buffer of 0.85 for the angelfish, parrotfish, and surgeonfish stock complexes, and an uncertainty buffer of 0.95 for all remaining stocks and stock complexes. The ABC for each of those stocks or stock complexes was multiplied by the buffer to determine the ACL for each stock and stock complex proposed for management. For all stocks and stock complexes, OY would equal the ACL.

St. Croix Stock Evaluation

For the St. Croix FMP, recreational landings data were not available, thus management reference points and SDC (*e.g.,* SYL, ABC, and ACL) for the stocks and stock complexes proposed for management were derived using commercial landings in Steps 1 and 3 of the three-step process used to revise reference points and SDC. The SSC determined that some species proposed for management under the St. Croix FMP were more vulnerable to overfishing and recommended that the ABC be set at zero (the corresponding ACL would also equal zero). These species would include Nassau grouper, goliath grouper, blue, midnight, and rainbow parrotfishes, sea cucumbers, sea urchins, and corals. The SSC also recommended an ABC of 50,000 lb (22,680 kg) for queen conch in the St. Croix EEZ. The Council also determined an MSY proxy, MFMT, and MSST based on the fishing mortality rate in Step 2 of the three-step process used to revise reference points and SDCs. To determine the ACL for each stock and stock complex proposed for management for the stocks and stock complexes in which the ABCs were not equal to zero, in Step 3, the Council proposed an uncertainty buffer of 0.85 for the angelfish, parrotfish, and surgeonfish stock complexes, an uncertainty buffer of 0.95 for spiny lobster and all other fish stocks and stock complexes, and no uncertainty buffer for queen conch, as management uncertainty was accounted for when setting the ABC, thus no additional reduction from the ABC to the ACL was necessary or appropriate. The ABC for each of those stocks or stock complexes was multiplied by the buffer to determine the ACL for each stock and stock complex proposed for management. For all stocks and stock complexes, OY would equal the ACL.

Accountability Measures

Under the current AMs, reef fish and spiny lobster landings data for each island management area are evaluated relative to the applicable ACL based on a moving multi-year average of landings, using the most recent, complete three years of landings data available. For reef fish species or species groups in the EEZ around Puerto Rico, ACLs are specific by sector and NMFS applies AMs on a sector-specific basis to the sector that exceeded its ACL if both the sector-specific ACL and total ACL (commercial and recreational) is exceeded. For reef fish species or species groups in the EEZ around the USVI and for spiny lobster in all management areas, if NMFS determines that the applicable ACL for a particular stock or stock complex was exceeded because of enhanced data collection and monitoring efforts instead of an increase in catch, NMFS will not reduce the length of the applicable fishing season the following fishing year. For reef fish species or species groups in the EEZ around Puerto Rico, if either the sector ACL or the total ACL is exceeded because of enhanced data collection and monitoring efforts instead of an increase in catch, NMFS will not reduce the length of the applicable sector fishing season the following fishing year. However, if landings exceed the applicable ACL for a species or species group and this exception does not apply, NMFS will reduce the length of the fishing season by the amount necessary to ensure that landings do not exceed the applicable ACL in the following fishing year for that species or species group. Additionally, any fishing season reduction is applied starting from September 30 and earlier toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied in the same fishing year from October 1 and later toward the end of the fishing year.

For most stocks and stock complexes in each island-based FMP, the AMs proposed would be triggered if landings of a stock or stock complex exceed the respective ACL. The proposed AMs were selected to ensure that, if an ACL for a particular stock or stock complex is exceeded, it will not be exceeded in the year following the ACL overage determination, or for pelagic stocks, that landings can be controlled at or below the ACL.

For each reef fish stock and stock complex where harvest is allowed, and for spiny lobster in the respective island management areas, each island-based FMP proposes to specify an AM that would be triggered if the ACL for the stock or stock complex has been exceeded based on a moving multi-year average of landings as described in the FMP. If the ACL is exceeded, the length

of the fishing season for the affected stock or stock complex in the fishing year following an ACL overage determination would be reduced by the amount needed to prevent such an overage from occurring again. If the NMFS SEFSC determines that the overage occurred because of improved data collection and monitoring rather than because catches actually increased, then the AMs would not be applied. Additionally, the Regional Administrator in consultation with the Council may deviate from the specific time sequences of landings based on data availability. Any fishing season reduction would be applied from September 30 and earlier toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction would be applied from October 1 forward, toward the end of the fishing year.

For the pelagic stocks and stock complexes, all of which would be new to Federal management within each island-based FMP, an annual catch target (ACT) would be specified as a percentage of the ACL (ACT equals 90 percent of ACL) that would serve as the AM trigger. An AM would be triggered if the landings for a stock or stock complex exceed its ACT based on a moving multi-year average of landings as described in the FMP. The Regional Administrator in consultation with the Council may deviate from the specific time sequences of landings based on data availability. If an AM was triggered, the Council in consultation with the SEFSC would determine whether corrective action is needed.

For stocks with harvest prohibitions in each island management area, those prohibitions would serve as the AMs. No additional or unique AMs are proposed for St. Thomas and St. John.

Puerto Rico Stock AMs

For reef fish stocks and stock complexes in the Puerto Rico management area, the default process discussed for AMs above would be modified by the Puerto Rico FMP to reflect sector-specific management. Where sector-specific ACLs were determined, landings would be evaluated relative to the applicable commercial or recreational ACL, depending on data availability. An AM would be triggered if a sector's landings exceeded the respective sector ACL and the total landings (commercial plus recreational) exceeded the total ACL (commercial plus recreational) for a specific stock or stock complex. The AM would be applied only for the particular sector that exceeded its ACL. NMFS would not apply an AM if the NMFS SEFSC determines that either ACL overage (sector-specific or total ACL) occurred because data collection or monitoring improved rather than because catch increased. However, as described above, if landings for one sector are not available for the averaging period, then that sector would not be managed by a separate sector ACL. The ACL for the sector with available data would be the ACL for that stock or stock complex and would apply to the application of AMs. Landings would be evaluated relative to the ACL. The AM would operate to reduce the length of the fishing season for all sectors by the amount necessary to ensure to the greatest practicable extent that landings do not again exceed the ACL in the year of application. For spiny lobster, only commercial harvest data are collected as recreational landings are not available. However, the ACL and AM for spiny lobster would apply to commercial and recreational harvest. For all stock and stock complexes, any fishing season reduction resulting from an AM application would be applied during the fishing year after the overage is detected in the same manner as stated earlier, *i.e.,* from September 30 and earlier in the fishing year.

St. Croix Stock AMs

For St. Croix, the general process described above applies, with modifications for queen conch. The St. Croix FMP would continue to allow queen conch harvest from the EEZ east of 64°34′ W longitude during the open fishing season. The rest of the U.S. Caribbean EEZ would continue to be closed to the harvest of queen conch. The proposed AM for queen conch would be applied if, based on in-season monitoring, NMFS determines its ACL is reached or is projected to be reached prior to the end of the fishing season. If the AM is applied, the Regional Administrator would close the St. Croix management area to the harvest and possession of queen conch. During any such closure, no person would be allowed to fish for or possess a Caribbean queen conch in or from Federal waters.

Essential Fish Habitat

The EFH designations for species and species groups that are currently managed under the U.S. Caribbean-wide FMPs and are proposed for management under the Puerto Rico FMP, St. Thomas and St. John FMP, and St. Croix FMP would remain as currently described in the Sustainable Fisheries Act Amendment (70 FR 62073, October 28, 2005). For species new to Federal management, each island-based FMP proposes to describe and identify EFH according to functional relationships between life history stages of the species and marine and estuarine habitats, based on best scientific information available from the literature, landings data, fishery-independent surveys, and expert opinion.

Framework Procedures

The current framework procedures for the Reef Fish, Spiny Lobster, Queen Conch, and Coral FMPs provide the Council and NMFS the flexibility to more expeditiously adjust management options to respond to changing fishery conditions or new scientific information. Each island-based FMP proposes to update the framework procedures to expand or modify the range of existing management measures that can be implemented by the Council without going through a full FMP amendment process. The proposed framework procedures for each island-based FMP are identical and future proposed actions could be implemented either by an open abbreviated framework, an open standard framework, or through a closed framework procedure. Some of the management measures proposed to be adjusted through framework procedures include re-specification of management reference points and SDCs, and modification of seasonal, year-round, or area closures, commercial trip limits, recreational bag and possession limits, size limits, and fishing gear modifications.

Proposed Rule for the Island-based FMPs

A proposed rule that would implement the island-based FMPs is being drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the Magnuson-Stevens Act and other applicable laws. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted the Puerto Rico FMP, St. Thomas and St. John FMP, and St. Croix FMP for Secretarial review, approval, and implementation. Comments on any of the FMPs must be received by August 25, 2020. Comments received during the respective comment periods, whether specifically directed to any or all of the FMPs or to the proposed rule, will be considered by

NMFS in the decision to approve, disapprove, or partially approve the island-based FMPs. Comments received after the comment period will not be considered by NMFS in this decision. All comments received by NMFS on an island-based FMP or the proposed rule during the comment period will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 23, 2020.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–13823 Filed 6–25–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 124
Friday, June 26, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 23, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 27, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Laboratory Assessment Requests.

OMB Control Number: 0583–New.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are wholesome, not adulterated, and properly labeled and packaged.

As a public health regulatory agency, FSIS investigates reports of foodborne illness, contamination, and adulteration potentially associated with FSIS-regulated products. During these investigations, non-FSIS laboratories may test FSIS regulated product and share the results with FSIS. FSIS Office of Public Health Science (OPHS) Staff (SciS) will review the results and associated documentation shared by the non-FSIS laboratory to determine whether FSIS will accept the results. If the SciS lead investigator determines the non-FSIS laboratory result is acceptable, FSIS may use the result to inform regulatory action (*e.g.* request a recall or detain product).

Need and Use of the Information: As part of the process to determine if the non-FSIS laboratory result is acceptable, the SciS lead investigator collects information from the non-FSIS laboratory and verifies that the non-FSIS laboratory can provide the appropriate certifications and documentation of accreditation, such as ISO17025, or another third-party accreditation entity covering the methods performed. The SciS lead investigator also verifies that the laboratory has submitted all the necessary information, including evidence of chain of custody, the appropriate laboratory reports with sample identification, final results, and authorization by the responsible official for affirming results. The laboratory may use FSIS Form 8000–17, *Evidence Receipt and Chain of Custody,* to submit information to FSIS. Finally, the SciS investigator collects and verifies laboratory methods and quality assurance records documentation from the accredited, non-FSIS laboratory.

Description of Respondents: Business or other for-profit.

Number of Respondents: 3.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 23.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–13800 Filed 6–25–20; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 23, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 27, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information

displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: Subpart U—Ineligibility for Programs under the Federal Crop Insurance Act.

OMB Control Number: 0563–0085.

Summary of Collection: The Federal Crop Insurance Corporation (FCIC) is a wholly-owned Government corporation created February 16, 1938 (7 U.S.C. 1501). The program was amended previously, but Public Law 96–365, dated September 26, 1980, provided for nationwide expansion of a comprehensive crop insurance program. The Federal Crop Insurance Act, as amended in later years further expanded this role of the crop insurance program to be the principal tool for risk management by producers of agricultural commodities.

Need and Use of the Information: The purpose of collecting the information is to ensure persons that are ineligible for benefits under the Federal crop insurance program are accurately identified as such and do not obtain benefits to which they are not eligible. A person can become ineligible for benefits for three reasons: (1) Debt on unpaid premium or overpaid indemnity (information provided by AIP; (2) Debt on unpaid CAT fee (information provided by AIP); and (3) Debarment/disqualification/suspension, including but not limited to judgement, civil fines, etc. The Federal Crop Insurance Corporation and AIPs use the information collected to determine whether a person seeking to obtain Federal crop insurance coverage are ineligible for such coverage according to the statutory/regulatory mandates identified. Failure to collect the applicable information could result in unearned Federal benefits being issued.

Description of Respondents: Businesses or other for-profits.

Number of Respondents: 14.

Frequency of Responses: On occasions; Annually.

Total Burden Hours: 2,647.

Ruth Brown,

Departmental Information Clearance Officer.

[FR Doc. 2020–13803 Filed 6–25–20; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Rural Business Service

[Docket No. RBS–20–BUSINESS–0025]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Business Service, USDA.

ACTION: Notice; comment requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named agency to request Office of Management and Budget's (OMB) approval for a revision of a currently approved information collection in support of the Advanced Biofuel Payment Program.

DATES: Comments on this notice must be received by August 25, 2020.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, Room 4227, South Building, Washington, DC 20250–1522. Telephone: (202)720–2825. Email *arlette.mussington@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RBS is submitting to OMB for extension.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) The accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''RBS'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RBS–20–BUSINESS–0025 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: Advanced Biofuel Payment Program.

OMB Number: OMB No. 0570–0063.

Expiration Date of Approval: December 31, 2020.

Type of Request: Revision of a currently approved information collection.

Abstract: The Advanced Biofuel Payment Program was authorized under section 9005 of Title IX of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). It authorizes the Agency to enter into contracts to make payments to eligible entities to support and ensure an expanding production of advanced biofuels. Entities eligible to receive payments under the Program are producers of advanced biofuels that meet all of the requirements of the Program.

This revision reflects a 584 decrease in annual responses and a 507 decrease in burden hours. The reduction in the burden to the public reflects a full accounting of all Rural Development (RD) forms that must be provided by participating producers. The estimated burden includes accounting for the Assurance Agreement (RD 400–4) and the Certification for Contracts, Grants and Loans (RD 1940–Q). The total estimated costs to the public was decreased by $16,879 per year, from $66,096 to 49,217.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.89 hours per response.

Respondents: The respondents are the advanced biofuel producers and Agency staff who process applications and quarterly payment requests.

Estimated Number of Respondents: 206 advanced biofuel producers.

Estimated Number of Responses per Respondent: 1.

Estimate Number of Responses: 1,500.

Estimated Total Annual Burden on Respondents: 1,339 hours.

Copies of this information collection can be obtained from Arlette Mussington, Innovation Center—Regulations Management Division, at

(202) 720–2825. Email: *arlette.mussington@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2020–13804 Filed 6–25–20; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–20–TELECOM–0024]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; comment requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Rural Housing Service (RHS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested. The intention is to request a revision for a currently approved information collection in support of the program for Telecommunications System Construction Policies and Procedures.

DATES: Comments on this notice must be received by August 25, 2020 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Robin Jones, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, Room 2445, South Building, Washington, DC 20250. Telephone: (202) 772–1172. Email *robin.m.jones@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the following method:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Rural Utilities Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RUS–20–TELECOM–0024 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: Telecommunications System Construction Policies and Procedures.

OMB Number: 0572–0059.

Expiration Date of Approval: November 30, 2020.

Type of Request: Extension of a currently approved information collection.

Abstract: In order to facilitate the programmatic interest of the RE Act, and, in order to assure that loans made or guaranteed by the Agency are adequately secured, the Agency, as a secured lender, has established certain forms for materials, equipment and construction of electric and telecommunications systems. The use of standard forms, construction contracts, and procurement procedures helps assure the Agency that appropriate standards and specifications are maintained, the Agency's loan security is not adversely affected; and the loan response. In an effort to improve customer service provided to RUS rural borrowers, the Agency continues to revise, consolidate, and/or streamline its current contracts and contracting procedures.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Public bodies, not for profits, or Indian Tribes.

Estimated Number of Respondents: 572.

Estimated Number of Responses per Respondent: 5.3.

Estimated Total Annual Burden on Respondents: 8,233 hours.

Copies of this information collection can be obtained from Robin M. Jones, Innovation Center—Regulations Management Division, at (202) 772–1172, Email: *robin.m.jones@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Chad Rupe,

Administrator, Rural Utilities Service.

[FR Doc. 2020–13750 Filed 6–25–20; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada Advisory Committee

AGENCY: U.S. Commission on Civil Rights

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Nevada Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (Pacific Time) Tuesday, July 14, 2020, the purpose of the meeting will be to orient members to state advisory committee work and discuss potential civil rights topics to study.

DATES: The meeting will be held on Tuesday, July 14, 2020 at 1:00 a.m. PT.

Public Call Information:

Dial: 800–367–2403.

Conference ID: 9816410.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (202) 691–0857.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID number: 9816410. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the

conference call number and conference ID number.

Members of the public are 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 mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may also be emailed to Ana Victoria Fortes at *afortes@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=a10t0000001gzlJAAQ.*

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, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Nominate Vice Chair
III. Concept Stage Presentation
IV. Review Civil Rights Topics
V. Public Comment
VI. Discuss Next Steps
VII. Good of the Order
VIII. Adjournment

Dated: June 22, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–13777 Filed 6–25–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–012, C–570–013]

Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping (AD) and countervailing duty (CVD) orders on carbon and certain alloy steel wire rod from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable June 26, 2020.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 2015, Commerce published both the AD and CVD orders on carbon and certain alloy steel wire rod from China.[1] On December 2, 2019, the ITC instituted,[2] and on Commerce initiated,[3] the five-year (sunset) reviews of the AD and CVD orders on carbon and certain alloy steel wire rod from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* on carbon and certain alloy steel wire rod from China would be likely to lead to continuation or recurrence of dumping and countervailable subsidies and, therefore, notified the ITC of the magnitude of the margins and net subsidy rates likely to prevail should the *Orders* be revoked.[4] On June 19, 2020, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The merchandise covered by these *Orders* is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately circular cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.,* products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to these *Orders* are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093; 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by these *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or a recurrence of dumping and countervailable subsidies and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will

[1] *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Antidumping Duty Order,* 80 FR 1015 (January 8, 2015); *see also Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 1018 (January 8, 2015) (collectively, *Orders*).

[2] *See Carbon and Certain Alloy Steel Wire Rod from China; Institution of Five-Year Reviews,* 84 FR 66007 (December 2, 2019).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 65968 (December 2, 2019).

[4] *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Results of the Expedited First Five-Year Sunset Review of the Countervailing Duty Order,* 85 FR 17533 (March 30, 2020), and accompanying Issues and Decision Memorandum (IDM); and *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Results of the Expedited First Five-Year Sunset Review of the Antidumping Duty Order,* 85 FR 19136 (April 6, 2020), and accompanying IDM.

[5] *See Carbon and Alloy Steel Wire Rod from China (Inv. Nos. 701–TA–512 and 731–TA–1248 (Review)),* 85 FR 37108 (June 19, 2020); *see also Carbon and Alloy Steel Wire Rod from China (Inv. Nos. 701–TA–512 and 731–TA–1248 (Review)),* USITC Pub. 5064 (June 2020).

continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and (d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4). Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.[6]

Dated: June 22, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–13811 Filed 6–25–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–857; C–122–858]

Antidumping and Countervailing Duty Orders on Certain Softwood Lumber Products from Canada: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is notifying the public that the Court of International Trade's (CIT) final judgment in *Shake and Shingle Alliance* v. *United States,* Court No. 18–00228, is not in harmony with Commerce's final scope ruling and is, therefore, finding that certain cedar shakes and shingles exported by the Shake and Shingle Alliance (SSA) are not within the scope of the antidumping (AD) and countervailing duty (CVD) orders on certain softwood lumber (softwood lumber) from Canada.

DATES: Applicable April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

Commerce issued the AD and CVD orders on softwood lumber from Canada on January 3, 2018.[1] On September 10, 2018, in response to a scope ruling request filed by SSA, Commerce issued its Final Scope Ruling, finding that certain cedar shakes and shingles exported by SSA are covered by the scope of the *Orders.*[2] As a result of the Final Scope Ruling, Commerce instructed U.S. Customs and Border Protection (CBP) to continue suspension of liquidation of entries of SAA's certain cedar shakes and shingles.[3]

SAA challenged Commerce's Final Scope Ruling before the CIT. On November 13, 2019, the CIT remanded the Final Scope Ruling to Commerce to further consider the record as it pertains to the determination of the subject merchandise, to further consider record evidence as it pertains to the determination of whether cedar shakes and shingles are within the scope of the *Orders,* and to further consider prior determinations, including but not limited to scope rulings, in accordance with 19 CFR 351.225(k)(1).[4]

Pursuant to the CIT's *Remand Order,* on remand, Commerce reconsidered its Final Scope Ruling and determined that SSA's certain cedar shakes and shingles do not fall within the scope of the *Orders.*[5] Specifically, Commerce determined that the petitioner never intended for cedar shakes and shingles to be covered by the *Orders.*[6] On April 20, 2020, the CIT sustained Commerce's Final Remand Results.[7]

Timken Notice

In its decision in *Timken,*[8] as clarified by *Diamond Sawblades,*[9] the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's April 20, 2020, judgment in this case constitutes a final decision of the court that is not in harmony with Commerce's Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Scope Ruling

Because there is now a final court decision with respect to this case, Commerce is amending its final scope ruling and finds that the scope of the *Orders* do not cover certain cedar shakes and shingles exported by SSA. Commerce will instruct CBP to liquidate entries of certain cedar shakes and shingles exported by SSA without regard to AD and or CVD duties, and to lift suspension of liquidation of such entries.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1) of the Act.

Dated: June 22, 2020.

Joseph A. Laroski Jr.,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2020–13812 Filed 6–25–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Softwood Lumber Products From Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 347 (January 3, 2018); and *Certain Softwood Lumber Products from Canada: Antidumping Duty Order and Partial Amended Final Determination,* 83 FR 350 (January 3, 2018) (collectively, the *Orders*).

[2] *See* Antidumping and Countervailing Duty Orders on Certain Softwood Lumber Products from Canada: Final Scope Ruling—Cedar Shakes and Shingles, dated September 10, 2018 (Final Scope Ruling).

[3] *See* CBP Message Numbers 9045306 and 9045308, dated February 14, 2019.

[4] *See Shake and Shingle Alliance* v. *United States,* Slip Op. 19–140, Court No. 18–00228 (CIT 2019) (*Remand Order*).

[5] *See* Final Results of Redetermination Pursuant to Court Remand, *Shake and Shingle Alliance* v. *United States,* Court No. 18–00228, Slip Op. 19–140 (CIT November 2019), dated February 13, 2020 (Final Remand Results).

[6] *Id.* at 15.

[7] *See Shake and Shingle Alliance* v. *United States,* Court No. 18–00228, Slip Op. 20–52 (CIT April 20, 2020).

[8] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[9] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[6] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–882]

Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that POSCO received countervailable subsidies that are above *de minimis,* and that Hyundai Steel Company (Hyundai Steel) received countervailable subsidies that are *de minimis.* The period of review (POR) is January 1, 2017 through December 31, 2017.

DATES: Applicable June 26, 2020.

FOR FURTHER INFORMATION CONTACT: Moses Song or Yasmin Bordas, 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) 482–7885 or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this review on November 8, 2019.[1] In addition, Commerce issued a post-preliminary determination on the upstream allegation on electricity and the debt workout/restructuring program of POSCO Plantec Co., Ltd. (POSCO Plantec), which is a POSCO affiliated entity, on April 14, 2020.[2] For a history of events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

On March 3, 2020, we postponed the final results of this review until May 6, 2020.[4] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until June 25, 2020.[5]

Scope of the Order

The merchandise covered by this order is certain cold-rolled steel flat products. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' case briefs are addressed in the Issues and Decision Memorandum. The issues are identified in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from interested parties and record information, we have made no changes to the net subsidy rates calculated for POSCO, Hyundai Steel and for those companies not selected for individual review. For a discussion of these issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this 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.[6] For a description of the methodology underlying all of Commerce's conclusions, *see* the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation.

Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate an all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero, *de minimis,* or rates based entirely on facts available. Commerce looks to that provision as guidance in determining a rate for companies in which a review was requested, but which were not selected as mandatory respondents. In this review, the only subsidy rate above *de minimis* is the rate calculated for POSCO. Therefore, for the companies for which a review was requested that were not selected as mandatory respondents, we are applying the subsidy rate calculated for POSCO.

Final Results of Administrative Review

In accordance with section 751(a)(1)(A) of the Act and 19 CFR 351.221(b)(5), we determine the total estimated net countervailable subsidy rates for the period January 1, 2017 through December 31, 2017 to be as follows:

Company	Subsidy rate (percent *ad valorem*)
POSCO[7]	0.59
Hyundai Steel Co., Ltd	0.45 (*de minimis*)
Dongbu Steel Co., Ltd	0.59
Dongbu Incheon Steel Co., Ltd.	0.59
Dongkuk Steel Mill Co., Ltd	0.59
Dongkuk Industries Co., Ltd	0.59
Euro Line Global Co., Ltd	0.59
Hanawell Co., Ltd	0.59
Hankum Co., Ltd	0.59
Hyuk San Profile Co., Ltd	0.59
Nauri Logistics Co., Ltd	0.59

[1] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2017,* 84 FR 60377 (November 8, 2020) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Post-Preliminary Analysis Memorandum,'' dated April 14, 2020 (Post-Prelim Analysis Memorandum).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2017 Administrative Review: Certain Cold-Rolled Steel Flat Products from Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum, or IDM).

[4] *See* Memorandum, ''Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Countervailing Duty Administrative Review,'' dated March 3, 2020.

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[6] *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.

[7] We note that cross-ownership exists between POSCO, POSCO Chemtech (also known as POSCO Chemical Co., Ltd.), POSCO Nippon Steel RHF Joint Venture Co., Ltd., POSCO Processing and Service, Pohang Scrap Recycling Distribution Center Co., Ltd., and POSCO M-Tech. This rate applies to all cross-owned companies. *See Preliminary Results* and accompanying PDM at 9.

Company	Subsidy rate (percent *ad valorem*)
Taihan Electric Wire Co., Ltd	0.59
Union Steel Co., Ltd	0.59

Assessment and Cash Deposit Requirements

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of these final results to liquidate shipments of subject merchandise. Because we have calculated a *de minimis* countervailable subsidy rate for Hyundai Steel, we will instruct CBP to liquidate the appropriate entries without regard to countervailing duties in accordance with 19 CFR 351.212. We will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by POSCO and the above listed companies, entered or withdrawn from warehouse for consumption from January 1, 2017 through December 31, 2017, at the *ad valorem* rates listed above for each respective company.

In accordance with section 751(a)(2)(C) of the Act, we intend also to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above, with the exception of Hyundai Steel, 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 review. Because the countervailable subsidy rate for Hyundai Steel is *de minimis,* Commerce will instruct CBP to collect cash deposits at a rate of zero for Hyundai Steel for all shipments of the subject merchandise that are 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, 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, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of proceeding. Timely written notification of the return/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 violation which is subject to sanction.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: June 22, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. List of Issues
III. Background
IV. Changes Since the Preliminary Results
V. Scope of the Order
VI. Period of Review
VII. Rate for Non-Examined Companies
VIII. Subsidies Valuation Information
IX. Use of Facts Otherwise Available
X. Analysis of Programs
XI. Discussion of Comments
Comment 1: Whether the Electricity for Less Than Adequate Remuneration Upstream Subsidy Allegation Confers a Benefit
Comment 2: Whether POSCO Plantec Co., Ltd. (POSCO Plantec) is POSCO's Cross-Owned Input Supplier
Comment 3: Whether POSCO Plantec Received Countervailable Benefits Through Its Debt Restructuring Program
Comment 4: Whether the Application of Adverse Facts Available is Warranted for Sungjin Geotec Co., Ltd.'s Non-Recurring Subsidies Received During the Average Useful Life Period
XII. Recommendation

[FR Doc. 2020–13813 Filed 6–25–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review; Notice of Amended Final Results of Review Pursuant to Court Decision; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 11, 2020, the United States Court of International Trade (CIT) sustained the final results of redetermination pertaining to the administrative review of the antidumping duty order on steel wire garment hangers from the People's Republic of China (China) covering the period of review (POR) October 1, 2012 through September 31, 2013. The Department of Commerce (Commerce) is notifying the public that the CIT's final judgment in this case is not in harmony with the final results of the administrative review, and that Commerce is amending the final results with respect to Shanghai Wells Hanger Co., Ltd. (Shanghai Wells).

DATES: Applicable June 21, 2020.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 2015, Commerce published its *Final Results* in the 2012–2013 administrative review of steel wire garment hangers from China.[1] During the review, Commerce selected Thailand as the primary surrogate country, finding that data from Thailand provided the best available information on the record to value Shanghai Wells' reported factors of production (FOPs). In particular, Commerce found that the import data (including the surrogate value (SV) for wire rod, the primary material input FOP) and the labor SV for Thailand were superior to the SV data available from the Philippines, and the

[1] *See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012–2013,* 80 FR 13332 (March 13, 2015) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

Thai financial statements were usable.[2] Therefore, Commerce selected Thailand as the primary surrogate country, consistent with section 773(c) of the Act of 1930, as amended (the Act) and used the Thai SV data as the basis for its dumping analysis.[3]

Shanghai Wells challenged the *Final Results,* and, on March 2, 2017, the CIT remanded that determination to Commerce, questioning Commerce's decision to rely on ''usable'' Thai financial statements based on a preference to ''stay within the primary surrogate country,'' because Commerce must first ''evaluate the available data {sources}, which includes an acknowledgement that on this record a reasonable mind would not select the Thai financial statements as better than the Philippine {financial} statements.'' [4]

On June 7, 2017, Commerce issued the *First Redetermination Results,*[5] continuing to select Thailand as the primary surrogate country and to value all FOPs with data from the primary surrogate country, in accordance with the established regulatory preference.[6]

On February 7, 2020, the CIT granted Commerce's request for a voluntary remand in order to further examine concerns raised by the CIT and the parties to this litigation.[7] In the *Second Redetermination Results,* Commerce determined that the Philippine financial statements on the record were the best available information for valuing the financial FOPs and recalculated the weighted-average dumping margin for Shanghai Wells.[8] On June 11, 2020, the CIT sustained Commerce's *Second Redetermination Results.*[9]

Timken Notice

In its decision in *Timken,*[10] as clarified by *Diamond Sawblades,*[11] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A of the Act, Commerce must publish notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision.[12] The CIT's June 11, 2020 judgment sustaining the *Second Redetermination Results* constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken* and section 516A of the Act.

Amended Final Results of Review

Because there is now a final CIT decision, Commerce is amending its *Final Results* with respect to Shanghai Wells for the POR as follows:

Exporter	Weighted-average dumping margin (percent)
Shanghai Wells Hanger Co., Ltd.[13]	2.26

Assessment Instructions

In the event the CIT's ruling is not appealed or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise exported by Shanghai Wells in accordance with 19 CFR 351.212(b)(1). Commerce will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated is not zero or *de minimis.* Where an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[14] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Pursuant to Commerce's assessment practice, for entries that were not reported in the U.S. sales data submitted by Shanghai Wells during this review, Commerce will instruct CBP to liquidate such entries at the China-wide entity rate.[15]

Cash Deposit Requirements

The cash deposit rate for Shanghai Wells has been superseded by cash deposit rates calculated in intervening administrative reviews of the antidumping duty order on steel wire garment hangers from China. Thus, we will not alter Shanghai Wells' cash deposit rate as a result of these amended final results of review.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: June 19, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–13814 Filed 6–25–20; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Final Results,* and accompanying IDM at Comments 2 and 3.

[3] *Id.*

[4] *See Shanghai Wells Hanger Co.* v. *United States,* 211 F. Supp. 3d 1377, 1381 (CIT 2017).

[5] *See Final Results of Redetermination Pursuant to Court Remand in Shanghai Wells Co., Ltd.* v. *United States,* Consol. Court No. 15–00103, CIT Slip Op. 17–24, dated June 7, 2017 (*First Redetermination Results*).

[6] *See* 19 CFR 351.408(c)(2); *see also First Redetermination Results* at 2, 4–12.

[7] *See Shanghai Wells Co., Ltd.* v. *United States,* Consol. Court No. 15–00103, Order (CIT, February 7, 2020).

[8] *See Final Results of Redetermination Pursuant to Court Remand in Shanghai Wells Co., Ltd.* v. *United States,* Consol. Court No. 15–00103 (*Second Redetermination Results*).

[9] *See Shanghai Wells Co., Ltd. et al.* v. *United States,* Consol. Court No. 15–00103, Slip Op 20–82 (CIT, June 11, 2020).

[10] *See Timken Co.* v *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[11] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[12] *See* section 516A(c) and (e) of the Act.

[13] Shanghai Wells consists of Shanghai Wells Hanger Co., Ltd., and Hong Kong Wells Ltd. *See Final Results,* 80 FR at 13333.

[14] *See* 19 CFR 351.106(c)(2).

[15] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information and the National Telecommunications and Information Administration (NTIA) on spectrum management policy matters.

DATES: The meeting will be held July 30, 2020, from 1:00 p.m. to 4:00 p.m., Eastern Daylight Time (EDT).

ADDRESSES: This meeting will be conducted in an electronic format and open to the public via audio teleconference (866–652–3435 participant code 28570198). Public comments may be emailed to *dreed@ntia.gov* or mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution

Avenue NW, Room 4600, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: David J. Reed, Designated Federal Officer, at (202) 482–5955 or *dreed@ntia.gov;* and/or visit NTIA's website at *https://www.ntia.gov/category/csmac.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: License radio frequencies in a way that maximizes public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. *See* Charter at *https://www.ntia.doc.gov/files/ntia/publications/csmac_charter_10.1.19.pdf.*

This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.gov/category/csmac.*

Matters To Be Considered: The Committee provides advice to the Assistant Secretary to assist in developing and maintaining spectrum management policies that enable the United States to maintain or strengthen its global leadership role in the introduction of communications technology, services, and innovation; thus expanding the economy, adding jobs, and increasing international trade, while at the same time providing for the expansion of existing technologies and supporting the country's homeland security, national defense, and other critical needs of government missions. NTIA will post a detailed agenda on its website, *http://www.ntia.gov/category/csmac,* prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may address the Committee regarding the agenda items. *See Open Meeting and Public Participation Policy,* available at *http://www.ntia.gov/category/csmac.*

Time and Date: The meeting will be held on July 30, 2020, from 1:00 p.m. to 4:00 p.m. EDT. The meeting time and the agenda topics are subject to change. Please refer to NTIA's website, *http://www.ntia.gov/category/csmac,* for the most up-to-date meeting agenda and access information.

Place: This meeting will be conducted in an electronic format and open to the public via audio teleconference. Individuals requiring accommodations are asked to notify Mr. Reed at (202) 482–5955 or *dreed@ntia.gov* at least ten (10) business days before the meeting.

Status: Interested parties are invited to join the teleconference and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of the meeting are strongly encouraged to submit their comments in Microsoft Word and/or PDF format via electronic mail to *dreed@ntia.gov*. Comments may also be sent via postal mail to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230. It would be helpful if paper submissions also include a compact disc (CD) that contains the comments in one or both of the file formats specified above. CDs should be labeled with the name and organizational affiliation of the filer. Comments must be received five (5) business days before the scheduled meeting date in order to provide sufficient time for review. Comments received after this date will be distributed to the Committee, but may not be reviewed prior to the meeting. Additionally, please note that there may be a delay in the distribution of comments submitted via postal mail to Committee members.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and reports are available on NTIA's website at *http://www.ntia.gov/category/csmac.*

Dated: June 23, 2020.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2020–13799 Filed 6–25–20; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* July 26, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 11/22/2019, 5/15/2020 and 5/22/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN(s)—Product Name(s)
MR 13031—Salad Spinner
MR 13034—Dispenser, Creamer, Plastic
MR 13035—Dispenser, Sugar, Plastic
MR 13036—Herb Keeper, Green Saver, Large, 2.8 Qt
MR 13060—Flavor Injector, Meat and Poultry
MR 13061—Good Gravy Fat Separator, 4 Cup
MR 13062—Rack, Pressure Cooker, Silicone
MR 13063—Rack, Roasting, Silicone
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency

Services

Service Type: Hospitality Services
Mandatory for: Customs and Border Protection, Advanced Training Center (ATC) Lodge and Conference Center, (ATC Lodge only), Harpers Ferry, WV
Mandatory Source of Supply: Professional Contract Services, Inc., Austin, TX
Contracting Activity: U.S. CUSTOMS AND BORDER PROTECTION, MISSION SUPPORT CTR DIV

Service Type: Grounds Maintenance Service
Mandatory for: Defense Information Systems Agency, DISA Global, Building 5160, Scott AFB, IL
Mandatory Source of Supply: Challenge Unlimited, Inc., Alton, IL
Contracting Activity: DEFENSE INFORMATION SYSTEMS AGENCY (DISA), IT CONTRACTING DIVISION—PL83

Service Type: Grounds Maintenance Service
Mandatory for: Defense Information Systems Agency, DITCO, Building 3600, Scott AFB, IL
Mandatory Source of Supply: Challenge Unlimited, Inc., Alton, IL
Contracting Activity: DEFENSE INFORMATION SYSTEMS AGENCY (DISA), IT CONTRACTING DIVISION—PL83

Deletions

On 5/22/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
2815–01–492–5709—Parts Kit, Diesel Engine Hydraulic Transmission
Mandatory Source of Supply: Georgia Industries for the Blind, Bainbridge, GA
Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

NSN(s)—Product Name(s):
7510–01–599–9349—Toner Cartridge, Laser, Double Yield, Compatible w/ Lexmark T650 Series Printers
Mandatory Source of Supply: Alabama Industries for the Blind, Talladega, AL
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–13789 Filed 6–25–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products on the Procurement List furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: July 26, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s):
3030–01–017–4340—Belt, V-shaped, EPDM Rubber, Notched/A2 Cog, Neoprene, 38.3″
3030–01–146–7057—Joined Belt, V-shaped, EPDM Rubber, VA Cross Section, Notched/A2 Cog, Neoprene, 47.96″
3030–01–200–6004—Belt, V-shaped, Joined, EPDM Rubber, RA Cross Section, Notched/A2 Cog, 42.53″
3030–01–387–5760—Belt, V-shaped, EPDM Rubber, HC41 Cross Section, Notched/A2 Cog, Neoprene, 34.58″
Mandatory Source of Supply: East Texas Lighthouse for the Blind, Tyler, TX
Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH
NSN(s)—Product Name(s):
1670–01–235–0923—Deployment Bag, Parachute
Mandatory Source of Supply: Huntsville Rehabilitation Foundation, Huntsville, AL
Contracting Activity: DLA AVIATION, RICHMOND, VA

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–13791 Filed 6–25–20; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0102]

Agency Information Collection Activities; Comment Request; Annual Performance Report for Titles III, V, and VII Grants

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 25, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0102. Comments submitted

in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jason Cottrell, 202–453–7530.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Annual Performance Report for Titles III, V and VII Grants.

OMB Control Number: 1840–0766.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 1,180.

Total Estimated Number of Annual Burden Hours: 21,240.

Abstract: Titles III, V, and VII of the Higher Education Act of 1965, as amended (HEA), provide discretionary and formula grant programs that make competitive awards to eligible institutions of higher education and organizations (Title III, Part E) to assist these institutions with expanding their capacity to serve minority and low-income students. Grantees annually submit a performance report to demonstrate that substantial progress is being made towards meeting the objectives of their project.

Dated: June 23, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–13781 Filed 6–25–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0050]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2)

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 27, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2).

OMB Control Number: 1845–0089.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 732.

Total Estimated Number of Annual Burden Hours: 732.

Abstract: The collection of this information is needed in order for the Payment Analysts in Federal Student Aid, an office of the U.S. Department of Education, to review and process the institutional payment request for Title IV funds. The Higher Education Act of 1965, as amended (HEA) requires that the Secretary prescribe regulations to ensure that any funds eligible postsecondary institutions receive under the HEA are used solely for the purposes specified in and in accordance with the provision of the applicable program. 34 CFR 668.161 and 668.162 establish the rules and procedures for a participating institution to request, maintain, disburse, and manage Title IV program funds.

Dated: June 22, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–13688 Filed 6–25–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During May 2020

	FE Docket Nos.
EMPIRE NATURAL GAS CORPORATION.	20–40–NG
IRVING OIL TERMINALS INC	20–41–CNG
SEMPRA GAS & POWER MARKETING, LLC.	20–43–NG
IMPERIAL IRRIGATION DISTRICT.	20–44–NG
NATIONAL FUEL RESOURCES, INC.	20–45–NG
MORGAN STANLEY CAPITAL GROUP INC.	20–46–NG
TOURMALINE OIL MARKETING CORP.	20–47–NG
POWER CITY PARTNERS, L.P	20–48–NG
UNIPER GLOBAL COMMODITIES NORTH AMERICA LLC.	20–50–NG
CAMERON LNG, LLC	20–14–LNG
SPECTRUM LNG, LLC	20–33–LNG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during May 2020, it issued orders granting authority to import and export natural gas, to export liquefied natural gas (LNG), and to import and export compressed natural gas (CNG). These orders are summarized in the attached appendix and may be found on the FE website at *https://www.energy.gov/fe/listing-doefe-authorizationsorders-issued-2020.* They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9387. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Signed in Washington, DC, on June 23, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement Office of Oil and Natural Gas.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

4532	05/01/20	20–40–NG	Empire Natural Gas Corporation.	Order 4532 granting blanket authority to import/export natural gas from/to Canada.
4533	05/01/20	20–41–CNG	Irving Oil Terminals Inc	Order 4533 granting blanket authority to import/export CNG from/to Canada by truck.
4534	05/13/20	20–43–NG	Sempra Gas & Power Marketing, LLC.	Order 4535 granting blanket authority to import/export natural gas from/to Mexico.
4535	05/13/20	20–44–NG	Imperial Irrigation District	Order 4535 granting blanket authority to import/export natural gas from/to Mexico.
4536	05/13/20	20–45–NG	National Fuel Resources, Inc	Order 4536 granting blanket authority to import/export natural gas from/to Canada.
4537	05/13/20	20–46–NG	Morgan Stanley Capital Group Inc.	Order 4537 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4538	05/15/20	20–47–NG	Tourmaline Oil Marketing Corp.	Order 4538 granting blanket authority to import natural gas from Canada.
4539	05/15/20	20–48–NG	Power City Partners, L.P	Order 4539 granting blanket authority to import natural gas from Canada.
4540	05/15/20	20–50–NG	Uniper Global Commodities North America LLC.	Order 4540 granting blanket authority to import/export natural gas from/to Canada.
4541	05/27/20	20–14–LNG	Cameron LNG, LLC	Order 4541 granting blanket authority to export LNG to Free Trade Agreement Nations, and Non-Free Trade Agreement Nations.
4542	05/26/20	20–33–LNG	Spectrum LNG, LLC	Order 4542 granting short-term authority for Small-scale exports of LNG to Non-Free Trade Agreement Nations.

[FR Doc. 2020–13826 Filed 6–25–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–75–000.

Applicants: AltaGas Ripon Energy Inc.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of AltaGas Ripon Energy Inc.

Filed Date: 6/19/20.

Accession Number: 20200619–5199.

Comments Due: 5 p.m. ET 7/10/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–194–000.

Applicants: Coachella Hills Wind, LLC

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Coachella Hills Wind, LLC.

Filed Date: 6/19/20.

Accession Number: 20200619–5105.

Comments Due: 5 p.m. ET 7/10/20.

Docket Numbers: EG20–195–000.

Applicants: Voyager Wind IV Expansion, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Voyager Wind IV Expansion, LLC.

Filed Date: 6/19/20.

Accession Number: 20200619–5107.

Comments Due: 5 p.m. ET 7/10/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2633–038; ER10–2717–037.

Applicants: Birchwood Power Partners, L.P., EFS Parlin Holdings, LLC.

Description: Updated Market Power Analysis for the Northeast Region of Birchwood Power Partners, L.P., et al.

Filed Date: 6/22/20.

Accession Number: 20200622–5098.

Comments Due: 5 p.m. ET 8/21/20.

Docket Numbers: ER20–159–002.

Applicants: Pioneer Transmission, LLC.

Description: Compliance Filing with Opinion No. 569–A of Pioneer Transmission, LLC.

Filed Date: 6/19/20.

Accession Number: 20200619–5147.

Comments Due: 5 p.m. ET 7/10/20.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC20–10–000.

Applicants: Energy Center Fajardo LLC.

Description: Notice of Self-Certification of Foreign Utility Company Status.

Filed Date: 6/19/20.

Accession Number: 20200619–5217.

Comments Due: 5 p.m. ET 7/10/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or 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: June 22, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13817 Filed 6–25–20; 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:

Docket Numbers: RP20–958–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Compliance filing Rate Schedule S–2 Flow Through Refund TETCO OFO.

Filed Date: 6/19/20.

Accession Number: 20200619–5054.

Comments Due: 5 p.m. ET 7/1/20.

Docket Numbers: RP20–959–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—Range K910916 releases to be effective 6/20/2020.

Filed Date: 6/19/20.

Accession Number: 20200619–5173.

Comments Due: 5 p.m. ET 7/1/20.

Docket Numbers: RP20–960–000.

Applicants: Kern River Gas Transmission Company.

Description: § 4(d) Rate Filing: 2020 BP Energy Non-Conforming TSA to be effective 7/1/2020.

Filed Date: 6/19/20.

Accession Number: 20200619–5181.

Comments Due: 5 p.m. ET 7/1/20.

Docket Numbers: RP20–961–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: § 4(d) Rate Filing: TPC 2020–06–19 Negotiated Rate Agreement to be effective 6/20/2020.

Filed Date: 6/19/20.

Accession Number: 20200619–5191.

Comments Due: 5 p.m. ET 7/1/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or 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 date(s). 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: June 22, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13815 Filed 6–25–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Central Arizona Project—Rate Order No. WAPA–193

AGENCY: Western Area Power Administration, Department of Energy (DOE).

ACTION: Notice of proposed extension of transmission service formula rates.

SUMMARY: Western Area Power Administration (WAPA) proposes to extend its existing formula rates for transmission service on the Central Arizona Project (CAP) through December 31, 2025. The proposed formula rates are unchanged from the existing formula transmission service rates, under Rate Schedules CAP–FT3, CAP–NFT3, and CAP–NITS3 that expire on December 31, 2020.

DATES: A consultation and comment period will begin June 26, 2020 and end July 27, 2020. WAPA will accept written comments any time during the consultation and comment period.

ADDRESSES: Written comments and requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the proposed transmission service rate extension submitted by WAPA to FERC should be sent to: Ms. Tracey LeBeau, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, Arizona 85005–6457, or email: *dswpwrmrk@wapa.gov.* WAPA will post information about the proposed transmission rate extension and written comments received to its website at: *https://www.wapa.gov/regions/DSW/Rates/Pages/central-arizona-rates.aspx.*

FOR FURTHER INFORMATION CONTACT: Ms. Tina Ramsey, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, (602) 605–2565 or email: *dswpwrmrk@wapa.gov.*

SUPPLEMENTARY INFORMATION: On January 27, 2020, FERC approved and confirmed Rate Schedules CAP–FT3, CAP–NFT3, and CAP–NITS3 for the period January 1, 2016 through December 31, 2020.[1] Previously, in Rate Order No. WAPA–172-issued on December 21, 2015, the Deputy Secretary of Energy approved and placed these rate schedules into effect on an interim basis from January 1, 2016, through December 31, 2020.[2] In

[1] Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF19–6–000, 170 FERC ¶ 62,055 (2020).

[2] 80 FR 81310 (Dec. 29, 2015).

accordance with 10 CFR 903.23(a),[3] WAPA is proposing to extend the existing CAP transmission service formula rates under Rate Schedules CAP–FT3, CAP–NFT3, and CAP–NITS3 through December 31, 2025.

Extending these rate schedules through December 31, 2025, will provide WAPA and its customers time to evaluate the potential benefits of combining transmission service rates on Federal projects located within WAPA's Colorado River Storage Project Management Center (CRSP) and Desert Southwest Region (DSW). Ongoing efforts made towards combining transmission rates, which up to this time have been solely focused within DSW, have been expanded to include CRSP transmission system rates. Combining rates may lead to more efficient use of Federal transmission systems, diversify the customers who use those systems, and be financially advantageous. If, after a thorough evaluation, WAPA determines that combining transmission service rates will produce material benefits, it would initiate a public process before making a decision to combine the rates.

The existing formula rates provide sufficient revenue to pay all annual costs including interest expense and repay investment within the allowable period consistent with the cost recovery criteria set forth in DOE Order RA 6120.2.

Legal Authority

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to WAPA's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. 00–002.00S, effective January 15, 2020, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary of Energy. By Redelegation Order No. 00–002.10E, effective February 14, 2020, the Under Secretary of Energy further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity.

In accordance with 10 CFR 903.23(a), WAPA has determined that it is not necessary to hold public information or public comment forums for this rate action but is initiating a 30-day consultation and comment period to give the public an opportunity to comment on the proposed extension. WAPA will review and consider all timely comments at the conclusion of the consultation and comment period and make adjustments to the proposal as appropriate.

Signing Authority

This document of the Department of Energy was signed on June 22, 2020, by Mark A. Gabriel, Administrator, Western Area Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon its publication in the **Federal Register**.

Signed in Washington, DC, on June 23, 2020.

Treena V. Garrett,

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

[FR Doc. 2020–13825 Filed 6–25–20; 8:45 a.m.]

BILLING CODE 6450–01–P

[3] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

DEPARTMENT OF ENERGY

Western Area Power Administration

Re-Opening of Comment Period for Proposed Salt Lake City Area Integrated Projects Firm Power Rate and Colorado River Storage Project Transmission and Ancillary Services Rates—Rate Order No. WAPA–190

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of re-opening of public comment period.

SUMMARY: Western Area Power Administration (WAPA) announces the re-opening of the comment period for the proposed Salt Lake City Area Integrated Projects (SLCA/IP) firm power rate and Colorado River Storage Project (CRSP) transmission and ancillary services formula rates under Rate Order No. WAPA–190.

DATES: The comment period will begin June 26, 2020 and end July 10, 2020. WAPA will not hold any additional public information and public comment forums; however, WAPA will accept written comments anytime during the comment period.

ADDRESSES: Written comments and requests to be informed about Federal Energy Regulatory Commission (FERC) actions concerning the proposed rates submitted by WAPA to FERC for approval should be sent to: Mr. Steven Johnson, CRSP Manager, Colorado River Storage Project Management Center, Western Area Power Administration, 299 South Main Street, Suite 200, Salt Lake City, UT 84111, (801) 524–6372, or email: *johnsons@wapa.gov* or *CRSPMC-rate-adj@wapa.gov*. WAPA will continue to post information about the proposed rates and written comments received to its website at: *https://www.wapa.gov/regions/CRSP/rates/Pages/rates.aspx.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hackett, Rates Manager, Colorado River Storage Project Management Center, Western Area Power Administration, (801) 524–5503, or email: *CRSPMC-rate-adj@wapa.gov.*

SUPPLEMENTARY INFORMATION: The formal rate action under Rate Order No. WAPA–190 began on January 21, 2020, upon publication of the Notice of Proposed Rates in the **Federal Register**.[1] The 90-day comment period under the Notice of Proposed Rates ended April 20, 2020. WAPA is re-opening the comment period to provide interested parties the additional time to review and provide comments related to information about the rate proposals that were made available by WAPA during and after the original comment period. WAPA will consider any comments received between April 20, 2020 and July 10, 2020 to be timely submitted.

Legal Authority

Existing DOE procedures for public participation in power and transmission rate adjustments (10 CFR part 903) were published on September 18, 1985, and February 21, 2019.[2]

The proposed action is a major rate adjustment, as defined by 10 CFR 903.2(e). In accordance with 10 CFR 903.15(a) and 10 CFR 903.16(a), WAPA held public information and public comment forums for this rate adjustment on March 12, 2020. WAPA will review and consider all timely public comments at the conclusion of this comment period and make amendments or adjustment to the proposals, as appropriate. Proposed

[1] 85 FR 3367 (Jan. 21, 2020).

[2] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

rates will be forwarded to the Assistant Secretary for Electricity for approval on an interim basis.

WAPA is establishing the SLCA/IP firm power rate and revised CRSP transmission and ancillary services formula rates in accordance with section 302 of the DOE Organization Act (42 U.S.C. 7152). This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to WAPA's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. 00–002.00S, effective January 15, 2020, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary of Energy. By Redelegation Order No. 00–002.10E, effective February 14, 2020, the Under Secretary of Energy further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity.

Availability of Information

All brochures, studies, comments, letters, memoranda, or other documents that WAPA initiates or uses to develop the proposed rates are available, by appointment, for inspection and copying at the Colorado River Storage Project Management Center, 299 South Main Street, Suite 200, Salt Lake City, Utah, Documents and supporting information are also available on WAPA's website at *https://www.wapa.gov/regions/CRSP/rates/Pages/rates.aspx.*

Ratemaking Procedure Requirements

Environmental Compliance

WAPA has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.[3] A copy of the categorical exclusion determination is available on WAPA's website at*https://www.wapa.gov/regions/CRSP/environment/Pages/environment.aspx.*

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on June 19, 2020, by Mark A. Gabriel, Administrator, Western Area Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the **Federal Register**, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 22, 2020.

Treena V. Garrett,

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

[FR Doc. 2020–13752 Filed 6–25–20; 8:45 am]

BILLING CODE 6450–01–P

[3] The determination was done in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10010–75–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the State of Tennessee's request to revise its EPA-authorized program under the National Primary Drinking Water Regulations Implementation to allow electronic reporting.

DATES: EPA's approval is effective July 27, 2020 for the State of Tennessee's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency.

FOR FURTHER INFORMATION CONTACT: Shirley Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, *miller.shirley@epa.gov,* or Erin McGown, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 564–6381, *mcgown.erin@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** 70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On December 6, 2019, the State of Tennessee Department of Environment and Conservation (TN DEC) submitted an application titled ''Compliance Monitoring Data Portal (CMDP)'' for

revision of its EPA-authorized Part 142 program under title 40 CFR. EPA reviewed TN DEC's request to revise its EPA-authorized program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Tennessee's request to revise its Part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting under 40 CFR part 141 is being published in the **Federal Register**.

TN DEC was notified of EPA's determination to approve its application with respect to the authorized program listed above. Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Tennessee's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information:

(1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Tennessee's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Dated: June 19, 2020.

Jennifer Campbell,

Acting Director, Office of Information Management.

[FR Doc. 2020–13740 Filed 6–25–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9051–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed June 15, 2020, 10 a.m. EST

Through June 22, 2020, 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200130, Final, USFS, OR, Flat Country, Review Period Ends: 08/10/2020, Contact: Dean Schlichting 541–822–7214.

EIS No. 20200131, Draft, USACE, FL, Florida Keys Coastal Storm Risk Management Report/Environmental Impact Statement, Comment Period Ends: 08/10/2020, Contact: Kathy Perdue 757–201–7218.

EIS No. 20200132, Final, BR, CA, Auburn State Recreation Area Preliminary General Plan and Auburn Project Lands Draft Resource Management Plan Final Environmental Impact Report/Environmental Impact Statement, Review Period Ends: 07/27/2020, Contact: Bonnie Van Pelt 916–537–7062.

EIS No. 20200133, Final, BLM, AK, National Petroleum Reserve in Alaska Final Integrated Activity Plan and Environmental Impact Statement, Review Period Ends: 07/27/2020, Contact: Stephanie Rice 907–271–3202.

Amended Notice

EIS No. 20200111, Draft, CHSRA, CA, Burbank to Los Angeles Project Section Draft Environmental Impact Report/Environmental Impact Statement, Comment Period Ends: 07/31/2020, Contact: Dan McKell 916–330–5668.

Revision to FR Notice Published 5/29/2020; Extending the Comment Period from 7/13/2020 to 7/31/2020.

Dated: June 23, 2020.

Candi Schaedle,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–13809 Filed 6–25–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standards 58, Deferral of the Effective Date of SFFAS 54, Leases

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standards (SFFAS) 58, *Deferral of the Effective Date of SFFAS 54, Leases.*

SFFAS 58 is available on the FASAB website at *https://fasab.gov/accounting-standards/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act (5 U.S.C. App.).

Dated: June 19, 2020.

Monica R. Valentine,

Executive Director.

[FR Doc. 2020–13850 Filed 6–25–20; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Identifying and Addressing Human Trafficking in Child Welfare Agencies (New Collection)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) within the U.S. Department of Health and Human

Services (HHS) is proposing to collect data on child welfare agencies' efforts to identify human trafficking and subsequent service delivery. The goal of the study is to better understand child welfare practice in screening for human trafficking, and the degree to which screening is related to subsequent referrals for, access to, and delivery of specialized services for children identified as trafficking victims or at high-risk of trafficking.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF is proposing data collection as part of the study ''Identifying and Addressing Human Trafficking in Child Welfare Agencies,'' exploring child welfare practice in screening for human trafficking, and the relationship between screening and specialized services.

Primary data collection includes semi-structured qualitative interviews with state and local human trafficking coordinators (or comparable staff members with greatest knowledge about human trafficking efforts); small group interviews with casework supervisors; and case narrative interviews with caseworkers.

The interviews will be conducted by telephone (25 state agencies) and in-person (up to 8 local agencies or offices). Interview questions will be focused on how agencies select, train on, and implement screening for human trafficking, the details of screening protocols, and variations in implementation. Questions will also address the availability of specialized services for children identified as trafficking victims or at high-risk of trafficking, agency steps based on positive or suspected screening, and the process for initiating specialized services.

Respondents: State and local human trafficking coordinators, casework supervisors, and caseworkers.

Annual Burden Estimates

Data collection is expected to take place over 2 years.

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
State Human Trafficking Coordinator Telephone Interview Guide	25	1	1.5	37.5	19
Local Human Trafficking Coordinator Interview Guide	8	1	1.5	12	6
Casework Supervisor Group Interview Guide	40	1	1.5	60	30
Caseworker Case Narrative Interview Guide	48	1	1	48	24

Estimated Total Annual Burden Hours: 79

Comments: The Department specifically requests comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 476(a)(1–2) (42 U.S.C. 676) of the Social Security Act Part E-Federal Payments for Foster Care and Adoption Assistance.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–13779 Filed 6–25–20; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–D–1106, FDA–2020–D–1136, FDA–2020–D–1138, FDA–2020–D–1139, FDA–2020–D–1140]

Guidance Documents Related to Coronavirus Disease 2019 (COVID–19); 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 FDA guidance documents related to the Coronavirus Disease 2019 (COVID–19) public health emergency (PHE). This notice of availability (NOA) is pursuant to the process that FDA announced, in the **Federal Register** of March 25, 2020, for making available to the public COVID–19-related guidances. The guidances identified in this notice address issues related to the COVID–19 PHE and have been issued in accordance with the process announced in the March 25, 2020, notice. The guidance documents have been implemented without prior comment, but they remain subject to comment in accordance with the Agency's good guidance practices.

DATES: The announcement of the guidances is published in the **Federal Register** on June 26, 2020. The guidance documents have been implemented without prior comment, but they remain subject to comment in accordance with the Agency's good guidance practices.

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

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your

comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the name of the guidance document that the comments address and the docket number for the guidance (see table 1). Received comments will be placed in the docket(s) 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 these guidances to the addresses noted in table 1. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance documents.

FOR FURTHER INFORMATION CONTACT: Kimberly Thomas, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6220, Silver Spring, MD 20993–0002, 301–796–2357; Erica Takai, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5456, HFZ–450, Silver Spring, MD 20993–0002, 301–796–6353; Phil Chao, Center for Food Safety and Applied Nutrition (CFSAN), CPK1 Rm. 1C001, HFS–024, Food and Drug Administration, College Park, MD 20740, 240–402–2112; Diane Heinz, Center for Veterinary Medicine (CVM), Food and Drug Administration, MPN2 RME435 HFV–6, 7500 Standish Pl., Rockville, MD 20855, 240–402–5692.

SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 2020, as a result of confirmed cases of COVID–19, and after consultation with public health officials as necessary, Alex M. Azar II, Secretary of Health and Human Services, pursuant to the authority under section 319 of the Public Health Service Act (42 U.S.C. 247d) (PHS Act), determined that a PHE exists and has existed since January 27, 2020, nationwide.[1] On March 13, 2020, President Donald J. Trump declared that the COVID–19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020.[2]

In the **Federal Register** of March 25, 2020 (the March 25, 2020, notice) (available at *https://www.govinfo.gov/content/pkg/FR-2020-03-25/pdf/2020-06222.pdf*), FDA announced procedures for making available FDA guidance documents related to the COVID–19 PHE. These procedures, which operate within FDA's established good guidance practices regulations, are intended to allow FDA to rapidly disseminate Agency recommendations and policies related to COVID–19 to industry, FDA staff, and other stakeholders. The March 25, 2020, notice stated that due to the need to act quickly and efficiently to respond to the COVID–19 PHE, FDA believes that prior public participation will not be feasible or appropriate before FDA implements COVID–19-related guidance documents. Therefore, FDA will issue COVID–19-related guidance documents for immediate implementation without prior public comment (see section 701(h)(1)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 371(h)(1)(C) and 21 CFR 10.115(g)(2) (§ 10.115(g)(2))). The guidances are available at FDA's web page entitled ''COVID–19-Related Guidance Documents for Industry, FDA Staff, and Other Stakeholders'' (*https://www.fda.gov/emergency-preparedness-and-response/mcm-issues/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders*) and through FDA's web page entitled ''Search for FDA Guidance Documents'' available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.*

The March 25, 2020, notice further stated that, in general, rather than publishing a separate NOA for each COVID–19-related guidance document, FDA intends to publish periodically a consolidated NOA announcing the availability of certain COVID–19-related guidance documents FDA issued during the relevant period, as included in table 1. This notice announces COVID–19-

[1] On April 21, 2020, the PHE Determination was extended, effective April 26, 2020. These PHE Determinations are available at *https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx.*

[2] Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak (March 13, 2020), available at *https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.*

related guidances that are posted on FDA's website.

II. Availability of COVID–19-Related Guidance Documents

Pursuant to the process described in the March 25, 2020, notice, FDA is announcing the availability of the following COVID–19-related guidance documents:

TABLE 1—GUIDANCES RELATED TO THE COVID–19 PUBLIC HEALTH EMERGENCY

Docket No.	Center	Title of guidance	Contact information to request single copies
FDA–2020–D–1138 ...	CDRH	Notifying CDRH of Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the FD&C Act During the COVID–19 Public Health Emergency (May 6, 2020).	*CDRH-Guidance@fda.hhs.gov.* Please include the document number 20032 and complete title of the guidance in the request.
FDA–2020–D–1138 ...	CDRH	Supplements for Approved Premarket Approval (PMA) or Humanitarian Device Exemption (HDE) Submissions During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency (May 21, 2020).	*CDRH-Guidance@fda.hhs.gov.* Please include the document number 20028 and complete title of the guidance in the request.
FDA–2020–D–1138 ...	CDRH	Enforcement Policy for Face Masks and Respirators During the Coronavirus Disease (COVID–19) Public Health Emergency (April 2020) (Updated May 26, 2020).	*CDRH-Guidance@fda.hhs.gov.* Please include the document number 20018 and complete title of the guidance in the request.
FDA–2020–D–1138 ...	CDRH	Recommendations for Sponsors Requesting EUAs for Decontamination and Bioburden Reduction Systems for Face Masks and Respirators During the Coronavirus Disease (COVID–19) Public Health Emergency (May 26, 2020).	*CDRH-Guidance@fda.hhs.gov.* Please include the document number 20033 and complete title of the guidance in the request.
FDA–2020–D–1136 ...	CDER	Exemption and Exclusion of Certain Requirements of the Drug Supply Chain Security Act During the COVID–19 Public Health Emergency (April 30, 2020).	*druginfo@fda.hhs.gov.* Please include the docket number FDA–2020–D–1136 and complete title of the guidance in the request.
FDA–2020–D–1136 ...	CDER	COVID–19 Public Health Emergency: General Considerations for Pre-IND Meeting Requirements for COVID–19 Related Drugs and Biological Products (May 11, 2020).	*druginfo@fda.hhs.gov.* Please include the docket number FDA–2020–D–1136 and complete title of the guidance in the request.
FDA–2020–D–1136 ...	CDER	Temporary Policy Regarding Non-Standard PPE Practices for Sterile Compounding by Pharmacy Compounders not Registered as Outsourcing Facilities During the COVID–19 Public Health Emergency (April 10, 2020) (Updated May 14, 2020).	*druginfo@fda.hhs.gov.* Please include the docket number FDA–2020–D–1136 and complete title of the guidance in the request.
FDA–2020–D–1136 ...	CDER	Temporary Policy for Compounding of Certain Drugs for Hospitalized Patients by Outsourcing Facilities During the COVID–19 Public Health Emergency (April 2020) (Updated May 21, 2020).	*druginfo@fda.hhs.gov.* Please include the docket number FDA–2020–D–1136 and complete title of the guidance in the request.
FDA–2020–D–1136 ...	CDER	Temporary Policy for Compounding of Certain Drugs for Hospitalized Patients by Pharmacy Compounders not Registered as Outsourcing Facilities During the COVID–19 Public Health Emergency (April 2020) (Updated May 21, 2020).	*druginfo@fda.hhs.gov.* Please include the docket number FDA–2020–D–1136 and complete title of the guidance in the request.
FDA–2020–D–1136 ...	CDER	Effects of the COVID–19 Public Health Emergency on Formal Meetings and User Fee Applications—Questions and Answers (May 26, 2020).	*druginfo@fda.hhs.gov.* Please include the docket number FDA–2020–D–1136 and complete title of the guidance in the request.
FDA–2020–D–1106 ...	CDER	FDA Guidance on Conduct of Clinical Trials of Medical Products during COVID–19 Public Health Emergency (March 2020) (Updated May 14 and June 3, 2020).	*clinicaltrialconduct-COVID19@fda.hhs.gov.* Please include the docket number FDA–2020–D–1106 and complete title of the guidance in the request.
FDA–2020–D–1139 ...	CFSAN ...	Returning Refrigerated Transport Vehicles and Refrigerated Storage Units to Food Uses After Using Them to Preserve Human Remains During the COVID–19 Pandemic (May 12, 2020).	Retail Food Protection Staff, Office of Food Safety, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740.
FDA–2020–D–1139 ...	CFSAN ...	Temporary Policy Regarding Certain Food Labeling Requirements During the COVID–19 Public Health Emergency: Minor Formulation Changes and Vending Machines (May 22, 2020).	Office of Nutrition and Food Labeling, Food Labeling and Standards Staff, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740.
FDA–2020–D–1140 ...	CVM	GFI# 271 Reporting and Mitigating Animal Drug Shortages during the COVID–19 Public Health Emergency (May 7, 2020).	*AskCVM@fda.hhs.gov.* Please include the docket number FDA–2020–N–1140 and complete title of the guidance in the request.

Although these guidance documents have been implemented immediately without prior comment, FDA will consider all comments received and revise the guidances as appropriate (see § 10.115(g)(3)).

These guidances are being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidances represent the current thinking of FDA. They do not establish any rights for any person and are not binding on

FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

A. CDRH Guidances

The guidances listed in the table below refer to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

TABLE 2—CDRH GUIDANCES AND COLLECTIONS

COVID–19 guidance title	CFR cite referenced in COVID–19 guidance	Another guidance title referenced in COVID–19 guidance	OMB control No(s).
Supplements for Approved Premarket Approval (PMA) or Humanitarian Device Exemption (HDE) Submissions During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	21 CFR part 814, subparts A through E.		0910–0231
	21 CFR part 814, subpart H ...		0910–0332
	21 CFR part 820		0910–0073
	21 CFR parts 800, 801, and 809.	.....	0910–0485
Recommendations for Sponsors Requesting EUAs for Decontamination and Bioburden Reduction Systems for Face Masks and Respirators During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	21 CFR part 803	.....	0910–0437
		Emergency Use Authorization of Medical Products and Related Authorities.	0910–0595
Enforcement Policy for Face Masks and Respirators During the Coronavirus Disease (COVID–19) Public Health Emergency.	21 CFR parts 800, 801, and 809.	.....	0910–0485
	21 CFR part 803	.....	0910–0437
	21 CFR part 806	.....	0910–0359
	21 CFR part 807, subpart E ...	.....	0910–0120
	21 CFR part 807, subparts A through D.	.....	0910–0625
	21 CFR part 820	.....	0910–0073
	21 CFR part 830 and 801.20	.....	0910–0720
		Emergency Use Authorization of Medical Products and Related Authorities.	0910–0595

The guidance indicated in the table below refers to previously approved collections of information. These collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the table. This guidance also contains a new collection of information not approved under a current collection. This new collection of information has been granted a PHE waiver from the PRA by the Department of Health and Human Services (HHS) on March 19, 2020, under section 319(f) of the PHS Act. Information concerning the PHE PRA waiver can be found on the HHS website at *https://aspe.hhs.gov/public-health-emergency-declaration-pra-waivers.*

TABLE 3—CDRH GUIDANCE AND COLLECTIONS

COVID–19 guidance title	CFR cite referenced in COVID–19 guidance	Another guidance referenced in COVID–19 guidance	OMB control No(s).	New collection covered by PHE PRA waiver
Notifying CDRH of Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the FD&C Act During the COVID–19 Public Health Emergency.	21 CFR part 807, subparts A through D.		0910–0625	
		Emergency Use Authorization of Medical Products and Related Authorities; Guidance for Industry and Other Stakeholders.	0910–0595	
				Notifications to FDA about changes in the production of certain medical device products that will help the Agency prevent or mitigate shortages of such devices during the COVID–19 PHE.
				Updates to FDA every 2 weeks after initial notification on the shortage situation, including the expected timeline for recovery.
				Voluntary submission of other information that enables FDA to work more effectively with manufacturers and other entities to prevent or limit any negative impact on patients or healthcare providers during the COVID–19 PHE.

B. CDER Guidances

The guidances listed in the table below refer to previously approved collections of information. These collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidances have been approved by OMB as listed in the following table:

TABLE 4—CDER GUIDANCES AND COLLECTIONS

COVID–19 guidance title	CFR cite referenced in COVID–19 guidance	Another guidance title referenced in COVID–19 guidance	OMB control No(s).
Effects of the COVID–19 Public Health Emergency on Formal Meetings and User Fee Applications..	§ 10.115(g)(2)	Planning for the Effects of High Absenteeism to Ensure Availability of Medically Necessary Drug Products. Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products. Formal Meetings Between the FDA and Sponsors or Applicants of BsUFA Products.	0910–0001 0910–0014 0910–0429 0910–0693 0910–0718 0910–0719 0910–0727
Exemption and Exclusion of Certain Requirements of the Drug Supply Chain Security Act During the COVID–19 Public Health Emergency..	.....	Drug Supply Chain Security Act Implementation: Identification of Suspect Product and Notification. Verification Systems Under the Drug Supply Chain Security Act for Certain Prescription Drugs. Definitions of Suspect Product and Illegitimate Product for Verification Obligations Under the Drug Supply Chain Security Act.	0910–0777 0910–0800 0910–0806 0910–0827 0910–0859
General Considerations for Pre-IND Meeting Requirements for COVID–19 Related Drugs and Biological Products..	21 CFR part 312	COVID–19: Developing Drugs and Biological Products for Treatment or Prevention. Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products. Emergency Use Authorization of Medical Products and Related Authorities. Preclinical Assessment of Investigational Cellular and Gene Therapy Products. Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees. Use of Liquids and/or Soft Foods as Vehicles for Drug Administration: General Considerations for Selection and In Vitro Methods for Product Quality Assessments. Demonstrating Substantial Evidence of Effectiveness for Human Drug and Biological Products.	0910–0001 0910–0014 0910–0338 0910–0429 0910–0595 0910–0719 0910–0814

The guidances listed in the table below refer to previously approved collections of information. These collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidances have been approved by OMB as listed in the below table. These guidances also contain new collections of information not approved under a current collection. These new collections of information have been granted a PHE waiver from the PRA by HHS on March 19, 2020, under section 319(f) of the PHS Act. Information concerning the PHE PRA waiver can be found on the HHS website at *https://aspe.hhs.gov/public-health-emergency-declaration-pra-waivers.*

TABLE 5— CDER GUIDANCES AND COLLECTIONS

COVID–19 guidance title	CFR cite referenced in COVID–19 guidance	Another guidance referenced in COVID–19 guidance	OMB control No(s).	New collection covered by PHE PRA waiver
Temporary Policy for Compounding of Certain Drugs for Hospitalized Patients by Outsourcing Facilities During the COVID–19 Public Health Emergency.	21 CFR 314.81, 21 CFR 600.82.	Current Good Manufacturing Practice—Guidance for Human Drug Compounding Outsourcing Facilities Under Section 503B of the FD&C Act.	0910–0777, 0910–0338, 0910–0001, 0910–0139.	To provide suitability and proof of sterility for the container closure systems used.
Temporary Policy for Compounding of Certain Drugs for Hospitalized Patients by Pharmacy Compounders not Registered as Outsourcing Facilities During the COVID–19 Public Health Emergency.	.....	Compounded Drug Products That are Essentially Copies of a Commercially Available Drug Product under Section 503A of the Federal Food, Drug, and Cosmetic Act. Temporary Policy for Compounding of Certain Drugs for Hospitalized Patients by Outsourcing Facilities During the COVID–19 Public Health Emergency. Prescription Requirement Under Section 503A of the Federal Food, Drug, and Cosmetic Act.	0910–0001, 0910–0139, 0910–0338.	For reporting of adverse events by pharmacy compounders to the MedWatch system and maintaining records of drugs suppliers and patients who receive the compounded products.

TABLE 5— CDER GUIDANCES AND COLLECTIONS—Continued

COVID–19 guidance title	CFR cite referenced in COVID–19 guidance	Another guidance referenced in COVID–19 guidance	OMB control No(s).	New collection covered by PHE PRA waiver
		Temporary Policy Regarding Non-Standard PPE Practices for Sterile Compounding by Pharmacy Compounders not Registered as Outsourcing Facilities during the COVID–19 Public Health Emergency.		
Temporary Policy Regarding Non-Standard PPE Practices for Sterile Compounding by Pharmacy Compounders not Registered as Outsourcing Facilities During the COVID–19 Public Health Emergency.	21 CFR parts 210 and 211	Enforcement Policy for Face Masks and Respirators During the Coronavirus Disease (COVID–19) Public Health Emergency (Revised). Enforcement Policy for Gowns, Other Apparel, and Gloves During the Coronavirus Disease (COVID–19) Public Health Emergency. Electronic Drug Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.	0910–0139	Recordkeeping of compounding performed without standard PPE; recordkeeping of any change of sterilization/aseptic processing methods; documentation of mitigation strategies for sterile compounding without standard PPE.
Guidance on Conduct of Clinical Trials of Medical Products during COVID–19 Public Health Emergency.	21 CFR part 11, 21 CFR part 50, 21 CFR part 56, 21 CFR part 312, 21 CFR part 314, 21 CFR part 601, 21 CFR part 812.	Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products. Formal Meetings Between the FDA and Sponsors or Applicants of BsUFA Products. Pediatric Study Plans: Content of and Process for Submitting Initial Pediatric Study Plans and Amended Pediatric Study Plans. Draft Guidance for Industry on Demonstrating Substantial Evidence of Effectiveness for Human Drug and Biological Products. Enhancing the Diversity of Clinical Trial Populations—Eligibility Criteria, Enrollment Practices, and Trial Design. Pregnant Women: Scientific and Ethical Considerations for Inclusion in Clinical Trials. Part 11, Electronic Records; Electronic Signatures Scope and Application. Use of Electronic Records and Electronic Signatures in Clinical Investigations under 21 CFR Part 11—Questions and Answers. Safety Reporting Requirements for INDs and BA/BE Studies. Adverse Event Reporting to IRBs—Improving Human Subject Protection. Use of Electronic Informed Consent In Clinical Investigations. E6(R2) Good Clinical Practice: Integrated Addendum to ICH E6(R1). Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications. Best Practices for Communication Between IND Sponsors and FDA During Drug Development.	0910–0001, 0910–0014, 0910–0130, 0910–0303, 0910–0338, 0910–0119, 0910–0581, 0910–0733, 0910–0078.	Submission by investigators of informed consent forms to third parties.

TABLE 5— CDER GUIDANCES AND COLLECTIONS—Continued

COVID–19 guidance title	CFR cite referenced in COVID–19 guidance	Another guidance referenced in COVID–19 guidance	OMB control No(s).	New collection covered by PHE PRA waiver
		Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program.		

C. CFSAN Guidance

The guidance indicated in the table below refers to previously approved collections of information. These collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the table. This guidance also contains a new collection of information not approved under a current collection. This new collection of information has been granted a PHE waiver from the PRA by the HHS on March 19, 2020, under section 319(f) of the PHS Act. Information concerning the PHE PRA waiver can be found on the HHS website at *https://aspe.hhs.gov/public-health-emergency-declaration-pra-waivers.*

TABLE 6—CFSAN GUIDANCE AND COLLECTIONS

COVID–19 guidance title	CFR cite referenced in COVID–19 guidance	Another guidance referenced in COVID–19 guidance	OMB control No(s).	New collection covered by PHE PRA waiver
Temporary Policy Regarding Certain Mandatory Food Labeling Requirements During the COVID–19 Public Health Emergency: Minor Formulation Changes and Vending Machines.	21 CFR part 101; section 403(w) of the FD&C Act.	.....	0910–0381, 0910–0782, 0910–0792.	Recommend that manufacturers post ingredient omissions or substitutions not reflected on the product label.

The guidance entitled ''Returning Refrigerated Transport Vehicles and Refrigerated Storage Units to Food Uses After Using Them to Preserve Human Remains During the COVID–19 Pandemic'' contains no collection of information. Therefore, clearance by OMB under the PRA is not required.

D. CVM Guidance

This guidance indicated in the table below refers to previously approved collections of information. These collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidance have been approved by OMB as indicated in the table. This guidance also contains a new collection of information not approved under a current collection. This new collection of information has been granted a PHE waiver from the PRA by HHS on March 19, 2020, under section 319(f) of the PHS Act. Information concerning the PHE PRA waiver can be found on the HHS website at *https://aspe.hhs.gov/public-health-emergency-declaration-pra-waivers.*

TABLE 7—CVM GUIDANCE AND COLLECTION

COVID–19 guidance title	CFR cite referenced in COVID–19 guidance	Another guidance referenced in COVID–19 guidance	OMB control No(s).	New collection covered by PHE PRA waiver
GFI# 271, Reporting and Mitigating Animal Drug Shortages during the COVID–19 Public Health Emergency.	21 CFR 514.1(a))	.....	0910–0032, 0910–0669	Reporting and mitigating animal drug shortages.

IV. Electronic Access

Persons with access to the internet may obtain COVID–19-related guidances at:

- The FDA web page entitled ''COVID–19-Related Guidance Documents for Industry, FDA Staff, and Other Stakeholders,'' available at *https://www.fda.gov/emergency-preparedness-and-response/mcm-issues/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders;*
- the FDA web page entitled ''Search for FDA Guidance Documents'' available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents;* or
- *https://www.regulations.gov.*

Dated: June 22, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13829 Filed 6–25–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1459]

Generic Drug User Fee Amendments; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is hosting a virtual public meeting entitled ''Generic Drug User Fee

Amendments (GDUFA) of 2017.'' At the end of September 2022, new legislation will be required for FDA to continue to collect generic drug user fees for future fiscal years. The Federal Food, Drug, and Cosmetic Act (FD&C Act) requires that before FDA begins negotiations with the regulated industry on GDUFA reauthorization, we publish a notice in the **Federal Register** requesting public input on the reauthorization, hold a public meeting at which the public may present its views on the reauthorization, including specific suggestions for changes to the goals referred to in the GDUFA Reauthorization Performance Goals and Program Enhancements Fiscal Years 2018–2022 (*i.e.,* the GDUFA II Commitment Letter), provide a period of 30 days after the public meeting to obtain written comments from the public, and publish the comments on FDA's website. FDA invites public comment on the GDUFA program and suggestions regarding the features FDA should propose for the next GDUFA program cycle. These comments will be published and available on FDA's website.

DATES: The public meeting will be held on July 21, 2020, from 8:30 a.m. to 3:30 p.m., and will take place virtually and will be held by webcast only. Submit either electronic or written comments on this public meeting by August 20, 2020. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 20, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 20, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2020–N–1459 for ''Generic Drug User Fee Amendments; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Tiana Barnes, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6196, Silver Spring, MD 20993, 301–796–2882, *Tiana.Barnes@fda.hhs.gov;* or Dat Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3334, Silver Spring, MD 20993, 240–402–8926, *Dat.Doan@fda.hhs.gov;*

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2012, the Food and Drug Administration Safety and Innovation Act, which included GDUFA (Pub. L. 112–144, Title III), was signed into law by the President. In 2017, the GDUFA program was reauthorized (GDUFA II) under the FDA Reauthorization Act of 2017 (Pub. L. 115–52, Title III), which authorizes FDA to collect fees for certain generic human drug applications, drug master files, and facilities. Designed to speed access to safe and effective generic drugs to the public, GDUFA II requires that generic drug manufacturers and other relevant entities pay user fees to finance critical and measurable generic drug program enhancements. As described in the GDUFA II Commitment Letter, FDA committed to achieve certain performance goals, provide enhanced communication intended to streamline abbreviated new drug application (ANDA) development and assessment, and take other steps to increase the efficiency of the assessment process.

GDUFA II also includes a pre-ANDA program to clarify regulatory expectations for complex generic product developers early in product development and during application review.

Additional information concerning GDUFA, including the text of the law, the GDUFA II Commitment Letter, key **Federal Register** documents, GDUFA-related guidances, performance reports, and financial reports may be found on the FDA website at *https://www.fda.gov/gdufa.*

II. Topics for Discussion at the Public Meeting

FDA is interested in responses to the following general questions:

- What is your assessment of the overall performance of the GDUFA program to date?
- What aspects of GDUFA should be retained, changed, or discontinued to further strengthen and improve the program?
- What new features should FDA consider adding to the program to enhance efficiency and effectiveness of the generic drug review process?

FDA welcomes any other relevant information the public would like to share as it relates to the GDUFA program, including but not limited to the following topic areas:

- supply chain security and drug shortages;
- drug quality and advanced manufacturing; and
- complex products.

In general, the public meeting's format will include presentations by FDA and our stakeholders, which may include scientific and academic experts, health care professionals, representatives of patient and consumer advocacy groups, the generic drug industry, and the general public. The amount of time available for public testimony will be determined by the number of persons who register to present during the virtual public meeting. A draft agenda and other background information for the public meeting will be posted at *https://www.fda.gov/gdufa* by July 14, 2020.

III. Participating in the Public Meeting

Registration: FDA is seeking participation (*i.e.,* oral remote presentations) during the virtual public meeting by all interested parties, including but not limited to scientific and academic experts, health care professionals, representatives of patient and consumer advocacy groups, the generic drug industry, and the general public. Persons interested in attending this virtual public meeting should register online by 11:59 p.m. Eastern Time on July 7, 2020, at *https://collaboration.fda.gov/e8a35s83so0x/event/registration.html.* Please provide complete contact information for each attendee, including name, title, affiliation, and email.

Requests for Oral Presentations: If you wish to present during a public comment session or participate in a specific session, please submit your request to *GenericDrugPolicy@fda.hhs.gov* by 11:59 p.m. Eastern Time on July 7, 2020. Your email should contain which topic(s) you wish to address and include complete contact information, including name, title, affiliation, address, and email address. We will do our best to accommodate requests to make public comments and requests to participate in specific sessions. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the focused sessions. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by July 8, 2020. All requests to make oral presentations must be received by the close of registration on July 7, 2020, 11:59 p.m. Eastern Time. If selected for presentation, any presentation materials must be emailed to *GenericDrugPolicy@fda.hhs.gov* no later than July 14, 2020. No commercial or promotional material will be permitted to be presented or distributed during the virtual public meeting.

Streaming Webcast of the Public Meeting: This virtual public meeting will be accessible via webcast only. In order to connect to the webcast, you must have Adobe Connect. The link for the webcast will be sent to all registered attendees in advance of the event.

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/gdufa.*

Dated: June 22, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13749 Filed 6–25–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Membership Forms for Organ Procurement and Transplantation Network OMB No. 0915–0184–Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than July 27, 2020.

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—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Membership Forms for Organ Procurement and Transplantation Network OMB No. 0915–0184–Revision.

Abstract: This is a request for OMB approval for revisions of the application documents used to collect information for determining if the interested party is compliant with membership requirements contained in the final rule Governing the Operation of the Organ Procurement and Transplantation Network (OPTN), (42 CFR part 121) ''the OPTN final rule.''

A 60-day notice published in the **Federal Register** on February 13, 2020, vol. 85, No. 30; pp. 8300–02. There were no public comments.

Need and Proposed Use of the Information: Membership in the OPTN is determined by submission of application materials to the OPTN (not to HRSA) demonstrating that the applicant meets all required criteria for membership and will agree to comply with all applicable provisions of the National Organ Transplant Act, as amended, 42 U.S.C. 273, *et seq.,* the OPTN final rule, OPTN Policies, and OPTN Bylaws. Section 1138 of the Social Security Act, as amended, 42 U.S.C. 1320b–8 (section 1138) requires that hospitals in which transplants are performed by members of, and abide by, the rules and requirements of the OPTN (that have been approved by the Secretary of HHS) as a condition of participation in Medicare and Medicaid.

Proposed Revisions to OPTN Membership Applications: Changes to the forms are proposed to make application requirements more clear and organized, and thus less cumbersome for applicants to complete. Proposed revisions include changes to wording to make questions more consistent with the language of the OPTN Bylaws (Bylaws). In addition, the applications have been revised so that the sequence of questions is parallel to that of the Bylaws. Using the Bylaws as a baseline, the revamped applications have been constructed in parallel order of the Bylaws so that an applicant can have the application and Bylaws side-by-side for easy reference. Additional proposed changes to the application include:

- A few major changes were made to the application order of documentation and attachments. The embedded transplant logs were revised in the form of a 'universal' surgeon and physician log that will be provided as a separate attachment to the application. This new log will provide applicants with all OPTN Bylaws requirements. We hope the added technology utilized in the log will help applicants complete the log with limited errors.
- Also within the applications, ''checkboxes''—fillable tables that were not checkboxes at all—were removed, and working checkboxes were inserted. The ''narrative'' section was replaced by checkbox attestations, which will serve the same purpose—understanding relevant and recent surgeon and physician applicant experience.
- The previous membership applications had several places for the applicants to sign. The new application requests only one signature from each member applicant involved.
- Additional changes to the application process include streamlining previous application attachments for key personnel and living donor components into one form for the respective organ application.
- Pediatric Bylaw Requirements, where applicable, were also given their sections within the organ applications. Conversely, the Certificate of Assessment (formerly known as Certificate of Investigation) and the Primary Coverage Plan Checklist was pulled out of the previous organ-specific applications and given their own, separate attachment. These changes will allow OPTN application reviewers to give these application components to applicants in as few attachments as possible. These changes will also allow the United Network for Organ Sharing Membership Team to give these important application components to applicants in as few attachments as possible, but are inclusive of all possible changes within a program.
- Further changes have been made to the Vascularized Composite Allograft (VCA) Transplant program applications, which were previously submitted as separate applications for OMB approval based on body part transplanted. These forms have been revised into one single application with sections for each VCA organ type.
- Personnel changes for Organ Procurement Organizations (OPOs) and Histocompatibility Laboratories have also been consolidated into organization applications. OPO and Lab applicants will be able to use one respective application for new and/or personnel changes.

Given these changes, the overall burden has decreased significantly from an estimated 7,020 total burden hours to 4,755 hours in this current proposed revision package, although some forms have been combined into one more comprehensive form resulting in increased burden hours for a particular form.

Likely Respondents: Parties seeking initial OPTN membership approval and then maintenance of existing OPTN approval. Applicants include the following: Hospitals seeking to perform organ transplants, non-profit organizations seeking to become an organ procurement organization, and medical laboratories seeking to become an OPTN-approved histocompatibility laboratory. In addition, there are other OPTN membership categories for organizations and individuals who want to participate in the organ transplant system, and they are also required to fill out an appropriate application.

Burden Statement: Burden, in this context, means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
OPTN Membership Application for Transplant Hospitals	2	1	2	3	6
OPTN Certificate of Assessment and Program Coverage Plan Membership Application	2	1	2	3	6
OPTN Membership Application for Kidney Transplant Programs	189	2	378	3	1,134

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
OPTN Membership Application for Liver Transplant Programs	110	2	220	3	660
OPTN Membership Application for Pancreas Transplant Programs	120	2	240	3	720
OPTN Membership Application for Heart Transplant Programs	142	2	284	3	852
OPTN Membership Application for Lung Transplant Programs	60	2	120	3	360
OPTN Membership Application for Islet Transplant Programs	4	2	8	2	16
OPTN Membership Application for Vascularized Composite Allograft (VCA) Transplant Programs	53	2	106	2	212
OPTN Membership Application for Intestine Transplant Programs	90	2	180	3	540
OPTN Membership Application for Organ Procurement Organizations (OPOs)	10	1	10	3	30
OPTN Membership Application for Histocompatibility Laboratories	27	2	54	3	162
OPTN Representative Form	20	2	40	1	40
OPTN Medical/Scientific Membership Application	7	1	7	1	7
OPTN Public Organization Membership Application	4	1	4	1	4
OPTN Business Membership Application	2	1	2	1	2
OPTN Individual Membership Application	4	1	4	1	4
OPTN Membership Application Surgeon or Physician Log*	.....	.....	.....	.....	.....
Total = 18 forms	846	.....	1,661	.....	4,755

*The OPTN Membership Application Surgeon or Physician Log accompanies every individual organ application. The burden to complete is built into the organ application data.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–13793 Filed 6–25–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment; Information Collection Request Title: Ryan White HIV/AIDS Program: Allocation and Expenditure Forms, OMB No. 0915–0318—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than July 27, 2020.

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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Ryan White HIV/AIDS Program: Allocation and Expenditure Forms, OMB No. 0915–0318—Revision.

Abstract: HRSA's HIV/AIDS Bureau administers the Ryan White HIV/AIDS Program (RWHAP) authorized under Title XXVI of the Public Health Service Act as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009. RWHAP Allocation and Expenditure Reports (A&E Reports), in conjunction with the Consolidated List of Contractors (CLC), will allow HRSA to monitor and track the use of grant funds for compliance with program and grants policies and requirements as outlined in the 2009 legislation. To avoid duplication and reduce recipient reporting burden, HRSA created an electronic grantee contract management system (GCMS) that includes data required for various reports, including the Allocations Reports, the CLC and other HRSA data reports, such as the RWHAP Services Report. Recipients can access GCMS year-round to upload or manually enter data on their service provider contractors and subrecipients, the RWHAP core medical and support services provided, and their funding amounts. GCMS automatically repopulates the data required for the Allocations Reports and other reports. Expenditures Report data are not auto-populated in the GCMS, and are thus still manually reported in the data reporting system.

Allocations and Expenditures (A&E) Reports

Recipients funded under RWHAP Parts A, B, C, and D are required to report financial data to HRSA at the beginning (Allocations Report) and at the end of their grant budget period

(Expenditures Report). The A&E Reports request information recipients already collect, including the use of RWHAP grant funds for core medical and support services and for various program components, such as administration, planning and evaluation, and clinical quality management. The reports are identical in content; however, in the first report recipients document the allocation of their RWHAP grant award at the beginning of their grant budget period, and in the second report recipients document actual expenditures of their RWHAP grant award (including any carryover dollars) at the end of their grant budget period.

HRSA is proposing that RWHAP Parts A and B recipients funded under the Ending the HIV Epidemic Initiative (EHE)—a new funding source to implement four key strategies (diagnose, treat, prevent, and respond) to end the HIV epidemic—be required to report EHE service allocations and corresponding EHE award expenditures in the A&E Reports.[1] This addition allows HRSA to track and report progress toward meeting the EHE goals.

In addition to this substantive modification, minor changes are proposed to (1) the layout of the A&E Reports that affects how already required data is reported; (2) align service categories with HRSA Policy Clarification Notice #16–02: RWHAP Services: Eligible Individuals & Allowable Uses of Funds, updated October 22, 2019; and (3) add clarity to language used.

Consolidated List of Contractors

Recipients funded under RWHAP Parts A and B are required to report information about their service provider contracts or sub awards in the CLC, a report that is generated from data entered through other systems. The CLC form identifies a recipient's contracts with service providers for the current grant year, the contract amount, the types of services the service provider provided, and the service provider's status as a minority or faith-based provider. HRSA is not proposing any changes to the CLC.

A 60-day notice published in the **Federal Register** on February 11, 2020, vol. 85, No. 28; pp. 7763–64. There was one public comment. Based on the commenter's concern about increasing recipients reporting burden, HRSA removed a request to require RWHAP Parts A and B recipients to report program income and pharmaceutical rebates information in their expenditures report.

Need and Proposed Use of the Information: Accurate allocation, expenditure, and service contract records of the recipients receiving Ryan White HIV/AIDS Program funding are critical to the implementation of the RWHAP legislation and thus are necessary for HRSA to fulfill its responsibilities.

The primary purposes of these forms are to provide information on the number of grant dollars spent on various services and program components and oversee compliance with the intent of Congressional appropriations in a timely manner. In addition to meeting the goal of accountability to Congress, RWHAP clients, advocacy groups, and the general public, information collected through these reports is critical for HRSA, state, and local grant recipients, and individual providers to evaluate the effectiveness of the RWHAP. The addition of EHE funding to the A&E Reports will allow HRSA the ability to assess progress toward meeting the national goals for ending the HIV epidemic.

Likely Respondents: RWHAP Part A, Part B, Part C, and Part D recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Part A Allocations Report	52	1	52	4	208
Part A Expenditures Report	52	1	52	4	208
Part A CLC	52	1	52	2	104
Part B Allocations Report	54	1	54	6	324
Part B Expenditures Report	54	1	54	6	324
Part B CLC	54	1	54	2	108
Part C Allocations Report	346	1	346	4	1,384
Part C Expenditures Report	346	1	346	4	1,384
Part D Allocations Report	116	1	116	4	464
Part D Expenditures Report	116	1	116	4	464
EHE Allocations Report	47	1	47	4	188
EHE Expenditures Report	47	1	47	4	188
Total	1,336	.....	1,336	.....	5,348

[1] OMB granted HRSA approval to collect these data under OMB Control Number 0915–0318, ICR Reference Number 201909–0915–004.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–13794 Filed 6–25–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0459]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the information collection request (ICR) must be received on or before July 27, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–New–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Fast-Track Generic Clearance for the Collection of Routine Customer Feedback on HHS Communications.

Type of Collection: Father Generic ICR.

OMB No. 0990–0459—Office within OS—Specific program collecting the data (is applicable).

Abstract: This collection of information is necessary to enable HHS to garner customer and stakeholder feedback. Information will be collected from our customers and stakeholders from the concept phase to the end of the product life cycle. This will help ensure that users have an effective, efficient, and satisfying experience with HHS communications products. If this information is not collected, vital feedback on HHS communications will be unavailable, preventing programs from developing communications products that meets the needs of the audience and demonstrating impact of the communications products developed.

Type of respondent; frequency (annual, quarterly, monthly, etc.); and the affected public (individuals, public or private businesses, state or local governments, etc.).

ESTIMATED ANNUALIZED BURDEN TABLE

Survey type	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Customer Feedback/Satisfaction Survey	1,000,000	1	30/60	500,000

Sherrette A. Funn,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2020–13828 Filed 6–25–20; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Population Sciences and Epidemiology Program Project.

Date: July 20, 2020.

Time: 10:00 a.m. to 12:00 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: Fungai Chanetsa, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, (301) 408–9436, *fungai.chanetsa@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR18–744: Pilot and Feasibility Clinical Research Grants in Kidney Diseases.

Date: July 22, 2020.

Time: 1:00 p.m. to 3:00 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: Ganesan Ramesh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 827–5467, *ganesan.ramesh@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cardiovascular and Respiratory Sciences.

Date: July 23–24, 2020.

Time: 8:00 a.m. to 5:00 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: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, (301) 435–5575, *hamannkj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844,

93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 22, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13755 Filed 6–25–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Ruth L. Kirschstein NRSA Individual Postdoctoral Fellowship (F32) Review.

Date: July 13, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Nicholas Gaiano, Ph.D., Review Branch Chief, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6150/MSC 9606, 6001 Executive Boulevard, Bethesda, MD 20892–9606, 301–443–2742, *nick.gaiano@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.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH Pathway to Independence Awards (K99/R00).

Date: July 16, 2020.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Mental Health, NSC, 6001 Executive Blvd., Rockville, MD (Telephone Conference Call).

Contact Person: Erin E. Gray, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard NSC 6152B, Bethesda, MD 20892, 301–402–8152, *erin.gray@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: June 22, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13757 Filed 6–25–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the HIV Comorbidities and Clinical Studies Study Section, July 14, 2020, 08:00 a.m. to July 15, 2020, 06:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on June 15, 2020, 85 FR 36223.

This notice is being amended to change the meeting start time from 8:00 a.m. to 06:00 p.m. to 9:00 a.m. to 06:00 a.m. The meeting is closed to the public.

Dated: June 22, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13756 Filed 6–25–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2036]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before September 24, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2036, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required

by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Stanislaus County, California and Incorporated Areas Project: 19–09–0002S Preliminary Date: March 31, 2020	
City of Ceres	City Hall, 2220 Magnolia Street, Ceres, CA 95307.
City of Modesto	Tenth Street Place, 1010 10th Street, Modesto, CA 95354.
City of Newman	City Hall, 938 Fresno Street, Newman, CA 95360.
City of Patterson	City Hall, 1 Plaza Circle, Patterson, CA 95363.
Unincorporated Areas of Stanislaus County	Tenth Street Place, 1010 10th Street, Modesto, CA 95354.
Clay County, Iowa and Incorporated Areas Project: 18–07–0010S Preliminary Date: September 30, 2019	
City of Dickens	Community Center, 100 Main Street, Dickens, IA 51333.
City of Everly	City Hall, 202 North Main Street, Everly, IA 51338.
City of Peterson	City Hall, 101 Main Street, Peterson, IA 51047.
City of Spencer	City Hall, 418 2nd Avenue West, Spencer, IA 51301.
City of Webb	City Hall, 306 Church Street, Webb, IA 51366.
Town of Gillett Grove	Town Hall, 221 Railway Street, Gillett Grove, IA 51341.
Unincorporated Areas of Clay County	Clay County Courthouse, 300 West 4th Street, Spencer, IA 51301.
Crawford County, Iowa and Incorporated Areas Project: 18–07–0011S Preliminary Date: October 15, 2019	
City of Arion	Arion City Hall, 333 4th Street, Dow City, IA 51528.
City of Aspinwall	Crawford County Courthouse, 1202 Broadway, Denison, IA 51442.
City of Buck Grove	Buck Grove City Hall, 333 4th Street, Dow City, IA 51528.
City of Charter Oak	City Hall, 453 Railroad Street, Charter Oak, IA 51439.
City of Deloit	Community Center, 320 Maple Street, Deloit, IA 51441.
City of Denison	City Hall, 111 North Main Street, Denison, IA 51442.
City of Dow City	City Hall, 117 North Franklin Street, Dow City, IA 51528.
City of Kiron	City Hall, 12 North Grove Street, Kiron, IA 51448.
City of Manilla	City Hall, 443 Main Street, Manilla, IA 51454.
City of Ricketts	City Hall, 28 Maple Street, Ricketts, IA 51460.
City of Vail	City Hall, 215 Main Street, Vail, IA 51465.
City of Westside	City Hall, 131 Main Street, Westside, IA 54167.
Unincorporated Areas of Crawford County	Crawford County Courthouse, 1202 Broadway, Denison, IA 51442.
Des Moines County, Iowa and Incorporated Areas Project: 16–07–2202S Preliminary Date: August 27, 2018 and March 27, 2020	
Unincorporated Areas of Des Moines County	Southeast Iowa Regional Planning Commission, 211 North Gear Avenue, Suite 100, West Burlington, IA 52655.

Community	Community map repository address
Henry County, Iowa and Incorporated Areas Project: 16–07–2275S Revised Preliminary Date: March 26, 2020	
Unincorporated Areas of Henry County	Henry County Courthouse, 100 East Washington Street, Mount Pleasant, IA 52641.
Tama County, Iowa and Incorporated Areas Project: 17–07–0294S Preliminary Date: March 15, 2019	
City of Dysart	City Hall, 601 Wilson Street, Dysart, IA 52224.
Pottawatomie County, Kansas and Incorporated Areas Project: 15–07–0283S Preliminary Date: January 31, 2020	
.	
City of Belvue	City Hall, 308 Broadway Street, Belvue, KS 66407.
City of St. Marys	City Hall, 200 South 7th Street, St. Marys, KS 66536.
City of Wamego	City Hall, 430 Lincoln Avenue, Wamego, KS 66547.
Unincorporated Areas of Pottawatomie County	Pottawatomie County Administration Building, 207 North 1st Street, Westmoreland, KS 66549.

[FR Doc. 2020–13820 Filed 6–25–20; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/A0A501010.999900253G]

Draft School Reopening Plan for School Year 2020–2021

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of consultation.

SUMMARY: The Bureau of Indian Education (BIE) will conduct consultations to obtain oral and written comments on the draft School Reopening Plan (Plan) for school year 2020–2021, for its Bureau-funded schools to ensure BIE is meeting the needs of its students, schools, and Tribal communities to provide a safe environment for the continuation of education of the students in response to the COVID–19 pandemic and following guidance issued by the Centers for Disease Control and Prevention.

DATES: Comments must be received on or before July 25, 2020 at 11:59 p.m. ET. See the **SUPPLEMENTARY INFORMATION** section of this notice for dates and locations of consultation sessions.

ADDRESSES: Send comments to *consultation@bia.gov* or Bureau of Indian Education, Juanita Mendoza, 1849 C Street NW, MIB–3612, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Juanita Mendoza, Special Assistant to the Director, Bureau of Indian Education; phone (202) 208–3559 or email *Juanita.Mendoza@bie.edu*.

SUPPLEMENTARY INFORMATION: The purpose of the consultation is to provide Indian Tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on the Plan for school year 2020–2021. The Plan provides reopening directives for Bureau-operated schools for developing individual school site reopening plans and guidance for Tribally-controlled schools who may utilize the Plan's recommendations to support their individual school site reopening plans. School reopening will also be based on local decision-making in coordination with Tribal and local public health officials. The topics are:

(1) Guidelines for school reopening;

(2) Considerations for teachers and staff;

(3) School building mitigation and cleaning;

(4) Health screening; and

(5) Social distancing and other safety protocols.

The BIE will conduct virtual webinar sessions and will accept both oral and written comments. Due to the COVID–19 pandemic and the approaching start of the 2020–2021 school year, BIE is providing an expedited notification period of 15 days instead of the usual 30-day notification period. The following table lists dates and links to join a consultation session:

For:	Dates	Time (EDT)	To join webinar:
Tribes	Thursday, July 9, 2020 (Day 1)	3–5 p.m. ET	Register in advance for this meeting: *https://us02web.zoom.us/meeting/register/tZErc-urTotEt0x9u1tNXmfYuv5DPddpbCc.* After registering, you will receive a confirmation email containing information about joining the meeting.
Public	Friday, July 10, 2020 (Day 2)	3–5 p.m. ET	Register in advance for this meeting: *https://us02web.zoom.us/meeting/register/tZYrceGgqjkuEtHzyFJYyaJUG135xP7yYYZp.* After registering, you will receive a confirmation email containing information about joining the meeting.

The Plan is available at *https://www.bia.gov/covid-19/school-reopening* and will be available at the above-listed sessions. The BIE strongly recommends reviewing the Plan located on BIE's web page prior to attending a consultation session or submitting written comments in order to provide meaningful feedback.

Public Comment Availability

Written comments, including names, street addresses of respondents, will be available for public review at the location listed under the **ADDRESSES** section of this notice, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifiable information from public view, we cannot guarantee that we will be able to do so.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–13819 Filed 6–25–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X.LLAK9 30000.L13100000.DP0000.LXSSL0550000]

Notice of Availability of the National Petroleum Reserve in Alaska Integrated Activity Plan Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Naval Petroleum Reserves Production Act of 1976 (NPRPA), as amended, the Bureau of Land Management (BLM), Alaska State Office, has prepared the Final Environmental Impact Statement (EIS) for the Integrated Activity Plan (IAP) for the National Petroleum Reserve in Alaska (NPR–A) and by this notice is announcing its publication.

DATES: The BLM will issue a Record of Decision for the project no earlier than 30 days from the date of the Final EIS Notice of Availability published by the Environmental Protection Agency.

ADDRESSES: *To access the Final EIS or to request an electronic or paper copy, please reach out to:*

- *website: http://www.blm.gov/alaska.*
- *Email: srice@blm.gov.*
- *Mail: BLM Alaska State Office, 222 West 7th Avenue #13, Anchorage, Alaska 99513.*

FOR FURTHER INFORMATION CONTACT: Stephanie Rice, NPR–A IAP Project Manager, 907–271–3202; address: 222 West 7th Avenue, #13, Anchorage, AK 99513. People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The IAP/EIS analyzes management of all BLM managed lands in the NPR–A in a manner consistent with existing statutory direction and Secretarial Order 3352. Secretarial Order 3352 directed the development of a schedule to ''effectuate the lawful review and development of an IAP for the NPR–A that strikes an appropriate balance of promoting development while protecting surface resources.'' The NPRPA, as amended, and its implementing regulations require oil and gas leasing in the NPR–A and the protection of surface values consistent with exploration, development and transportation of oil and gas. The IAP/EIS will serve to inform BLM's management of the NPR–A for all permissible uses.

Specifically, the IAP/EIS considers and analyzes the environmental impact of various management alternatives, including the areas to offer for oil and gas leasing, and the impacts that could result based on consideration of a hypothetical development scenario. The alternatives analyze various terms and conditions (*i.e.,* lease stipulations and required operating procedures) to require of permittees in the NPR–A, to properly balance oil and gas development and other activities with protection of surface resources and other uses, including subsistence use. The lands comprising the NPR–A are approximately 23 million acres.

Public comments on the draft EIS alternatives drove significant changes to required operating procedures and lease stipulations that were used to develop a new and Preferred Alternative (Alternative E). The Preferred Alternative would make the most land open to leasing (approximately 18.6 million acres, or 82 percent of NPR–A's subsurface estate).

The BLM has worked with interested parties to identify the management decisions best suited to local, regional, and national needs and concerns, as well as to develop a range of alternatives that examines how best to balance development with protecting surface resources and other uses. Future on-the-ground actions requiring BLM approval, including potential exploration and development proposals, would require further NEPA analysis based on the site-specific proposal. Potential applicants would be subject to the terms of the new IAP/EIS Record of Decision; however, the BLM Authorized Officer may require additional site-specific terms and conditions before authorizing any oil and gas activity based on the project level NEPA analysis.

(Authority: 40 CFR 1506.6(b))

Chad B. Padgett,

State Director, Alaska.

[FR Doc. 2020–13733 Filed 6–25–20; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Section 337 Investigations]

Notice of Commission Determination To Extend Postponement of All In-Person Section 337 Hearings, Effective June 19, 2020 and Continuing Until Phase Three of the Commission's Three-Phase Plan To Re-Establish On-Site Building Operations

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend postponement of all in-person hearings under section 337 of the Tariff Act of 1930, as amended, effective June 19, 2020 and continue until such time as the agency enters Phase Three of the Commission's three-phase plan to re-establish on-site business operations.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for section 337 investigations may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: In light of the ongoing concerns regarding Coronavirus (COVID–19), the District of Columbia, the State of Maryland, and the Commonwealth of Virginia recently began measures for a phased reopening of the region. These plans were developed in response to the President's guidance for a three-phased approach based on the advice of public health experts that includes steps to help state, regional, and local officials when reopening their regions. *https://www.whitehouse.gov/openingamerica/#criteria.* Similarly, based upon guidance from the Office of Management and Budget (OMB) and Office of Personnel Management (OPM), (*https://www.whitehouse.gov/wp-content/uploads/2020/04/M-20-23.pdf*), as well as from the Centers for Disease Control and Prevention (CDC) and other relevant agencies regarding COVID–19, the USITC has developed a three-phase plan to reestablish on-site business operations. The Chairman has begun implementation of the USITC's three-phase plan, which utilizes the identified gating criteria and relevant factors to guide the Commission's progression through the phases.

Under that plan, the Commission has determined to extend postponement of all section 337 in-person hearings effective June 19, 2020 until such time as the agency enters PHASE THREE of the three-phase plan. Commission Administrative Law Judges (ALJs) are directed to notify all affected parties and to schedule new dates for hearings as appropriate. ALJs may otherwise conduct their investigations in accordance with their established procedures.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 22, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–13778 Filed 6–25–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1142]

Certain Pocket Lighters; Notice of Commission Final Determination of a Violation of Section 337; Issuance of a General Exclusion Order and a Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') granting the motion of BIC Corporation (''BIC'' or ''Complainant'') for summary determination of a violation of section 337 by respondents Milan Import Export Company, LLC (''Milan''); Wellpine Company Limited (''Wellpine''); and Zhuoye Lighter Manufacturing Co., Ltd. (''Zhuoye'') (collectively, ''the Defaulting Respondents''). The Commission has also determined to issue a general exclusion order (''GEO'') barring entry of certain pocket lighters including an oblong body which is elliptical in cross-section, a fork which is generally parabolic in cross-section, and/or a hood which is generally parabolic in cross-section, that infringe Complainant's asserted trade dress. The Commission has further determined to issue a cease and desist order (''CDO'') directed to respondent Milan. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On February 12, 2019, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Complainant BIC of Shelton, Connecticut. *See* 84 FR 3486–87 (Feb. 12, 2019). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pocket lighters by reason of infringement of U.S. Trademark Registration Nos. 1,761,622 and 2,278,917. *See id.* The notice of investigation names numerous respondents, including Milan of San Diego, California; Wellpine of Hong Kong; and Zhuoye of Foshan City, China (collectively, ''Defaulting Respondents''). *See id.* The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. *See id.*

The Commission previously terminated other respondents based on settlement and entry of a consent order. *See* Order No. 21 (Oct. 30, 2019), *unreviewed,* Comm'n Notice (Nov. 25, 2019). The Commission also terminated an unserved respondent based on the withdrawal of the complaint allegations as to that respondent. *See* Order No. 23 (Dec. 18, 2019), *unreviewed,* Comm'n Notice (Jan. 16, 2020).

The Commission further found each of the Defaulting Respondents in default. *See* Order No. 13 (June 6, 2019), *unreviewed,* Comm'n Notice (July 8, 2019); Order No. 14 (June 6, 2019), *unreviewed,* Comm'n Notice (July 8, 2019); Order No. 15 (June 18, 2019), *aff'd with modification,* Comm'n Notice (July 10, 2019).

On November 14, 2019, Complainant filed a motion for summary determination of a violation of section 337 by the Defaulting Respondents. On December 16, 2019, OUII filed a response in support of Complainant's motion. On February 12, 2020, the ALJ issued an ID granting Complainant's motion for summary determination of violation of section 337 by the Defaulting Respondents. No petition for review of the ID was filed.

On April 22, 2020, the Commission determined to review the ID in part with respect to the ID's findings on the economic prong of the domestic industry requirement. *See* 85 FR 23528–29 (Apr. 28, 2020). The Commission's notice also requested written submissions on remedy, the public interest, and bonding. *See id.* On May 8, 2020, Complainant and OUII submitted written submissions, and on May 15, 2020, Complainant submitted a reply submission, in response to the Commission's notice. No other submissions were received.

As explained in the Commission's Opinion issued concurrently herewith, the Commission has determined to affirm the ID's findings with respect to the economic prong of the domestic industry requirement and, thus, the ID's finding of a violation of section 337. The Commission has also determined that the appropriate remedy in this investigation is: (1) A GEO prohibiting the unlicensed entry of certain pocket lighters including an oblong body which is elliptical in cross-section, a fork which is generally parabolic in cross-section, and/or a hood which is generally parabolic in cross-section, that infringe Complainant's asserted trade dress, pursuant to section 337(d)(2) (19 U.S.C. 1337(d)(2)); and (2) a CDO directed to defaulting respondent Milan, pursuant to section 337(f)(1) (19 U.S.C. 1337(f)(1)). The Commission has further determined that the bond during the period of Presidential review pursuant to section 337 (j) (19 U.S.C. 1337(j)) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the GEO and/or CDO. Still further, the Commission has determined that the public interest factors enumerated in subsections 337(d)(1) and (f)(1) (19 U.S.C. 1337(d)(1), (f)(1)) do not preclude the issuance of the GEO and CDO.

The Commission vote for this determination took place on June 22, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules §§ 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.

Issued: June 22, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–13765 Filed 6–25–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0099]

Agency Information Collection Activities; Proposed eCollection eComments Requested; ATF Adjunct Instructor Data Form—ATF Form 6140.3

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until July 27, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* ATF Adjunct Instructor Data Form.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 6140.3.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal Government.

Other: Individuals or households, Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Abstract: The Adjunct Instructor Data Form—ATF Form 6140.3 will be used to collect the necessary personally identifiable information (PII) from non-ATF employees, in order to document and evaluate their qualifications to serve as an ATF instructor.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 20 respondents will utilize the form annually, and it will take each respondent approximately 30 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 10 hours, which is equal to 20 (# of respondents) * 1 (# of responses per respondent) * .5 (30 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: June 23, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–13810 Filed 6–25–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute Of Electrical And Electronics Engineers

Notice is hereby given that, on May 27, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 20 new standards have been initiated and 16 existing standards are being revised. More detail regarding these changes can be found at: *https://standards.ieee.org/about/sasb/sba/march2020.html.*

On February 8, 2015, the IEEE Board of Directors approved an update of the IEEE patent policy for standards development, which became effective on 15 March 2015. The updated policy is available at *http://standards.ieee.org/develop/policies/bylaws/approved-changes.pdf* and, from the effective date, will be available at *http://standards.ieee.org/develop/policies/bylaws/sect6-7.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on April 1, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 27, 2020 (85 FR 23377).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–13785 Filed 6–25–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2017–0005]

Electric Power Generation, Transmission, and Distribution Standards for Construction and General Industry and Electrical Protective Equipment Standards for Construction and General Industry; Extension of the Office of Management and Budget's (OMB) Approval of Collection of Information

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the request for an extension of the collection of information specified in the standards on the Electric Power Generation, Transmission, and Distribution for Construction and General Industry and Electrical Protective Equipment Standards for Construction and General Industry.

DATES: Comments must be submitted (postmarked, sent, or received) by August 25, 2020.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2017–0005, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3625, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (*hand, express mail, messenger, and courier service*) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2017–0005) for the Information Collection Request (ICR). All comments, including any personal information you provide, such as social security numbers and date of birth, are placed in the public docket without change, and may be made available online at *https://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the below address to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Seleda Perrymen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing collection of information in accordance with the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Electrical Protective Equipment Standard (29 CFR 1926.97 and 29 CFR 1910.137) and the Electric Power Generation, Transmission, and

Distribution Standard (29 CFR part 1926 and 29 CFR 1910.269) specify several collection of information. The following describes the collection of information contained in the standards and addresses who will use the information.

Electrical Protective Equipment Standard (§§ 1926.97 and 1910.137)

Testing Certification (§§ 1926.97(c)(2)(xii) and 1910.137(c)(2)(xii)).

Employers must certify that the electrical protective equipment used by their workers have passed the tests specified in paragraphs (c)(2)(vii)(D), (c)(2)(viii), and (c)(2)(ix) and (xi) of the Standards. The certification must identify the equipment that passed the tests and the dates of the tests. The two standards require testing: Periodically (generally, every 6 months for rubber insulating gloves and every 12 months for most other types of rubber insulating equipment); after any repairs; and before the equipment is returned to service after any inspection finds certain defects. In addition, the employer must test rubber insulating gloves before reuse after employees use them without protector gloves and must certify that testing. These performance-based standards ensure that employers maintain the most recent test records for equipment that passes the required tests without specifying precisely how the employer must maintain those records.

Electric Power Generation, Transmission, and Distribution Standard (Part 1926 and § 1910.269)

For host employer responsibilities §§ 1910.269(a)(3)(i) and 1926.950(c)(1) for construction and general industry, before work begins, the host employer must inform the contract employers of: The characteristics of the host employer's installation listed; conditions listed in paragraphs of this section that are known to the host employer; information about the design and operation of the host employer's installation that the contract employer needs to make the assessments required by this section; and any other information about the design and operation of the host employer's installation that is known by the host employer, that the contract employer requests, and that is related to the protection of the contract employer's employees.

For contract employer responsibilities §§ 1910.269(a)(3)(ii) and 1926.950(c)(2) for construction and general industry, contract employers must ensure that each of the employees is instructed in the hazardous conditions relevant to the employee's work that the contract employer is aware of as a result of information communicated to the contract employer by the host employer; before work begins, the contract employer must advise the host employer of any unique hazardous conditions presented by the contract employer's work; and the contract employer must advise the host employer of any unanticipated hazardous conditions found during the contract employer's work that the host employer did not mention. The contract employer shall provide this information to the host employer within 2 working days after discovering the hazardous condition.

In job briefing the information provided by the employer in §§ 1910.269(c)(1)(i) and 1926.952(a)(1) for construction and general industry, in assigning an employee or a group of employees to perform a job, the employer must provide the employee in charge of the job with all available information that relates to the determination of existing characteristics and conditions required.

For the engineering analyses to determine maximum anticipated per unit transient overvoltage in §§ 1910.269(l)(3)(ii) and 1926.960(c)(1)(ii) for construction and general industry, the employer must determine the maximum anticipated per-unit transient overvoltage, phase-to-ground, through an engineering analysis or assume a maximum anticipated per-unit transient overvoltage, phase-to-ground, in accordance with the tables listed. When the employer uses portable protective gaps to control the maximum transient overvoltage, the value of the maximum anticipated per-unit transient overvoltage, phase-to-ground, must provide for five standard deviations between the statistical sparkover voltage of the gap and the statistical withstand voltage corresponding to the electrical component of the minimum approach distance. The employer must make any engineering analysis conducted to determine maximum anticipated per-unit transient overvoltage available upon request to employees and to the Assistant Secretary or designee for examination and copying.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed collection of information are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the collection of information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extends the approval of the collection of information contained in the Standards on Electric Power Generation, Transmission, and Distribution for Construction and General Industry (29 CFR part 1926, subpart V, and 29 CFR 1910.269) and the Electrical Protective Equipment Standards for Construction and General Industry (29 CFR 1926.97 and 29 CFR 1910.137). The agency is requesting an adjustment increase in the burden hours from 365,094 hours to 380,735 hours, a difference of 15,641 burden hours. This increase in burden is due to an increase in the number of projects and an increase in the number of establishments. The agency will summarize any comments submitted in response to this notice, and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved information collection.

Title: Electric Power Generation, Transmission, and Distribution Standards for Construction and General Industry and Electrical Protective Equipment for Construction and General.

OMB Control Number: 1218–0253.

Affected Public: Business or other for-profits.

Number of Respondents: 20,593.

Total Responses: 1,992,283

Frequency of Responses: On occasion; Semi-annually; Annually.

Average Time per Response: Varies

Estimated Total Burden Hours: 380,735.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2017–0005). You may supplement electronic submissions by uploading document

files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *https://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *https://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on June 22, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–13821 Filed 6–25–20; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (20–059)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel (ASAP).

DATES: Thursday, July 23, 2020, 10:30 a.m. to 12:30 p.m., Eastern Time.

ADDRESSES: This will be a virtual meeting via teleconference.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa M. Hackley, ASAP Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–1947 or *lisa.m.hackley@nasa.gov.*

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel (ASAP) will hold its Third Quarterly Meeting for 2020. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

—Updates on the International Space Station Program
—Updates on the Commercial Crew Program
—Updates on Exploration System Development Program
—Updates on Human Lunar Exploration Program

This meeting is a virtual meeting, and only available telephonically. Any interested person may call the USA toll free conference call number 888–664–9856; pass code 6549545 and then the # sign. At the beginning of the meeting, members of the public may make a verbal presentation to the Panel on the subject of safety in NASA, not to exceed 5 minutes in length. To do so, members of the public must contact Ms. Lisa M. Hackley at *lisa.m.hackley@nasa.gov* or at (202) 358–1947 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel via electronic submission to Ms. Hackley at the email address previously noted. Verbal presentations and written statements should be limited to the subject of safety in NASA. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–13754 Filed 6–25–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Chartering and Field of Membership

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before August 25, 2020 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; Fax No. 703–519–8579; or email at *PRAComments@NCUA.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Dawn Wolfgang at the email address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION: *OMB Number:* 3133–0015.

Title: Chartering and Field of Membership Manual, 12 CFR 701.1, Appendix B to 701.

Type of Review: Extension of a currently approved collection.

Abstract: The Federal Credit Union Act (Act) (12 U.S.C. 1751 *et al.*) requires NCUA to administer chartering and field of membership requirements for Federal credit unions (FCUs). This is implemented through the Chartering and Field of Membership (Chartering) Manual as incorporated into NCUA regulations at 12 CFR 701.1 and

appendix B to part 701. The Chartering Manual requires credit unions to prepare and submit forms with regard to chartering, field of membership amendments, service to underserved areas, and conversions from Federal to state credit unions and state to Federal credit unions.

The NCUA uses the information to determine if the charter application, field of membership amendment, or conversion application meets the requirements of the Act and NCUA regulations.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 8,985.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 8,985.

Estimated Hours per Response: 2.11.

Estimated Total Annual Burden Hours: 18,994.

Reason for Change: Adjustment have been make reflect the current number of respondents reporting and a more accurate accounting of the time needed to respond.

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. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on June 22, 2020.

Dated: June 22, 2020.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2020–13761 Filed 6–25–20; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Center for Science and Engineering Statistics, National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and 2 comments were received. NCSES is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION:

Comments: Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the NCSES, including whether the information will have practical utility; (b) the accuracy of the NCSES's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 7th Street NW, Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite 18200, Alexandria, VA 22314 or send email to *splimpto@nsf.gov.*

NCSES may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title of Collection: Survey of Graduate Students and Postdoctorates in Science and Engineering.

OMB Control Number: 3145–0062.

Summary of Collection: The Survey of Graduate Students and Postdoctorates in Science and Engineering (GSS), sponsored by the NCSES within NSF and the National Institutes of Health, is designed to comply with legislative mandates by providing information on the characteristics of academic graduate enrollments in science, engineering and health fields. This request to extend the information collection for three years is to cover the 2020, 2021, and 2022 GSS survey cycles. The information collected by the GSS is solicited under the authority of the National Science Foundation Act of 1950, as amended and the America COMPETES Reauthorization Act of 2010. Data collection starts each fall in October and data are obtained primarily through a Web survey. Data are disseminated annually. All information will be used for statistical purposes only. Participation in the survey is voluntary.

To improve coverage of postdocs, the GSS periodically collects information on postdocs employed in Federally Funded Research and Development Centers (FFRDCs). This survey of postdocs at FFRDCs will be conducted as part of the 2021 GSS survey cycle.

Additional details regarding this survey are provided in an earlier **Federal Register** Notice, at 85 FR 19169.

Use of the Information: The GSS data are routinely provided to Congress, other parts of NSF, other Federal agencies, the GSS institutions themselves, and several professional societies. In addition, the National Institutes of Health (NIH) publish GSS data annually in the NIH Data Book *https://report.nih.gov/nihdatabook/.*

Expected Respondents: The GSS is an annual census of all eligible academic institutions in the U.S. with graduate programs in science, engineering, and health fields. The response rate is calculated based on the number of reporting units (departments, programs, research centers, and health care facilities) that respond to the survey. For reference, in 2018, the GSS population was 19,592 units at 715 academic institutions. Based on recent cycles NCSES expects the annual response rate to be around 99 percent.

Estimate of Burden: The total estimated respondent burden of the GSS, including 1,000 hours for potential methodological studies to improve the survey procedures, will be 56,480 hours over the three-cycle survey clearance period. NCSES may review and revise this burden estimate based on

completion time data collected during the 2019 GSS survey cycle, which is ongoing.

TABLE 1—GSS ESTIMATED RESPONSE BURDEN

Category	Respondents (number of school coordinators)	Total burden (hours)
Total burden for 2020	911	18,424
Total burden for 2021	959	18,542
GSS institutions	*916*	*18,469*
FFRDCs	*43*	*73*
Total burden for 2022	921	18,514
Potential future methodological studies (across all 3 survey cycles)	.....	1,000
Total estimated burden	2,791	56,480
Estimated average annual burden	930	18,827

Comments: As required by 5 CFR 1320.8(d), comments on the information collection activities as part of this study were solicited through publication of a 60-Day Notice in the **Federal Register** on April 6, 2020, at 85 FR 19169. NCSES received 2 comments.

NCSES received the first comment on 4 April 2020 from an economics professional association requesting a copy of the draft information collection request (ICR) including the survey instrument and supporting statement. NCSES informed the commenters that the ICR was currently undergoing internal review within NCSES with plans to submit it for public review in June and that the GSS would be largely unchanged from its current design.

NCSES received a second comment on 6 May 2020 from a group representing several organizations. The commenters requested that NCSES include measures of sexual orientation and gender identity on the GSS. NCSES informed the commenters that it shares their interest in improving federal data collections and providing reliable measures for important segments of the population. Furthermore, NCSES described its process for evaluating possible questionnaire additions, including the extensive experimentation involved and the time and resources required. Finally, NCSES informed the commenters that it is conducting research to evaluate these measures and does not intend to include them in the 2020–22 GSS.

Dated: June 22, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–13768 Filed 6–25–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request received and permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated and permits issued under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of a requested permit modification and permit issued.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8224; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation (NSF), as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR part 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection.

NSF issued a permit (ACA 2018–010) to David J. Smith on October 26, 2017. The issued permit allows the applicant to introduce non-indigenous species into Antarctica. Dormant microbiological samples, pre-loaded into and remaining within a triple containment vessel, were brought to Antarctica to be launched into the Earth's stratosphere as part of NASA's Long Duration Balloon program (LDB). Details about the samples and the containment vessel are provided in the permit (attached). The microbiological samples, still contained within the vessel, will be returned to the USA and the home institution after recovery of the balloon payload.

A recent modification to this permit, dated June 19, 2019, permitted the permit holder to continue to conduct permitted activities, under the original permit conditions, until March 31, 2023. Now, the permit holder proposes to include an additional species of microorganism to the next payload. The quantity and state (dormant) of the bacterial spores, as well as the sample and payload preparation methods, would be identical to the original permit. The Environmental Officer has reviewed the modification request and has determined that the amendment is not a material change to the permit, and it will have a less than a minor or transitory impact.

Dates of Permitted Activities: June 23, 2020 to March 31, 2023.

The permit modification was issued on June 23, 2020.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2020–13795 Filed 6–25–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

SUMMARY: The National Science Board's Committee on Oversight (CO), pursuant to NSF regulations, the National Science Foundation Act, as amended, and the Government in the Sunshine Act, hereby gives notice of the scheduling of a teleconference for the transaction of

National Science Board business, as follows:

DATES: Wednesday, July 1, 2020 at 2–4:30 p.m. EDT.

PLACE: This meeting will be held by videoconference through the National Science Foundation. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED: (1) Chair's opening remarks and welcome of new committee members; (2) discussion of the 2019 Merit Review Digest draft, highlights of the biennial survey, and recent COV reports; (3) discussion of items to include in the Board's Overview; (4) discussion of future CO role regarding Broader Impacts; and (5) risks, including Enterprise Risk Management.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Ann Bushmiller (*abushmil@nsf.gov*), 703/292–7000. Request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference.

Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–13938 Filed 6–24–20; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

SUMMARY: The National Science Board's Committee on National Science and Engineering Policy (SEP), pursuant to NSF regulations, the National Science Foundation Act, as amended, and the Government in the Sunshine Act, hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATES: Wednesday, July 1, 2020 at 4–5:30 p.m. EDT.

PLACE: This meeting will be held by videoconference through the National Science Foundation. An audio link will be available for the public. Contact the Board Office 24 hours before the teleconference to request the public audio link at *nationalsciencebrd@nsf.gov.*

STATUS: Open.

MATTERS TO BE CONSIDERED: Chair's opening remarks; conduct an orientation of *Science & Engineering Indicators* in preparation for the 2022 cycle.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Reba Bandyopadhyay (*rbandyop@nsf.gov*), 703/292–7000. Members of the public must contact the Board Office to request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference.

Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–13936 Filed 6–24–20; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by July 27, 2020. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2021–002

1. *Applicant:* Megan Cimino, University of California at Santa Cruz, 1156 High Street, Santa Cruz, CA 95064.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Areas (ASPAs), Take, Harmful Interference, and Import into the USA. The applicant would conduct research as part of the Palmer Station Long-Term Ecological Research Program (Palmer LTER) relating variability in seabird ecology to changes in the physical and biological environment, especially sea ice, snow conditions and the availability of prey. The research would comprise two complimentary components at summer breeding colonies of seabirds and in their pelagic marine foraging environment. The applicant would continue long term-research efforts to assess how annual environmental variability affects seabird diets, breeding success, growth rates, survival and recruitment, behavior, population trends, foraging success and seasonal dispersal. The applicant would engage in take by capture and release in order to (1) census populations and mark breeding territories; (2) capture, mark, band and/or weigh adults, chicks and eggs; (3) obtain diet samples by stomach lavage, by screening contents of terrestrial sediment traps and/or by collecting regurgitated or defecated prey items; (4) place transmitters on individuals; (5) place instrumented artificial eggs under incubating individuals; (6) obtain tissue samples from adults and chicks (*e.g.,* preen gland oil, blood, feathers, egg yolk, toenails); (7) collect addles/infertile eggs no longer being incubated; (8) use GPS/GIS technologies to update existing breeding habitat maps; and (9) salvage dead specimens in good condition for educational purposes. The applicant would use all/some of the above methods on the following species:

Adelie Penguin, Chinstrap Penguin, Gentoo Penguin, Brown Skua, South Polar Skua, Southern Giant Petrel, Blue-Eyed Shag, Kelp Gull, Snowy Sheathbill. All seabirds involved in this research would be released unharmed. To conduct the research, the applicant would enter the following Antarctic Specially Protected Areas: ASPA 107, Dion Islands; ASPA 113, Litchfield Island; ASPA 115, Lagotellerie Island; ASPA 117, Avian Island; ASPA 139, Biscoe Point; and ASPA 170, Charcot Island.

Location: Palmer Station area, Marguerite Bay and vicinity, Charcot Island, Rosenthal Islans. ASPA 107, Dion Islands; ASPA 113, Litchfield Island; ASPA 115, Lagotellerie Island; ASPA 117, Avian Island; ASPA 139, Biscoe Point; and ASPA 170, Charcot Island.

Dates of Permitted Activities: October 1, 2020–September 30, 2023.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2020–13780 Filed 6–25–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for the Industry-University Cooperative Research Centers (IUCRC) Program

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title of Collection: Grantee Reporting Requirements for the Industry-University Cooperative Research Centers (IUCRC) Program.

OMB Number: 3145–0088.

Type of Request: Revision to and extension of approval of an information collection.

Proposed Project

The NSF's Division of Industrial Innovation and Partnerships (IIP), within the Engineering Directorate, serves a wide range of grantees across 5 major programs.

The IUCRC program provides a structure for academic researchers to conduct fundamental, pre-competitive research of shared interest to industry and government organizations. These organizations pay membership fees to a consortium so that they can collectively envision and fund research, with at least 90% of Member funds allocated to the direct costs of these shared research projects.

IUCRCs are formed around research areas of strategic interest to U.S. industry. Industry is defined very broadly to include companies (large and small), startups and non-profit organizations. Principal Investigators form a Center around emerging research topics of current research interest, in a pre-competitive space but with clear pathways to applied research and commercial development. Industry partners join at inception, as an existing Center grows, or they inspire the creation of a new Center by recruiting university partners to leverage NSF support. Government agencies participate in IUCRCs as Members or by partnering directly with NSF at the strategic level.

Universities, academic researchers, and students benefit from IUCRC participation through the research funding, the establishment and growth of industry partnerships, and educational and career placement opportunities for students. Industry Members benefit by accessing knowledge, facilities, equipment, and intellectual property in a highly cost-efficient model; leveraging Center research outcomes in their future proprietary projects; interacting in an informal, collaborative way with other private sector and government entities with shared interests; and identifying and recruiting talent. NSF provides funding to support Center administrative costs and a governance framework to manage membership, operations, and evaluation.

Sites within Centers will be required to provide data to NSF and/or its authorized representatives (contractors and/or grantees) annually—after the award expires for their fiscal year of activity—for the life of the Phase I, and if applicable, Phase II, and Phase III award(s).

Information collected are both quantitative and descriptive; they will provide managing Program Directors a means to monitor the operational and financial states of the Centers and ensure that the award is in good standing. These data will also allow NSF to assess the Centers in terms of intellectual, broader, and commercial impacts that are core to our review criteria. Finally, in compliance with the Evidence Act of 2019, information collected will be used in satisfying congressional requests, and supporting the agency's policymaking and reporting needs.

In addition to the agency's annual report requirement, Principal Investigators (IUCRC Center and Site Directors) of the awards are required to provide the following information:

Center-Related Information

- Center Data Reporting

○ A comprehensive annual survey collecting information on structure, funding, membership, personnel, and outcomes of the Center during a given reporting period. A Center must submit data for each fiscal year no later than September 30 of each year of operation, as well as after the award expires to describe its final year of activity.

Certification of Membership

○ A list of members and membership fees collected by the Center and certified by the respective university's Sponsored Research Office (SRO), Total

Program Income collected during the reporting period, In-kind Contributions during the reporting period, Allocation and Expenditures of each Site's research funds by project

Site Research Projects Summary

○ A list all projects in which the Site participated, including each project's goals; research tasks; key milestones, metrics/deliverables; developing results or outcomes; project budgets; and personnel.

• Assessment Coordinator Report

○ An independent assessment of the annual Center activities (this report is done by an independent evaluator, and uploaded by the Principal Investigator as part of the NSF annual reporting requirement).

Logistical Information

• IUCRC Directory

○ IUCRCs must provide accurate and current information for the online IUCRC directory (*http://iucrc.org/centers*). Instructions for updating and reporting information can be found at *http://www.nsf.gov/eng/iip/iucrc/directory/instructions.jsp.*

Optional

• IUCRC Impact Stories for Public Distribution

IUCRCs are highly encouraged to submit information on their emerging research highlights and significant breakthrough stories to NSF to showcase their impact to the public and industry (see *http://www.nsf.gov/eng/iip/iucrc*), including new products, technology creation and/or enhancements, intellectual property of significant commercial relevance, and major improvements in cost-savings, efficiency, sustainability, productivity, and job growth.

Not only do these data provide valuable information on program activities, products, outcomes, and impact, they also help to paint a detailed longitudinal view of the program, provide insights for benchmarking individual Center performance, advancing industry-university engagement approaches, strengthening future workforce, and contribute to the Nation's research and technology ecosystem.

Use of the Information: The information collected is for internal use by NSF, congressional requests, and for securing future funding for continued IUCRC program maintenance and growth.

Estimate Burden on the Public: Estimated at 16 hours per award for 250 sites for a total of 4,000 hours (per year).

Respondents: IUCRC Awardees (Academic Institutions).

Estimated Number of Respondents: One from each IUCRC site (estimated: 250 active sites/year).

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: June 23, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–13797 Filed 6–25–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

SUMMARY: The National Science Board's Executive Committee (EC), pursuant to National Science Foundation regulations, the National Science Foundation Act, as amended, and the Government in the Sunshine Act, hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows.

DATES: Thursday, July 2, 2020, from 10–11:00 a.m. EDT.

PLACE: This meeting will be held by teleconference through the National Science Foundation. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link at least 24 hours prior to the teleconference at this email address: *nationalsciencebrd@nsf.gov.*

STATUS: Open.

MATTERS TO BE CONSIDERED: Committee Chair's opening remarks; approval of Executive Committee minutes of April 10, 2020; and discuss issues and topics for an agenda of the NSB meetings scheduled for July 29–30, 2020.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: James Hamos, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: 703/292–8000. Email: *jhamos@nsf.gov.* Members of the public must contact the National Science Board Office to request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. Meeting information and updates may be found at *http://www.nsf.gov/nsb/notices/.jsp#sunshine.* Please refer to the National Science Board website at *www.nsf.gov/nsb* for general information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–13934 Filed 6–24–20; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17; NRC–2020–0134]

Portland General Electric Company; Trojan Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a license amendment application from Portland General Electric Company (PGE), requesting to amend License No. SNM–2509 for the Trojan Independent Spent Fuel Storage Installation (ISFSI), located in Columbia County, Oregon. The amendment would revise the description in the safety analysis report of the licensee's evaluation of explosion accident events.

DATES: A request for a hearing must be filed by August 25, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0134 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0134. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical

questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The license amendment request and the NRC acceptance letter are available in ADAMS under Accession Nos. ML20083G798 and ML20149K631, respectively.

FOR FURTHER INFORMATION CONTACT: Chris Allen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–6877 telephone: 301–415–6877; email: *William.Allen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated March 10, 2020, as supplemented by phone on May 12, 2020, and by email on May 15, 2020 (ADAMS Accession Nos. ML20083G798, ML20140A269 and ML20140A017, respectively), PGE requested to amend its license for the Trojan ISFSI, located in Columbia County, Oregon. License No. SNM–2509 authorizes the licensee to receive, store, and transfer spent fuel from the Trojan Nuclear Plant. The amendment, if granted, would revise the description in the safety analysis report of the licensee's evaluation of explosion accident events. The amendment would address a new anchorage point on the Columbia River near the ISFSI and incorporate a new method of evaluating explosion accident events.

An NRC administrative completeness review found the application acceptable for a technical review (ADAMS Accession No. ML20149K631). Prior to approving the amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. In the amendment request, Portland General Electric Company asserted that the proposed amendment satisfies the categorical exclusion criteria of 10 CFR 51.22(c)(11). After reviewing the amendment request, the NRC will make findings consistent with the National Environmental Policy Act (NEPA) and 10 CFR part 51.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated: June 23, 2020.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–13798 Filed 6–25–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–182 and CP2020–206]

New Postal Product

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:* June 30, 2020.

ADDRESSES: Submit comments electronically via the Commission's

Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–182 and CP2020–206; *Filing Title:* USPS Request to Add Priority Mail Contract 629 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 22, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Curtis E. Kidd; *Comments Due:* June 30, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–13796 Filed 6–25–20; 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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89116; File No. SR–BOX–2020–24]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BOX Rule 16000 Series (Consolidated Audit Trail Compliance Rule)

June 22, 2020.

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 June 22, 2020, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 16000 Series (Consolidated Audit Trail Compliance Rule) (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') [3] to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 this proposed rule change is to amend the Rule 16000 Series, the Compliance Rule regarding the CAT NMS Plan, to be consistent with certain exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. As described more fully below, the proposed rule change would make the following changes to the Compliance Rule:

- Add additional data elements to the consolidated audit trail (''CAT'') reporting requirements for Industry Members to facilitate the retirement of the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System (''OATS'');
- Add additional data elements related to OTC Equity Securities that FINRA currently receives from alternative trading systems (''ATSs'') that trade OTC Equity Securities for regulatory oversight purposes to the CAT reporting requirements for Industry Members;
- Implement a phased approach for Industry Member reporting to the CAT (''Phased Reporting'');
- To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) (''Adopting Release''). Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

revise the timestamp granularity requirement to require such Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds;

- Require Introducing Industry Members (as defined below) to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members;
- Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, ''individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' (collectively, referred to as ''SSNs'') or account numbers; and
- Revise the CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA's trade reports submitted to the CAT.

i. CAT–OATS Data Gaps

The Participants have worked to identify gaps between data reported to existing systems and data to be reported to the CAT to ''ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.'' [4] As a result of this process, the Participants identified several data elements that must be included in the CAT reporting requirements before existing systems can be retired. In particular, the Participants identified certain data elements that are required by OATS, but not currently enumerated in the CAT NMS Plan. Accordingly, the Exchange proposes to amend its Compliance Rule to include these OATS data elements in the CAT. Each of such OATS data elements are discussed below. With the addition of these OATS data elements to the CAT, the CAT will have the data elements necessary to retire OATS.

A. Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members [5] to record the identification of information barriers for certain order events, including when an order is received or originated, transmitted to a department within the OATS Reporting Member, and when it is modified. The Participants propose to amend the Compliance Rule to incorporate these requirements into the CAT.

Specifically, FINRA Rule 7440(b)(20) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.'' [6] The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(vii) to Rule 16030, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member where the order was received or originated.''

In addition, FINRA Rule 7440(c)(1) states that ''[w]hen a Reporting Member transmits an order to a department within the member, the Reporting Member shall record: . . . (H) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.'' The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to revise paragraph (a)(1)(B)(vi) of Rule 16030 to require, for the routing of an order, if routed internally at the Industry Member, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member to which the order was transmitted.''

FINRA Rule 7440(c)(2)(B) and 7440(c)(4)(B) require an OATS Reporting Member that receives an order transmitted from another member to report the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rule not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(C)(vii) to Rule 16030, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received the order.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification to the terms of an order to report the unique identification of any appropriate information barriers in place at the department within the member to which the modification was originated or received. The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(vii) to Rule 16030, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received or originated the modification.''

B. Reporting Requirements for ATSs

Under FINRA Rule 4554, ATSs that receive orders in NMS stocks are required to report certain order information to OATS, which FINRA uses to reconstruct ATS order books and perform order-based surveillance, including layering, spoofing, and mid-point pricing manipulation surveillance.[7] The Participants believe that Industry Members operating ATSs—whether such ATS trades NMS stocks or OTC Equity Securities—should likewise be required to report this information to the CAT. Because ATSs that trade NMS stocks are already recording this information and reporting it to OATS, the Participants believe that reporting the same information to the CAT should impose little burden on these ATSs. Moreover, including this information in the CAT is also necessary for FINRA to be able to retire the OATS system. The Participants similarly believe that obtaining the same information from ATSs that trade OTC Equity Securities will be important for purposes of reconstructing ATS order books and surveillance. Accordingly, the Exchange proposes to add to the data reporting requirements in the

[4] Letter from Participants to Brent J. Fields, Secretary, SEC, re: File Number 4–698; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail (September 23, 2016) at 21 (''Participants' Response to Comments'') (available at *https://www.sec.gov/comments/4-698/4698-32.pdf*).

[5] An OATS ''Reporting Member'' is defined in FINRA Rule 7410(o).

[6] FINRA Rule 5320 prohibits trading ahead of customer orders.

[7] *See* FINRA *Regulatory Notice* 16–28 (August 2016).

Compliance Rule the reporting requirements for ATSs in FINRA Rule 4554,[8] but to expand such requirements so that they are applicable to all ATSs rather than solely to ATSs that trade NMS stocks.

(i) New Definition

The Exchange proposes to add a definition of ''ATS'' to new paragraph (d) of Rule 16010 to facilitate the addition to the CAT of the reporting requirements for ATSs set forth in FINRA Rule 4554. The Exchange proposes to define an ''ATS'' to mean ''an alternative trading system, as defined in Rule 300(a)(1) of Regulation ATS under the Exchange Act.''

(ii) ATS Order Type

FINRA Rule 4554(b)(5) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

A unique identifier for each order type offered by the ATS. An ATS must provide FINRA with (i) a list of all of its order types 20 days before such order types become effective and (ii) any changes to its order types 20 days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

The Compliance Rule does not require Industry Members to report such order type information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: Paragraphs (a)(1)(A)(xi)(1), (a)(1)(C)(x)(1), (a)(1)(D)(ix)(1) and (a)(2)(D) of Rule 16030.

Proposed paragraph (a)(1)(A)(xi)(1) of Rule 16030 would require an Industry Member that operates an ATS to record and report to the Central Repository for the original receipt or origination of an order ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(C)(x)(1) of Rule 16030 would require an Industry Member that operates an ATS to record and report to the Central Repository for the receipt of an order that has been routed ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(D)(ix)(1) of Rule 16030 would require an Industry Member that operates an ATS to record and report to the Central Repository if the order is modified or cancelled ''the ATS's unique identifier for the order type of the order.'' Furthermore, as with the requirements in FINRA Rule 4554(b)(5), proposed paragraph (a)(2)(D) of Rule 16030 would state that:

An Industry Member that operates an ATS must provide to the Central Repository: (1) A list of all of its order types twenty (20) days before such order types become effective; and (2) any changes to its order types twenty (20) days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

(iii) National Best Bid and Offer

FINRA Rules 4554(b)(6) and (7) require the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

(6) The NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(7) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (6). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, FINRA Rule 4554(c) requires the following information to be recorded and reported to FINRA by ATSs when reporting the execution of an order to OATS:

(1) The NBBO (or relevant reference price) in effect at the time of order execution;

(2) The timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(3) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (1). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

The Compliance Rule does not require Industry Members to report such NBBO information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: (a)(1)(A)(xi)(2)–(3), (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 16030.

Specifically, proposed paragraph (a)(1)(A)(xi)(2)–(3) of Rule 16030 would require an Industry Member that operates an ATS to record and report to the Central Repository the following information when reporting the original receipt or origination of order:

(2) the National Best Bid and National Best Offer (or relevant reference price) at the time of order receipt or origination, and the date and time at which the ATS recorded such National Best Bid and National Best Offer (or relevant reference price);

(3) the identification of the market data feed used by the ATS to record the National Best Bid and National Best Offer (or relevant reference price) for purposes of subparagraph (xi)(2). If for any reason the ATS uses an alternative market data feed than what was reported on its ATS data submission, the ATS must provide notice to the Central Repository of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, proposed paragraphs (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 16030 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed, when reporting if the order is modified or cancelled, and when an order has been executed, respectively.

(iv) Sequence Numbers

FINRA Rule 4554(d) states that ''[f]or all OATS-reportable event types, all ATSs must record and report to FINRA the sequence number assigned to the order event by the ATS's matching engine.'' The Compliance Rule does not require Industry Members to report ATS sequence numbers to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate this requirement regarding ATS sequence numbers into each of the Reportable Events for the CAT. Specifically, the Exchange proposes to add proposed paragraph (a)(1)(A)(xi)(4) to Rule 16030, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt or origination of the order by the ATS's matching engine.'' The Exchange proposes to add proposed paragraph (a)(1)(B)(viii) to Rule 16030, which would require an Industry Member that operates an ATS to record and report to the Central

[8] FINRA Rule 4554 was approved by the SEC on May 10, 2016, while the CAT NMS Plan was pending with the Commission. *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (Order Approving SR–FINRA–2016–010). As noted in the Participants' Response to Comments, throughout the process of developing the Plan, the Participants worked to keep the gap analyses for OATS, electronic blue sheets, and the CAT up-to-date, which included adding data fields related to the tick size pilot and ATS order book amendments to the OATS rules. *See* Participants' Response to Comments at 21. However, due to the timing of the expiration of the tick size pilot, the Participants decided not to include those data elements into the CAT NMS Plan.

Repository ''the sequence number assigned to the routing of the order by the ATS's matching engine.'' The Exchange also proposes to add proposed paragraph (a)(1)(C)(x)(4) to Rule 16030, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt of the order by the ATS's matching engine.'' In addition, the Exchange proposes to add proposed paragraph (a)(1)(D)(ix)(4) to Rule 16030, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the modification or cancellation of the order by the ATS's matching engine.'' Finally, the Exchange proposes to add proposed paragraph (a)(1)(E)(viii)(3) to Rule 16030, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the execution of the order by the ATS's matching engine.''

(v) Modification or Cancellation of Orders by ATSs

FINRA Rule 4554(f) states that ''[f]or an ATS that displays subscriber orders, each time the ATS's matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report to OATS the time of such modification,'' and ''the applicable new display price or size.'' The Exchange proposes adding a comparable requirement into new paragraph (a)(1)(D)(ix)(5) to Rule 16030. Specifically, proposed new paragraph (a)(1)(D)(ix)(5) of Rule 16030 would require an Industry Member that operates an ATS to report to the Central Repository, if the order is modified or cancelled, ''each time the ATS's matching engine re-prices an order or changes the quantity of an order,'' the ATS must report to the Central Repository ''the time of such modification, and the applicable new price or size.'' Proposed paragraph (a)(1)(D)(ix)(5) of Rule 16030 would apply to all ATSs, not just ATSs that display orders.

(vi) Display of Subscriber Orders

FINRA Rule 4554(b)(1) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

> Whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data);

The Compliance Rule does not require Industry Members to report to the CAT such information about the displaying of subscriber orders. The Exchange proposes to add comparable requirements into proposed paragraphs (a)(1)(A)(xi)(5) and (a)(1)(C)(x)(5) of Rule 16030. Specifically, proposed paragraph (a)(1)(A)(xi)(5) would require an Industry Member that operates an ATS to report to the Central Repository, for the original receipt or origination of an order,

> whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data.

Similarly, proposed paragraph (a)(1)(C)(x)(5) of Rule 16030 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed.

C. Customer Instruction Flag

FINRA Rule 7440(b)(14) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Compliance Rule does not require Industry Members to report to the CAT such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(A)(viii) to Rule 16030, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Exchange also proposes to add paragraph (a)(1)(C)(ix) to Rule 16030, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification of an order to report the customer instruction flag. The Compliance Rule does not require Industry Members to report such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(D)(viii) to Rule 16030, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

D. Department Type

FINRA Rules 7440(b)(4) and (5) require an OATS Reporting Member that receives or originates an order to record the following information: ''the identification of any department or the identification number of any terminal where an order is received directly from a customer'' and ''where the order is originated by a Reporting Member, the identification of the department of the member that originates the order.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the department or terminal where the order is received or originated. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(A)(ix) to Rule 16030, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the nature of the department or desk that originated the order, or received the order from a Customer.''

Similarly, per FINRA Rules 7440(c)(2)(B) and (4)(B), when an OATS Reporting Member receives an order that has been transmitted by another Member, the receiving OATS Reporting Member is required to record the information required in 7440(b)(4) and (5) described above as applicable. The Compliance Rule does not require Industry Members to report to the CAT information regarding the department that received an order. To address this OATS–CAT data gap, the Exchange propose to add paragraph (a)(1)(C)(viii) to Rule 16030, which would require Industry Members to record and report to the Central Repository upon the receipt of an order that has been routed ''the nature of the department or desk that received the order.''

E. Account Holder Type

FINRA Rule 7440(b)(18) requires an OATS Reporting Member that receives or originates an order to record the following information: ''the type of account, *i.e.,* retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.'' The Compliance Rule does not require

Industry Members to report to the CAT information regarding the type of account holder for which the order is submitted. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(A)(x) to Rule 16030, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the type of account holder for which the order is submitted.''

ii. OTC Equity Securities

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently receives from ATSs that trade OTC Equity Securities for regulatory oversight purposes, but are not currently included in CAT Data. In particular, the Participants identified three data elements that need to be added to the CAT: (1) Bids and offers for OTC Equity Securities; (2) a flag indicating whether a quote in OTC Equity Securities is solicited or unsolicited; and (3) unpriced bids and offers in OTC Equity Securities. The Participants believe that such data will continue to be important for regulators to oversee the OTC Equity Securities market when using the CAT. Moreover, the Participants do not believe that the proposed requirement would burden ATSs because they currently report this information to FINRA and thus the reporting requirement would merely shift from FINRA to the CAT. Accordingly, as discussed below, the Exchange proposes to amend its Compliance Rule to include these data elements.

A. Bids and Offers for OTC Equity Securities

In performing its current regulatory oversight, FINRA receives a data feed of the best bids and offers in OTC Equity Securities from ATSs that trade OTC Equity Securities. These best bid and offer data feeds for OTC Equity Securities are similar to the best bid and offer SIP Data required to be collected by the Central Repository with regard to NMS Securities.[9] Accordingly, the Exchange proposes to add paragraph (f)(1) to Rule 16030 to require the reporting of the best bid and offer data feeds for OTC Equity Securities to the CAT. Specifically, proposed paragraph (f)(1) of Rule 16030 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the best bid and best offer for each OTC Equity Security traded on such ATS.''

B. Unsolicited Bid or Offer Flag

FINRA also receives from ATSs that trade OTC Equity Securities an indication whether each bid or offer in OTC Equity Securities on such ATS was solicited or unsolicited. Therefore, the Exchange proposes to add paragraph (f)(2) to Rule 16030 to require the reporting to the CAT of an indication as to whether a bid or offer was solicited or unsolicited. Specifically, proposed paragraph (f)(2) of Rule 16030 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''an indication of whether each bid and offer for OTC Equity Securities was solicited or unsolicited.''

C. Unpriced Bids and Offers

FINRA receives from ATSs that trade OTC Equity Securities certain unpriced bids and offers for each OTC Equity Security traded on the ATS. Therefore, the Exchange proposes to add paragraph (f)(3) to Rule 16030, which would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the unpriced bids and offers for each OTC Equity Security traded on such ATS.''

iii. Revised Industry Member Reporting Timeline

On February 19, 2020, the Participants filed with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for the implementation of phased reporting to the CAT by Industry Members (''Phased Reporting'').[10] Specifically, in their exemptive request, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members other than Small Industry Members (''Large Industry Members'') to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Small Industry Members [11] to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Correspondingly, the Participants requested that the SEC provide an exemption from the requirement in Section 6.4 of the CAT NMS Plan that ''[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.'' On April 20, 2020, the SEC granted the Participants exemptive relief to implement Phased Reporting, subject to certain timeline changes and conditions.[12]

As a condition to the exemption, each Participant would implement Phased Reporting through its Compliance Rule by requiring:

(1) Its Large Industry Members and its Small Industry Members that are required to record or report information to OATS pursuant to applicable SRO rules (''Small Industry OATS Reporters'') to commence reporting to the Central Repository Phase 2a Industry Member Data by June 22, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by July 20, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository

[9] Section 6.5(a)(ii) of the CAT NMS Plan.

[10] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

[11] *See* Section 1.1 of the CAT NMS Plan.

[12] *See* Securities Exchange Act Release No. 88702 (April 20, 2020), 85 FR 23075 (April 24, 2020). As discussed in the SEC's exemptive order, the Commission granted the Participants conditional exemptive relief from the CAT NMS Plan so that the Compliance Rules may require Phase 2a reporting to commence on June 22, 2020, rather than the April 20, 2020 date set forth in the exemptive request, and Phase 2b reporting to commence on July 20, 2020, rather than the May 18, 2020 date set forth in the exemptive request. As a condition to the exemptive relief, Industry Members who elect to report to the CAT prior to such dates will be permitted to report to the CAT as early as April 20, 2020 for Phase 2a reporting and as early as May 18, 2020 for Phase 2b reporting.

Phase 2d Industry Member Data by December 13, 2021; and

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data required under the CAT NMS Plan will be required to be reported when all five phases of the Phased Reporting have been implemented, subject to any applicable exemptive relief or amendments related to the CAT NMS Plan.

As a further condition to the exemption, each Participant proposes to implement the testing timelines described in Section F below through its Compliance Rule by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

As a result, the Exchange proposes to amend its Compliance Rule to be consistent with the exemptive relief to implement Phased Reporting as described below.

A. Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by June 22, 2020.[13] To implement the Phased Reporting for Phase 2a, the Exchange proposes to add paragraph (t)(1) of Rule 16010 (previously paragraph (s)) and amend paragraphs (c)(1) and (2) of Rule 16095.

(i) Scope of Reporting in Phase 2a

To implement the Phased Reporting with respect to Phase 2a, the Exchange proposes to add a definition of ''Phase 2a Industry Member Data'' as paragraph (t)(1) of Rule 16010. Specifically, the Exchange proposes to define the term ''Phase 2a Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2a.'' Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. While the following summarizes categories of Industry Member Data required for Phase 2a, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2a.[14]

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a. The inclusion of all OATS events and scenarios in the CAT is intended to facilitate the retirement of OATS.

Phase 2a Industry Member Data also would include Reportable Events for:

- Proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF'');
- electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''*IDQS*''); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by paragraphs (a)(1)(A)(i), and (a)(2)(C) of Rule 16030. Paragraph (a)(1)(A)(i) of Rule 16030 requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Paragraph (a)(2)(C) of Rule 16030 requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID if the order is executed, in whole or in part.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) The representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Rule 16030, Industry Members would be required to provide a timestamp pursuant to Rule 16060. Rule 16060(b)(i) states that

> Each Industry Member may record and report: Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Members shall record and report the time when a Manual Order Event has been captured electronically in an order handling

[13] Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters'') would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by December 13, 2021, which is approximately seventeen months after Large Industry Members and Small Industry OATS Reporters begin reporting.

[14] The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c or Phase 2d, as discussed below.

and execution system of such Industry Member (''*Electronic Capture Time*'') in milliseconds.

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.[15]

Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (''ISO''). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.[16] In addition, in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.

(ii) Timing of Phase 2a Reporting

Pursuant to paragraph (c)(1) of Rule 16095, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2a for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 16095 with new paragraph (c)(1)(A) of Rule 16095, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by June 22, 2020.''

Pursuant to paragraph (c)(2) of Rule 16095, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2a for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 16095 with new paragraphs (c)(2)(A) and (B) of Rule 16095. Proposed paragraph (c)(2)(A) of Rule 16095 would state that

> Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: (A) Small Industry Members that are required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by June 22, 2020.

Proposed paragraph (c)(2)(B) of Rule 16095 would state that ''Small Industry Members that are not required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry Non-OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by December 13, 2021.''

B. Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by July 20, 2020. Small Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by December 13, 2021, which is approximately seventeen months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2b, the Exchange proposes to add paragraph (t)(2) to Rule 16010 and amend paragraphs (c)(1) and (2) of Rule 16095.

(i) Scope of Phase 2b Reporting

To implement the Phased Reporting with respect to Phase 2b, the Exchange proposes to add a definition of ''Phase 2b Industry Member Data'' as paragraph (t)(2) to Rule 16010. Specifically, the Exchange proposes to define the term ''Phase 2b Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2b.'' Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. While the following summarizes the categories of Industry Member Data required for Phase 2b, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2b.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.[17] A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are also reportable in Phase 2b.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by Exchange rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

(ii) Timing of Phase 2b Reporting

Pursuant to paragraph (c)(1) of Rule 16095, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 16095 with new paragraph (c)(1)(B) of Rule 16095, which would state, in relevant part, that ''Each

[15] Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

[16] This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

[17] The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below in Section A.4.

Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (B) Phase 2b Industry Member Data by July 20, 2020.''

Pursuant to paragraph (c)(2) of Rule 16095, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2b for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 16095 with new paragraph (c)(2)(C) of Rule 16095, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository Phase 2b Industry Member Data . . . by December 13, 2021.''

C. Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by April 26, 2021. Small Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by December 13, 2021, which is approximately seven months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2c, the Exchange proposes to add paragraph (t)(3) to Rule 16010 and amend paragraphs (c)(1) and (2) of Rule 16095.

(i) Scope of Phase 2c Reporting

To implement the Phased Reporting with respect to Phase 2c, the Exchange proposes to add a definition of ''Phase 2c Industry Member Data'' as paragraph (t)(3) to Rule 16010. Specifically, the Exchange proposes to define the term ''Phase 2c Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2c.'' Phase 2c Industry Member Data'' would be Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data or Phase 2e Industry Member Data. Phase 2c Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. While the following summarizes the categories of Industry Member Data required for Phase 2c, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2c.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of large trader identifiers [18] (''LTID'') (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date [19] (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for all representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[20]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) An equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the Alternative Display Facility (ADF) operated by FINRA; or (b) for unlisted equity securities to an ''inter-dealer quotation system'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.

(ii) Timing of Phase 2c Reporting

Pursuant to paragraph (c)(1) of Rule 16095, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2c for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 16095 with new paragraph (c)(1)(C) of Rule 16095, which would state, in relevant part, that ''Each Industry Member (other than a Small

[18] *See* definition of ''Customer Account Information'' in Section 1.1 of the CAT NMS Plan. *See also* Rule 13h–1 under the Exchange Act.

[19] *See* definition of ''Customer Account Information'' and ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan. Note that the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 16010 to replace the references to November 15, 2018 and 2019 with references to the commencement of Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

[20] In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an OMS and represented by a principal order originated in an EMS that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Phase 2c Industry Member Data by April 26, 2021.''

Pursuant to paragraph (c)(2) of Rule 16095, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2c for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 16095 with new paragraph (c)(2)(C) of Rule 16095, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2c Industry Member Data . . . by December 13, 2021.''

D. Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2d Industry Member Data'' by December 13, 2021. To implement the Phased Reporting for Phase 2d, the Exchange proposes to add paragraph (t)(4) to Rule 16010 and amend paragraphs (c)(1) and (2) of Rule 16095.

(i) Scope of Phase 2d Reporting

To implement the Phased Reporting with respect to Phase 2d, the Exchange proposes to add a definition of ''Phase 2d Industry Member Data'' as paragraph (t)(4) to Rule 16010. Specifically, the Exchange proposes to define the term ''Phase 2d Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2d.'' [21]

''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d. While the following summarizes the categories of Industry Member Data required for Phase 2d, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2d.

Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) Simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; [22] (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders.

Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition would be reportable in Phase 2d for options.

Phase 2d Industry Member Data also would include with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).

(ii) Timing of Phase 2d Reporting

Pursuant to paragraph (c)(1) of Rule 16095, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2d for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 16095 with new paragraph (c)(1)(D) of Rule 16095, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (D) Phase 2d Industry Member Data by December 13, 2021.''

Pursuant to paragraph (c)(2) of Rule 16095, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 16095 with new paragraph (c)(2)(C) of Rule 16095, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2d Industry Member Data by December 13, 2021.''

E. Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2e Industry Member Data'' by July 11, 2022. To implement the Phased Reporting for Phase 2e, the Exchange proposes to add paragraph (t)(5) to Rule

[21] The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

[22] As noted above, the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 16010 to replace the references to November 15, 2018 and 2019 with references to the commencement of Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

16010 and amend paragraphs (c)(1) and (2) of Rule 16095.

(i) Scope of Phase 2e Reporting

To implement the Phased Reporting with respect to Phase 2e, the Exchange proposes to add a definition of ''Phase 2e Industry Member Data'' as paragraph (t)(5) of Rule 16010. Specifically, the Exchange proposes to define the term ''Phase 2e Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2e. The full scope of Industry Member Data required by the CAT NMS Plan will be required to be reported to the CAT when Phase 2e has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.'' LTIDs and Account Effective Date are both required to be reported in Phases 2c and 2d in certain circumstances, as discussed above. The terms ''Customer Account Information'' and ''Customer Identifying Information'' are defined in Rule 16010 of the Compliance Rule.[23] The Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2e.

(ii) Timing of Phase 2e Reporting

Pursuant to paragraph (c)(1) of Rule 16095, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2e for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 16095 with new paragraph (c)(1)(E) of Rule 16095, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Phase 2e Industry Member Data by July 11, 2022.''

Pursuant to paragraph (c)(2) of Rule 16095, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2e for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 16095 with new paragraph (c)(2)(D) of Rule 16095, which would state, in relevant part, that ''[e]ach Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Small Industry Members to report to the Central Repository Phase 2e Industry Member Data by July 11, 2022.''

F. Industry Member Testing Requirements

Rule 16080(a) sets forth various compliance dates for the testing and development for connectivity, acceptance and the submission order data. In light of the intent to shift to Phased Reporting in place of the two specified dates for the commencement of reporting for Large and Small Industry Members, the Exchange correspondingly proposes to replace the Industry Member development testing milestones in Rule 16080(a) with the testing milestones set forth in exemptive relief. Specifically, the Exchange proposes to replace Rule 16080(a) with the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.

(3) The Industry Member test environment shall open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment shall open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment shall open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting shall begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

iv. Granularity of Timestamps

On February 3, 2020, the Participants filed with the Commission a request for exemptive relief from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository.[24] On April 8, 2020, the Participants received the exemptive relief.[25] As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances. The timestamp granularity exemption remains in effect for five years, until April 8, 2025. After five years, the exemption would no longer be in effect unless the period the exemption is in effect is extended by the SEC.

Accordingly, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief. Specifically, the Exchange proposes to amend paragraph (a)(2) of Rule 16060. Rule 16060(a)(2) states that

> Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment.

The Exchange proposes to amend this provision to read as follows to reflect the exemptive relief:

> Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds; provided, that Industry Members that capture timestamps in

[23] The term ''Customer Account Information'' includes account numbers, and the term ''Customer Identifying Information'' includes, with respect to individuals, dates of birth and SSNs. *See* Rule 16010. The Participants have received exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). *See* also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020). Given the relief has been granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

[24] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

[25] *See* Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

increments more granular than nanoseconds must truncate the timestamps after the nanosecond level for submission to CAT, rather than rounding such timestamps up or down, until April 8, 2025.

v. Introducing Industry Members

On February 3, 2020, the Participants requested that the Commission exempt broker-dealers that do not qualify as Small Industry Members solely because they satisfy Rule 0–10(i)(2) under the Exchange Act and, as a result, are deemed affiliated with an entity that is not a small business or small organization (''Introducing Industry Member'') from the requirements in the CAT NMS Plan applicable to Industry Members other than Small Industry Members (''Large Industry Members'').[26] Instead, such Introducing Industry Members would comply with the requirements in the CAT NMS Plan applicable to Small Industry Members. On April 20, 2020, the SEC granted the Participants exemptive relief with regard to Introducing Industry Members.[27]

As a result, the Exchange proposes to amend its Compliance Rule to adopt a definition of ''Introducing Industry Member'' and to revise Rule 16085 to require Introducing Industry Members to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members. Specifically, the Exchange proposes to define ''Introducing Industry Member'' in proposed paragraph (v) to Rule 16010, as ''a broker-dealer that does not qualify as a Small Industry Member solely because such broker-dealer satisfies Rule 0–10(i)(2) under the Exchange Act in that it introduces transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations.'' The Exchange also proposes to add a new paragraph (3) to Rule 16095(c) to state that ''Introducing Industry Members must comply with the requirements of the CAT NMS Plan applicable to Small Industry Members.'' With these changes, Introducing Industry Members would be required to comply with the requirements in the CAT NMS Plan applicable to Small Industry Members, rather than the requirements in the CAT NMS Plan applicable to Large Industry Members.

vi. CCID/PII

On January 29, 2020, the Participants filed with the Commission a request for exemptive relief from certain requirements related to reporting SSNs, dates of birth and account numbers to the CAT.[28] The Commission, Participants and others indicated security concerns with maintaining such sensitive Customer information in the CAT. On March 17, 2020, the Participants received the exemptive relief, subject to certain conditions.[29] Assuming the Participants comply with the conditions set forth in the PII Exemption Order, Industry Members would not be required to report SSNs, dates of birth and account numbers to the CAT NMS Plan.

As described in the request for exemptive relief, the Participants requested exemptive relief to allow for an alternative approach to generating a CAT Customer ID (''CCID'') without requiring Industry Members to report SSNs to the CAT (the ''CCID Alternative''). In lieu of retaining such SSNs in the CAT, the Participants would use the CCID Alternative, a strategy developed by the Chief Information Security Officer for the CAT and the Chief Information Security Officers from each of the Participants, in consultation with security experts from member firms of Securities Industry and Financial Markets Association. The CCID Alternative facilitates the ability of the Plan Processor to generate a CCID without requiring the Plan Processor to receive SSNs or store SSNs within the CAT. Under the CCID Alternative, the Plan Processor would generate a unique CCID using a two-phase transformation process that avoids having SSNs reported to or stored in the CAT. In the first transformation phase, a CAT Reporter would transform the SSN to an interim value (the ''transformed value''). This transformed value, and not the SSN, would be submitted to a separate system within the CAT (''CCID Subsystem''). The CCID Subsystem would then perform a second transformation to create the globally unique CCID for each Customer that is unknown to, and not shared with, the original CAT Reporter. The CCID would then be sent to the customer and account information system of the CAT, where it would be linked with the other customer and account information. The CCID may then be used by the Participants' regulatory staff and the SEC in queries and analysis of CAT Data. To implement the CCID Alternative, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report SSNs to the Central Repository for the original receipt of an order. As set forth in one condition of the PII Exemption Order, Industry Members would be required to transform an SSN to an interim value, and report the transformed value to the CAT.

The Participants also requested exemptive relief to allow for an alternative approach which would exempt the reporting of dates of birth and account numbers [30] to the CAT (''Modified PII Approach''), and instead would require Industry Members to report the year of birth and the Firm Designated ID for each trading account associated with the Customers. To implement the Modified PII Approach, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order dates of birth and account numbers for Customers. As conditions to the exemption, Industry Members would be required to report the year of birth of an individual to the Central Repository, and to report the Firm Designated ID to the Central Repository.

To implement the request for exemptive relief and to eliminate the requirement to report SSNs, date of birth and account numbers to the CAT, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief. Rule 16030(a)(2)(C) states that

> [s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information

[26] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Small Industry Members (Feb. 3, 2020).

[27] *See* Securities Exchange Act Release No. 88703 (April 20, 2020), 85 FR 23115 (April 24, 2020).

[28] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

[29] *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020) (Order Granting Conditional Exemptive Relief, Pursuant to Section 36 and Rule 608(e) of the Securities Exchange Act of 1934, from Section 6.4(d)(ii)(C) and Appendix D Sections 4.1.6, 6.2, 8.1.1, 8.2, 9.1, 9.2, 9.4, 10.1, and 10.3 of the National Market System Plan Governing the Consolidated Audit Trail) (''PII Exemption Order''). The PII Exemption Order lists several conditions that must be met by the Exchange. If the Exchange does not satisfy the conditions, the PII Exemption Order would not apply to the Exchange.

[30] With respect to this aspect of the requested relief, the PII Exemption Order provided relief with regard to the reporting of all account numbers, not just account numbers for individuals as requested by the Participants.

referred to in Rule 16030(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with Rule 16040, Customer Account Information and Customer Identifying Information for the relevant Customer.

Similarly, Rule 16040 requires the reporting of Customer Account Information and Customer Identifying Information to the Central Repository. Currently, Rule 16010(m) defines ''Customer Identifying Information'' to include, with respect to individuals, ''date of birth'' and ''individual tax payer identification number (''ITIN'')/social security number (''SSN'').'' Accordingly, the Exchange proposes to replace ''date of birth'' in the definition of ''Customer Identifying Information'' in Rule 16010(m) (now renumbered Rule 16010(n)) with ''year of birth'' and to delete ''individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' from Rule 16010(m) (now renumbered Rule 16010(n)). In addition, currently, Rule 16010(l) defines ''Customer Account Information'' to include account numbers. The Exchange proposes to delete ''account number'' from the definition of ''Customer Account Information'' in Rule 16010(l) (now renumbered Rule 16010(m)).

The Exchange also proposes to add a definition of the term ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to Rule 16010. Specifically, the Exchange proposes to add paragraph (pp) to Rule 16010 to define ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to mean ''the interim value created by an Industry Member based on a Customer ITIN/SSN.''

The Exchange proposes to revise Rule 16030(a)(2)(C) to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''). Specifically, the Exchange proposes to revise Rule 16030(a)(2)(C) to state:

> [s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 16030(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), and in accordance with Rule 16040, Customer Account Information and Customer Identifying Information for the relevant Customer.

The Exchange also proposes to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') in the Customer information reporting required under Rule 16040. Specifically, the Exchange proposes to revise Rule 16040(a) to require each Industry Member to submit to the Central Repository the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), for each of its Customers with an Active Account prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 16080. The Exchange also proposes to revise Rule 16040(b) to require each Industry Member to submit to the Central Repository any updates, additions or other changes to the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account on a daily basis. In addition, the Exchange proposes to revise Rule 16040(c) to require, on a periodic basis as designated by the Plan Processor and approved by the Operating Committee, each Industry Member to submit to the Central Repository a complete set of the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account. The Exchange also proposes to revise Rule 16040(d) to require, for each Industry Member for which errors in the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member to submit corrected data to the Central Repository by 5:00 p.m. Eastern Time on T+3.

Paragraph (1)(B) of Rule 16010(m), the definition of ''Customer Account Information'' states that ''in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will'' . . . ''provide the relationship identifier in lieu of the ''account number.'' As an account number will no longer be an element in ''Customer Account Information,'' the relationship identifier used in lieu of the account number will no longer be required as an element of Customer Account Information. Therefore, the Exchange proposes to delete the requirement set forth in Rule 16010(m)(a)(B) regarding relationship identifiers from Rule 16010(m).

With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers pursuant to Rule 16030(a)(2)(C). However, Industry Members would be required to report the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') and the year of birth to the Central Repository.[31]

vii. FINRA Facility Data Linkage

On June 5, 2020, the Participants filed with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for an alternative approach to the reporting of clearing numbers and cancelled trade indicators.[32] The SEC provided this exemptive relief on June 11, 2020.[33] FINRA is required to report to the Central Repository data collected by FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility (collectively, ''FINRA Facility'') pursuant to applicable SRO rules (''FINRA Facility Data''). Included in this FINRA Facility Data is the clearing number of the clearing broker for a reported trade as well as the cancelled trade indicator. Under this alternative approach, the clearing number and the cancelled trade indicator of the FINRA Facility Data that is reported to the CAT would be linked to the related execution reports reported by Industry Members. To implement this approach in a phased manner, the Participants received exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository: (1) If the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable; and (2) if the trade is cancelled, a cancelled

[31] The Exchange anticipates that the Compliance Rule may be further amended when further details regarding the CCID Alternative are finalized.

[32] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (June 5, 2020).

[33] *See* Securities Exchange Act Release No. 89051 (June 11, 2020) (**Federal Register** publication pending).

trade indicator, subject to certain conditions.

As a condition to this exemption, the Participants would continue to require Industry Members to submit a trade report for a trade, and, if the trade is cancelled, a cancellation, to a FINRA Facility pursuant to applicable SRO rules, and to report the corresponding execution to the Central Repository. In addition, Industry Members would be required to report to the Central Repository the unique trade identifier reported to a FINRA Facility with the corresponding trade report. Furthermore, if an Industry Member does not submit a cancellation to a FINRA Facility, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator and cancelled trade timestamp if the trade is cancelled. Similarly, if an Industry Member does not submit the clearing number of the clearing broker to a FINRA Facility for a trade, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository the clearing number as well as contra party information.

As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief to implement this alternative approach. Specifically, the Exchange proposes to require Industry Members to report to the CAT with an execution report the unique trade identifier reported to a FINRA facility with the corresponding trade report. For example, the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting Facility, it would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility, it would the FINRA Compliance Number. This unique trade identifier would be used to link the FINRA Facility Data with the execution report in the CAT. Specifically, the Exchange proposes to add new paragraph (a)(2)(E) to Rule 16030, which states that:

(E) If an Industry Member is required to submit and submits a trade report for a trade, and, if the trade is cancelled, a cancellation, to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution and/or cancellation to the Central Repository:

(1) the Industry Member is required to report to the Central Repository trade identifier reported by the Industry Member to such FINRA facility for the trade when the Industry Member reports the execution of an order pursuant to Rule 16030(a)(1)(E) or cancellation of an order pursuant to Rule 16030(a)(1)(D) beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters, and such trade identifier must be unique beginning October 26, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

The Exchange also proposes to relieve Industry Members of the obligation to report to the CAT data related to clearing brokers and trade cancellations pursuant to Rules 16030(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT, except in certain circumstances. Accordingly, the Exchange proposes new paragraphs (a)(2)(E)(2) and (3) to Rule 16030, which would state:

(2) if the order is executed in whole or in part, and the Industry Member submits the trade report to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the SRO-Assigned Market Participant Identifier of the clearing broker pursuant to Rule 16030(a)(2)(A)(ii); provided, however, if the Industry Member does not report the clearing number of the clearing broker to such FINRA facility for a trade, or does not report the unique trade identifier to the Central Repository as required by Rule 16030(a)(2)(E)(1), then the Industry Member would be required to record and report to the Central Repository the clearing number of the clearing broker as well as information about the contra party to the trade beginning April 26, 2021 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters; and

(3) if the trade is cancelled and the Industry Member submits the cancellation to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the cancelled trade indicator pursuant to Rule 16030(a)(2)(B); provided, however, if the Industry Member does not report a cancellation for a canceled trade to such FINRA facility, or does not report the unique trade identifier as required by 16030(a)(2)(E)(1), then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator as well as a cancelled trade timestamp beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[34] in general, and Section 6(b)(5) of the Act,[35] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it is consistent with certain exemptions from the CAT NMS Plan, because it facilitates the retirement of certain existing regulatory systems, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [36] To the extent that this proposal implements the Plan, including the exemptive relief, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes are consistent with certain exemptions from the CAT NMS Plan, facilitate the retirement of certain existing regulatory systems, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the amendments to the Compliance Rules will apply equally to all Industry Members that trade NMS

[34] 15 U.S.C. 78f(b).

[35] 15 U.S.C. 78f(b)(5).

[36] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing these amendments to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [37] and subparagraph (f)(6) of Rule 19b–4 thereunder.[38]

A proposed rule change filed under Rule 19b–4(f)(6) [39] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[40] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by June 22, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements exemptive relief from the CAT NMS Plan granted by the Commission and facilitates the start of Industry Member reporting on June 22, 2020. In addition, as noted by the Exchange, the proposed rule change is based on a filing recently approved by the Commission.[41] Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative as of June 22, 2020.[42]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2020–24 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–BOX–2020–24. 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–BOX–2020–24 and should be submitted on or before July 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Assistant Secretary.

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[37] 15 U.S.C. 78s(b)(3)(A)(iii).

[38] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[39] 17 CFR 240.19b–4(f)(6).

[40] 17 CFR 240.19b–4(f)(6)(iii).

[41] *See* Securities Exchange Act Release No. 89108 (June 19, 2020).

[42] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89115; File No. SR–NASDAQ–2020–030]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 114 and Equity 7, Section 118(a) of the Fee Schedule

June 22, 2020.

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 June 10, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Equity 7, Section 114(d) to add a Qualified Market Maker (''QMM'') tier, and Section 118(a) to add several credits for displayed orders/quotes that provide liquidity to the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com/,* at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Qualified Market Maker (''QMM'') tiers pursuant to Equity 7, Section 114 and also to amend the schedule of credits it provides to member organizations, pursuant to Equity 7, Section 118(a), in two respects.

The QMM tier rebate provides a tier rebate to QMMs with respect to displayed orders (other than a Designated Retail Order [3]) in securities priced at $1 or more per share that provide liquidity and are for securities listed on NYSE (Tape A), Nasdaq (Tape C) or securities listed on exchanges other than Nasdaq and NYSE (Tape B). Currently, the Exchange provides a $0.0001 per share executed credit when a QMM executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.70% up to, and including, 0.90% of Consolidated Volume [4] during the month. The QMM may receive a $0.0002 per share executed credit if the QMM executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.90% of Consolidated Volume during the month.

The Exchange proposes to provide a $0.00025 per share executed credit to a QMM that (i) executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 1.25% of Consolidated Volume during the month; (ii) quotes at the NBBO [5] at least 25% of the time during the month during regular market hours in an average of at least 2,700 symbols per day; (iii) quotes at the NBBO at least 25% of the time during the month during regular market hours in an average of at least 1,200 symbols in securities in Tape A per day; and (iv) executes shares of liquidity provided in securities in Tape A through one or more of its Nasdaq Market Center MPIDs that represent an increase of at least 0.50% of Consolidated Volume relative to May 2020. The Exchange notes that this new QMM rebate is not cumulative. That is, a QMM may only qualify for one of the three tiers in any given month.

The Exchange also proposes to include the proposed Tier 3 in the $0.0029 per share executed fee charged to a QMM for orders in securities listed on exchanges other than Nasdaq priced at $1 or more per share that access liquidity on the Nasdaq Market Center if the QMM has a combined Consolidated Volume (adding and removing liquidity) of at least 3.7% and MOC/LOC volume greater than 0.25% of Consolidated Volume.

Additionally, the Exchange proposes to amend in two respects, its schedule of credits, as set forth in Equity 7, Section 118, which it provides to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. First, for orders in securities in each of Tapes A, B, and C, the Exchange proposes to provide a $0.00305 per share executed credit to a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 1.20% of Consolidated Volume during the month, and (ii) with at least 0.25% of Consolidated Volume during the month that sets the NBBO. Second, for adding liquidity in securities in Tape A, the Exchange proposes to provide a new $0.00005 per share executed supplemental credit to a member that, through one or more of its Nasdaq Market Center MPIDs: (i) Adds liquidity in securities in Tape A that represents at least 0.75% of Consolidated Volume during the month; and (ii) adds liquidity in securities in Tape B of at least 0.60% of Consolidated Volume during the month.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal Is Reasonable

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [8]

The Commission and the courts have repeatedly expressed their preference

[3] As defined in Equity 7, Section 118, a ''Designated Retail Order'' is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this section, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

[4] As used in Equity 7, Section 118(a), the term ''Consolidated Volume'' means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot.

[5] A member is considered to be quoting at the NBBO if one of its MPIDs has a displayed order (other than a Designated Retail Order) at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, Nasdaq will determine the number of securities in which each of a member's MPIDs satisfied the 25% NBBO requirement. Nasdaq will aggregate all of a member's MPIDs to determine the number of securities for purposes of the 25% NBBO requirement. To qualify the QMM must meet the requirement for an average of the symbols specified per day over the course of the month.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [9]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

In particular, the Exchange proposes to add an additional QMM tier rebate that would provide a $0.00025 per share credit with the goal of increasing the overall incentive to QMMs to further increase their liquidity adding activity on the Exchange, and more specifically, in securities in Tape A. The proposal will also provide an incentive for QMMs to add liquidity at the NBBO in more securities, which is intended to improve market quality. To the extent that this proposed change leads to an increase in overall liquidity activity on the Exchange and more competitive pricing, this will improve the quality of the Exchange's market and increase its attractiveness to existing and prospective participants. Additionally, the Exchange proposes to add QMMs that meet the criteria for Tier 3 to the $0.0029 per share executed fee charged for orders in securities listed on exchanges other than Nasdaq priced at $1 or more per share that access liquidity on the Nasdaq Market Center. It is reasonable to assess the fee to QMMs that meet the Tier 3 requirements because QMMs that meet the Tier 2 requirements are already charged the fee, and any QMM that satisfies the Tier 3 requirement has also met the Tier 2 requirement.

Similarly, the Exchange believes that it is reasonable to provide a $0.00305 per share executed credit to a member that adds liquidity in each of Tapes A, B, and C, and to provide a $0.00005 per share executed supplemental credit to a member that adds liquidity in Tape A. The proposed changes are intended to incentivize members to increase liquidity and set the NBBO, which will further improve overall market quality.

The Exchange notes that those participants that are dissatisfied with the proposed credits are free to shift their order flow to competing venues.

The Proposal Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal will allocate the proposed credits fairly among market participants. The proposed amendments to Equity 7, Section 114 will give a QMM the opportunity to receive a higher credit for adding a higher volume of liquidity and quoting at the NBBO in more securities. Additionally, it is reasonable to charge the same fee to QMMs that meet the Tier 2 and Tier 3 requirements because all QMMs that meet the Tier 3 requirements also meet the Tier 2 requirements and Tier 2 is currently assessed the fee.

The proposed amendments in Equity 7, Section 118 will allow members to qualify for a credit by adding liquidity and setting the NBBO. Additionally, it will provide a supplemental credit to members for adding liquidity in securities in Tape A. It is equitable for the Exchange to add additional incentives for members to receive a credit when their orders add liquidity to the Exchange as a means of incentivizing increased liquidity adding activity. An increase in overall liquidity on the Exchange will improve the quality of the Exchange's market and increase its attractiveness to existing and prospective participants. Furthermore, it is equitable for the Exchange to propose credit for participants with orders in securities in Tapes A due to the Exchange's goal to specifically promote increased liquidity in securities in Tape A. An increase in overall liquidity adding activity on the Exchange will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants. Similarly, incentivizing members to add liquidity at the NBBO in securities in Tape A under Tier 3 of the QMM program will increase the overall liquidity and robustness of the Exchange's order book and increase its attractiveness to existing and prospective participants.

Any participant that is dissatisfied with the proposed new credits is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

The Proposal Is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for the proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, thereby improving market wide quality and price discovery. Although a member's orders in securities in Tape A will benefit most from the proposed supplemental credit, this result is fair insofar as an uptick in liquidity adding activity will help to improve market quality and the attractiveness of the Exchange's equity market to all existing and prospective participants. Additionally, pricing by tape is not uncommon as competing exchanges offer similar pricing structures.[10]

Finally, the Exchange notes that any participant that does not find the amended credits to be sufficiently attractive is free to shift its order flow to a competing venue.

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[10] *See* New York Stock Exchange Price List 2020, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf;* NYSE Arca Equities Fees and Charges, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf;* CBOE BZX U.S. Equities Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/;* CBOE EDGX U.S. Equities Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that its proposals will place any category of Exchange participant at a competitive disadvantage. The Exchange's proposal to modify its QMM program will not burden intramarket competition because the QMM program, as modified, will continue to provide all members with an opportunity to obtain credits for transactions if they improve the market by providing a minimum percentage of volume per month and quoting a certain volume at the NBBO, which the Exchange believes will improve market quality. Additionally, the proposed credits for providing liquidity and setting the NBBO will not place any burden on intramarket competition because all members will have the opportunity to obtain the additional proposed credits if the member increases liquidity and sets the NBBO, which will further improve overall market quality. Similarly, the proposed supplemental credit will not place any burden on intramarket competition because all members will have the opportunity to obtain the proposed supplemental credit, which will improve overall market quality. Moreover, including QMMs that qualify for Tier 3 in the $0.0029 per share executed fee charged to a QMM for orders in securities listed on exchanges other than Nasdaq priced at $1 or more per share that access liquidity on the Nasdaq Market Center will not place any burden on intramarket competition because members are free to trade on other venues to the extent they believe that fees imposed are not attractive.

Furthermore, all members of the Exchange will benefit from an increase in the addition of liquidity by those that choose to meet the criteria for each of the proposed credits. Members may grow their businesses so that they have the capacity to receive credits for providing liquidity. Moreover, members are free to trade on other venues to the extent they believe that the credits provided are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

Addressing whether the proposed credits could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 34 alternative trading systems that trade national market system stock. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit changes in this market may impose any burden on competition is extremely limited.

The proposed credits for adding liquidity are reflective of this competition because even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 42% of industry volume for the month of May 2020.

The Exchange intends for the proposed changes, which add qualifying credits for its QMMs and other members, to increase member incentives to engage in the addition of liquidity on the Exchange. These changes are pro-competitive in that the Exchange intends for them to increase liquidity on the Exchange and thereby render the Exchange a more attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[11] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2020–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2020–030. 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

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2020–030 and should be submitted on or before July 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13770 Filed 6–25–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89114; File No. SR–BX–2020–011]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118

June 22, 2020.

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 June 10, 2020, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make certain changes to the Exchange's transaction fees, at Equity 7, Section 118(a).

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange operates on the ''taker-maker'' model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at $1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange.

Over the course of the last few months, the Exchange has experimented with various reformulations of its pricing schedule with the aim of increasing activity on the Exchange, improving market quality, and increasing market share.[3] Although these changes have met with some success, the Exchange has yet to achieve the results it desires. Accordingly, the Exchange proposes to again revise its pricing schedule, in a further attempt to improve the attractiveness of the market to new and existing participants.

The Exchange proposes to amend its existing $0.0028 per share executed charge for non-displayed orders (other than orders with Midpoint pegging) entered by a member that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume[4] during a month. The Exchange proposes to reduce the percentage of total Consolidated Volume needed to qualify for this charge, from 0.25% to 0.225% of total Consolidated Volume. Additionally, the Exchange proposes to allow a member to achieve the new volume threshold by including the removal of liquidity. By easing the volume requirements for this charge, which represents a discount off of the standard $0.0030 per share executed charge (for all other non-displayed orders), the Exchange intends to increase the number of members that seek to and do qualify for it, and thereby provide incentives for members to add liquidity to the Exchange.

The proposed changes to ease the qualifying volume threshold for obtaining the $0.0028 per share executed charge and to include removing liquidity in the calculation of the new volume threshold, will benefit participants that are net adders and net takers of liquidity by enabling them to more easily qualify for the existing $0.0028 per share executed discounted charge. Those participants that act as net adders of liquidity to the Exchange will benefit directly from the proposed change that would apply to orders that add liquidity to the Exchange. Those participants that act as net removers of liquidity will also benefit from the proposed amendment as their liquidity removal activity will be tied to achieving the $0.0028 discounted charge. Any ensuing increase in liquidity adding and removing activity

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See e.g.,* Securities Exchange Act Release No. 34–87271 (October 10, 2019), 84 FR 55621 (October 17, 2019) (SR–BX–2019–035); Securities Exchange Act Release No. 34–87093 (September 24, 2019), 84 FR 57530 (October 25, 2019) (SR–BX–2019–031); Securities Exchange Act Release No. 34–86120 (June 17, 2019); 84 FR 29270 (June 21, 2019) (SR–BX–2019–019); Securities Exchange Act Release No. 34–85912 (May 22, 2019); 84 FR 24834 (May 29, 2019) (SR–BX–2019–013).

[4] As used in this rule, the term ''Consolidated Volume'' shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. As used in this rule, ''price improvement'' shall mean instances when the accepted price of an order differs from the executed price of an order.

will improve the overall quality of the market, to the benefit of all members. The Exchange notes that its proposal is not otherwise targeted at or expected to be limited in its applicability to a specific segment(s) of market participants nor will it apply differently to different types of market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal Is Reasonable

The Exchange's proposed changes to its schedule of credits and fees are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . ..'' [7]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.[9]

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.[10] Separately, the Exchange has provided the SEC staff with multiple examples of instances where pricing changes by BX and other exchanges have resulted in shifts in exchange market share. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange has designed its proposed changes to the schedule of charges to assist members in more easily qualifying for the discounted $0.0028 charge by reducing the percentage threshold and including the removal of liquidity. The Exchange believes the proposal is reasonable because it adjusts the incentives to members in order to increase their liquidity adding and removing activity on the Exchange. An increase in liquidity adding and removing activity on the Exchange will, in turn, improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants. Generally, the proposed amendments to the charges will be comparable to, if not favorable to, those that its competitors provide.[11]

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing venues that offer them lower fees.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposed amended qualification requirements for the discounted charge will be fairly allocated among its market participants. It is equitable for the Exchange to lower the volume threshold and increase the types of activities that count toward qualifying for discounted charges to participants whose orders add liquidity to the Exchange as a means of incentivizing increased liquidity adding activity on the Exchange. It is also equitable to tie the receipt of the discounted charge to the member engaging in a threshold volume of combined liquidity adding and removing activity on the Exchange. An increase in overall liquidity adding and removing activity on the Exchange will improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants.

Any participant that is dissatisfied with the proposed amended fees is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

The Proposed Fee Is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[8] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[9] *See* CBOE EDGA Fee Schedule, at *https://markets.cboe.com/us/equities/membership/fee_schedule/edga/;* NYSE National Fee Schedule, at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

[10] The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

[11] *See* n. 9, *supra.*

The Exchange intends for its proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Both net removers and net adders of liquidity to the Exchange stand to benefit directly from the proposed changes. Moreover, to the extent that the proposed changes increase liquidity adding and removing activity on the Exchange, this will improve market quality and the attractiveness of the Nasdaq BX market, to the benefit of all existing and prospective participants.

Furthermore, any participant that is dissatisfied with the proposed amended fees is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive the lower charge. Moreover, members are free to trade on other venues to the extent they believe that the credit provided or fees imposed are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

Addressing whether the proposal could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits and charges will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 34 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee and credit changes in this market may impose any burden on competition is extremely limited.

The proposed amendments to the schedule of charges is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 17% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 41% of industry volume for the month of May 2020.

The Exchange intends for the proposed changes to its schedule of fees, in the aggregate, to increase member incentives to engage in the removal and addition of liquidity on the Exchange. These changes are procompetitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2020–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2020–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2020–011 and should be submitted on or before July 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13772 Filed 6–25–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89118; File No. SR–IEX–2020–08]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IEX Rule Series 11.600 (Consolidated Audit Trail Compliance Rule)

June 22, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 19, 2020, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Exchange Act,[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission a proposed rule change to amend the Rule Series 11.600, the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'')[6] to be consistent with certain exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems.

A notice of the proposed rule change for publication in the **Federal Register** is attached [sic] hereto as Exhibit 1. The text of the proposed rule change is attached [sic] as Exhibit 5.

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 11.600 Series, the Compliance Rule regarding the CAT NMS Plan, to be consistent with certain exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. As described more fully below, the proposed rule change would make the following changes to the Compliance Rule:

- Add additional data elements to the consolidated audit trail (''CAT'') reporting requirements for Industry Members to facilitate the retirement of the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System (''OATS'');
- Add additional data elements related to OTC Equity Securities that FINRA currently receives from alternative trading systems (''ATSs'') that trade OTC Equity Securities for regulatory oversight purposes to the CAT reporting requirements for Industry Members;
- Implement a phased approach for Industry Member reporting to the CAT (''Phased Reporting'');
- To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, revise the timestamp granularity requirement to require such Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds;
- Require Introducing Industry Members (as defined below) to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members;
- Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, ''individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' (collectively, referred to as ''SSNs'') or account numbers; and
- Revise the CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA's trade reports submitted to the CAT.

i. CAT–OATS Data Gaps

The Participants have worked to identify gaps between data reported to existing systems and data to be reported to the CAT to ''ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.''[7] As a result of this process, the Participants identified several data elements that must be included in the CAT reporting requirements before existing systems can be retired. In

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[7] Letter from Participants to Brent J. Fields, Secretary, SEC, re: File Number 4–698; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail (September 23, 2016) at 21 (''Participants' Response to Comments'') (available at *https://www.sec.gov/comments/4-698/4698-32.pdf*).

particular, the Participants identified certain data elements that are required by OATS, but not currently enumerated in the CAT NMS Plan. Accordingly, the Exchange proposes to amend its Compliance Rule to include these OATS data elements in the CAT. Each of such OATS data elements are discussed below. With the addition of these OATS data elements to the CAT, the CAT will have the data elements necessary to retire OATS.

A. Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members [8] to record the identification of information barriers for certain order events, including when an order is received or originated, transmitted to a department within the OATS Reporting Member, and when it is modified. The Participants propose to amend the Compliance Rule to incorporate these requirements into the CAT.

Specifically, FINRA Rule 7440(b)(20) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.'' [9] The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(vii) to Rule 11.630, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member where the order was received or originated.''

In addition, FINRA Rule 7440(c)(1) states that ''[w]hen a Reporting Member transmits an order to a department within the member, the Reporting Member shall record: . . . (H) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.'' The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS-CAT data gap, the Exchange proposes to revise paragraph (a)(1)(B)(vi) of Rule 11.630 to require, for the routing of an order, if routed internally at the Industry Member, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member to which the order was transmitted.''

FINRA Rule 7440(c)(2)(B) and 7440(c)(4)(B) require an OATS Reporting Member that receives an order transmitted from another member to report the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rule not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(C)(vii) to Rule 11.630, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received the order.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification to the terms of an order to report the unique identification of any appropriate information barriers in place at the department within the member to which the modification was originated or received. The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(vii) to Rule 11.630, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received or originated the modification.''

B. Reporting Requirements for ATSs

Under FINRA Rule 4554, ATSs that receive orders in NMS stocks are required to report certain order information to OATS, which FINRA uses to reconstruct ATS order books and perform order-based surveillance, including layering, spoofing, and mid-point pricing manipulation surveillance.[10] The Participants believe that Industry Members operating ATSs—whether such ATS trades NMS stocks or OTC Equity Securities—should likewise be required to report this information to the CAT. Because ATSs that trade NMS stocks are already recording this information and reporting it to OATS, the Participants believe that reporting the same information to the CAT should impose little burden on these ATSs. Moreover, including this information in the CAT is also necessary for FINRA to be able to retire the OATS system. The Participants similarly believe that obtaining the same information from ATSs that trade OTC Equity Securities will be important for purposes of reconstructing ATS order books and surveillance. Accordingly, the Exchange proposes to add to the data reporting requirements in the Compliance Rule the reporting requirements for ATSs in FINRA Rule 4554,[11] but to expand such requirements so that they are applicable to all ATSs rather than solely to ATSs that trade NMS stocks.

(i) New Definition

The Exchange proposes to add a definition of ''ATS'' to new paragraph (d) of Rule 11.610 to facilitate the addition to the CAT of the reporting requirements for ATSs set forth in FINRA Rule 4554. The Exchange proposes to define an ''ATS'' to mean ''an alternative trading system, as defined in Rule 300(a)(1) of Regulation ATS under the Exchange Act.''

(ii) ATS Order Type

FINRA Rule 4554(b)(5) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

A unique identifier for each order type offered by the ATS. An ATS must provide FINRA with (i) a list of all of its order types 20 days before such order types become effective and (ii) any changes to its order types 20 days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

The Compliance Rule does not require Industry Members to report such order

[8] An OATS ''Reporting Member'' is defined in FINRA Rule 7410(o).

[9] FINRA Rule 5320 prohibits trading ahead of customer orders.

[10] *See* FINRA Regulatory Notice 16–28 (August 2016).

[11] FINRA Rule 4554 was approved by the SEC on May 10, 2016, while the CAT NMS Plan was pending with the Commission. *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (Order Approving SR–FINRA–2016–010). As noted in the Participants' Response to Comments, throughout the process of developing the Plan, the Participants worked to keep the gap analyses for OATS, electronic blue sheets, and the CAT up-to-date, which included adding data fields related to the tick size pilot and ATS order book amendments to the OATS rules. *See* Participants' Response to Comments at 21. However, due to the timing of the expiration of the tick size pilot, the Participants decided not to include those data elements into the CAT NMS Plan.

type information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: Paragraphs (a)(1)(A)(xi)(1), (a)(1)(C)(x)(1), (a)(1)(D)(ix)(1) and (a)(2)(D) of Rule 11.630.

Proposed paragraph (a)(1)(A)(xi)(1) of Rule 11.630 would require an Industry Member that operates an ATS to record and report to the Central Repository for the original receipt or origination of an order ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(C)(x)(1) of Rule 11.630 would require an Industry Member that operates an ATS to record and report to the Central Repository for the receipt of an order that has been routed ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(D)(ix)(1) of Rule 11.630 would require an Industry Member that operates an ATS to record and report to the Central Repository if the order is modified or cancelled ''the ATS's unique identifier for the order type of the order.'' Furthermore, as with the requirements in FINRA Rule 4554(b)(5), proposed paragraph (a)(2)(D) of Rule 11.630 would state that:

An Industry Member that operates an ATS must provide to the Central Repository: (1) a list of all of its order types twenty (20) days before such order types become effective; and (2) any changes to its order types twenty (20) days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

(iii) National Best Bid and Offer

FINRA Rules 4554(b)(6) and (7) require the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

(6) The NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(7) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (6). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, FINRA Rule 4554(c) requires the following information to be recorded and reported to FINRA by ATSs when reporting the execution of an order to OATS:

(1) The NBBO (or relevant reference price) in effect at the time of order execution;

(2) The timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(3) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (1). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

The Compliance Rule does not require Industry Members to report such NBBO information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: (a)(1)(A)(xi)(2)–(3), (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 11.630.

Specifically, proposed paragraph (a)(1)(A)(xi)(2)-(3) of Rule 11.630 would require an Industry Member that operates an ATS to record and report to the Central Repository the following information when reporting the original receipt or origination of order:

(2) the National Best Bid and National Best Offer (or relevant reference price) at the time of order receipt or origination, and the date and time at which the ATS recorded such National Best Bid and National Best Offer (or relevant reference price);

(3) the identification of the market data feed used by the ATS to record the National Best Bid and National Best Offer (or relevant reference price) for purposes of subparagraph (xi)(2). If for any reason the ATS uses an alternative market data feed than what was reported on its ATS data submission, the ATS must provide notice to the Central Repository of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, proposed paragraphs (a)(1)(C)(x)(2)-(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 11.630 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed, when reporting if the order is modified or cancelled, and when an order has been executed, respectively.

(iv) Sequence Numbers

FINRA Rule 4554(d) states that ''[f]or all OATS-reportable event types, all ATSs must record and report to FINRA the sequence number assigned to the order event by the ATS's matching engine.'' The Compliance Rule does not require Industry Members to report ATS sequence numbers to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate this requirement regarding ATS sequence numbers into each of the Reportable Events for the CAT. Specifically, the Exchange proposes to add proposed paragraph (a)(1)(A)(xi)(4) to Rule 11.630, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt or origination of the order by the ATS's matching engine.'' The Exchange proposes to add proposed paragraph (a)(1)(B)(viii) to Rule 11.630, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the routing of the order by the ATS's matching engine.'' The Exchange also proposes to add proposed paragraph (a)(1)(C)(x)(4) to Rule 11.630, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt of the order by the ATS's matching engine.'' In addition, the Exchange proposes to add proposed paragraph (a)(1)(D)(ix)(4) to Rule 11.630, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the modification or cancellation of the order by the ATS's matching engine.'' Finally, the Exchange proposes to add proposed paragraph (a)(1)(E)(viii)(3) to Rule 11.630, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the execution of the order by the ATS's matching engine.''

(v) Modification or Cancellation of Orders by ATSs

FINRA Rule 4554(f) states that ''[f]or an ATS that displays subscriber orders, each time the ATS's matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report to OATS the time of such modification,'' and ''the applicable new display price or size.'' The Exchange proposes adding a comparable requirement into new paragraph (a)(1)(D)(ix)(5) to Rule 11.630. Specifically, proposed new paragraph (a)(1)(D)(ix)(5) of Rule 11.630 would require an Industry Member that operates an ATS to report to the Central Repository, if the order is modified or cancelled, ''each time the ATS's matching engine re-prices an order or changes the quantity of an order,'' the

ATS must report to the Central Repository ''the time of such modification, and the applicable new price or size.'' Proposed paragraph (a)(1)(D)(ix)(5) of Rule 11.630 would apply to all ATSs, not just ATSs that display orders.

(vi) Display of Subscriber Orders

FINRA Rule 4554(b)(1) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

Whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data);

The Compliance Rule does not require Industry Members to report to the CAT such information about the displaying of subscriber orders. The Exchange proposes to add comparable requirements into proposed paragraphs (a)(1)(A)(xi)(5) and (a)(1)(C)(x)(5) of Rule 11.630. Specifically, proposed paragraph (a)(1)(A)(xi)(5) would require an Industry Member that operates an ATS to report to the Central Repository, for the original receipt or origination of an order,

whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data.

Similarly, proposed paragraph (a)(1)(C)(x)(5) of Rule 11.630 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed.

C. Customer Instruction Flag

FINRA Rule 7440(b)(14) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Compliance Rule does not require Industry Members to report to the CAT such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(A)(viii) to Rule 11.630, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Exchange also proposes to add paragraph (a)(1)(C)(ix) to Rule 11.630, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification of an order to report the customer instruction flag. The Compliance Rule does not require Industry Members to report such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(D)(viii) to Rule 11.630, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

D. Department Type

FINRA Rules 7440(b)(4) and (5) require an OATS Reporting Member that receives or originates an order to record the following information: ''the identification of any department or the identification number of any terminal where an order is received directly from a customer'' and ''where the order is originated by a Reporting Member, the identification of the department of the member that originates the order.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the department or terminal where the order is received or originated. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(A)(ix) to Rule 11.630, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the nature of the department or desk that originated the order, or received the order from a Customer.''

Similarly, per FINRA Rules 7440(c)(2)(B) and (4)(B), when an OATS Reporting Member receives an order that has been transmitted by another Member, the receiving OATS Reporting Member is required to record the information required in 7440(b)(4) and (5) described above as applicable. The Compliance Rule does not require Industry Members to report to the CAT information regarding the department that received an order. To address this OATS–CAT data gap, the Exchange propose to add paragraph (a)(1)(C)(viii) to Rule 11.630, which would require Industry Members to record and report to the Central Repository upon the receipt of an order that has been routed ''the nature of the department or desk that received the order.''

E. Account Holder Type

FINRA Rule 7440(b)(18) requires an OATS Reporting Member that receives or originates an order to record the following information: ''the type of account, *i.e.,* retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the type of account holder for which the order is submitted. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(A)(x) to Rule 11.630, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the type of account holder for which the order is submitted.''

ii. OTC Equity Securities

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently receives from ATSs that trade OTC Equity Securities for regulatory oversight purposes, but are not currently included in CAT Data. In particular, the Participants identified three data elements that need to be added to the CAT: (1) Bids and offers for OTC Equity Securities; (2) a flag indicating whether a quote in OTC Equity Securities is solicited or unsolicited; and (3) unpriced bids and offers in OTC Equity Securities. The Participants believe that such data will continue to be important for regulators to oversee the OTC Equity Securities market when using the CAT. Moreover, the Participants do not believe that the proposed requirement would burden ATSs because they currently report this information to FINRA and thus the reporting requirement would merely shift from FINRA to the CAT. Accordingly, as discussed below, the Exchange proposes to amend its Compliance Rule to include these data elements.

A. Bids and Offers for OTC Equity Securities

In performing its current regulatory oversight, FINRA receives a data feed of the best bids and offers in OTC Equity Securities from ATSs that trade OTC

Equity Securities. These best bid and offer data feeds for OTC Equity Securities are similar to the best bid and offer SIP Data required to be collected by the Central Repository with regard to NMS Securities.[12] Accordingly, the Exchange proposes to add paragraph (f)(1) to Rule 11.630 to require the reporting of the best bid and offer data feeds for OTC Equity Securities to the CAT. Specifically, proposed paragraph (f)(1) of Rule 11.630 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the best bid and best offer for each OTC Equity Security traded on such ATS.''

B. Unsolicited Bid or Offer Flag

FINRA also receives from ATSs that trade OTC Equity Securities an indication whether each bid or offer in OTC Equity Securities on such ATS was solicited or unsolicited. Therefore, the Exchange proposes to add paragraph (f)(2) to Rule 11.630 to require the reporting to the CAT of an indication as to whether a bid or offer was solicited or unsolicited. Specifically, proposed paragraph (f)(2) of Rule 11.630 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''an indication of whether each bid and offer for OTC Equity Securities was solicited or unsolicited.''

C. Unpriced Bids and Offers

FINRA receives from ATSs that trade OTC Equity Securities certain unpriced bids and offers for each OTC Equity Security traded on the ATS. Therefore, the Exchange proposes to add paragraph (f)(3) to Rule 11.630, which would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the unpriced bids and offers for each OTC Equity Security traded on such ATS.''

iii. Revised Industry Member Reporting Timeline

On February 19, 2020, the Participants filed with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for the implementation of phased reporting to the CAT by Industry Members (''Phased Reporting'').[13] Specifically, in their exemptive request, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members other than Small Industry Members (''Large Industry Members'') to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Small Industry Members [14] to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Correspondingly, the Participants requested that the SEC provide an exemption from the requirement in Section 6.4 of the CAT NMS Plan that ''[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.'' On April 20, 2020, the SEC granted the Participants exemptive relief to implement Phased Reporting, subject to certain timeline changes and conditions.[15]

As a condition to the exemption, each Participant would implement Phased Reporting through its Compliance Rule by requiring:

(1) Its Large Industry Members and its Small Industry Members that are required to record or report information to OATS pursuant to applicable SRO rules (''Small Industry OATS Reporters'') to commence reporting to the Central Repository Phase 2a Industry Member Data by June 22, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by July 20, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data required under the CAT NMS Plan will be required to be reported when all five phases of the Phased Reporting have been implemented, subject to any applicable exemptive relief or amendments related to the CAT NMS Plan.

As a further condition to the exemption, each Participant proposes to implement the testing timelines described in Section F below through its Compliance Rule by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

[12] Section 6.5(a)(ii) of the CAT NMS Plan.

[13] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

[14] *See* Section 1.1 of the CAT NMS Plan.

[15] *See* Securities Exchange Act Release No. 88702 (April 20, 2020), 85 FR 23075 (April 24, 2020). As discussed in the SEC's exemptive order, the Commission granted the Participants conditional exemptive relief from the CAT NMS Plan so that the Compliance Rules may require Phase 2a reporting to commence on June 22, 2020, rather than the April 20, 2020 date set forth in the exemptive request, and Phase 2b reporting to commence on July 20, 2020, rather than the May 18, 2020 date set forth in the exemptive request. As a condition to the exemptive relief, Industry Members who elect to report to the CAT prior to such dates will be permitted to report to the CAT as early as April 20, 2020 for Phase 2a reporting and as early as May 18, 2020 for Phase 2b reporting.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

As a result, the Exchange proposes to amend its Compliance Rule to be consistent with the exemptive relief to implement Phased Reporting as described below.

A. Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by June 22, 2020.[16] To implement the Phased Reporting for Phase 2a, the Exchange proposes to add paragraph (t)(1) of Rule 11.610 (previously paragraph (s)) and amend paragraphs (c)(1) and (2) of Rule 11.695.

(i) Scope of Reporting in Phase 2a

To implement the Phased Reporting with respect to Phase 2a, the Exchange proposes to add a definition of ''Phase 2a Industry Member Data'' as paragraph (t)(1) of Rule 11.610. Specifically, the Exchange proposes to define the term ''Phase 2a Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2a.'' Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. While the following summarizes categories of Industry Member Data required for Phase 2a, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2a.[17]

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a. The inclusion of all OATS events and scenarios in the CAT is intended to facilitate the retirement of OATS.

Phase 2a Industry Member Data also would include Reportable Events for:

- proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF'');
- electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''*IDQS*''); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by paragraphs (a)(1)(A)(i), and (a)(2)(C) of Rule 11.630. Paragraph (a)(1)(A)(i) of Rule 11.630 requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Paragraph (a)(2)(C) of Rule 11.630 requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID if the order is executed, in whole or in part.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Rule 11.630, Industry Members would be required to provide a timestamp pursuant to Rule 11.660. Rule 11.660(b)(i) states that

> Each Industry Member may record and report: Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Members shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member (''Electronic Capture Time'') in milliseconds.

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.[18]

Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (''ISO''). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.[19] In addition, in Phase 2a, Industry Members would not be required to report a

[16] Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters'') would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by December 13, 2021, which is approximately seventeen months after Large Industry Members and Small Industry OATS Reporters begin reporting.

[17] The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c or Phase 2d, as discussed below.

[18] Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

[19] This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

cancellation of an order received from a Customer after the order has been executed.

(ii) Timing of Phase 2a Reporting

Pursuant to paragraph (c)(1) of Rule 11.695, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2a for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 11.695 with new paragraph (c)(1)(A) of Rule 11.695, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by June 22, 2020.''

Pursuant to paragraph (c)(2) of Rule 11.695, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2a for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 11.695 with new paragraphs (c)(2)(A) and (B) of Rule 11.695. Proposed paragraph (c)(2)(A) of Rule 11.695 would state that

> Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: (A) Small Industry Members that are required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by June 22, 2020.

Proposed paragraph (c)(2)(B) of Rule 11.695 would state that ''Small Industry Members that are not required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry Non-OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by December 13, 2021.''

B. Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by July 20, 2020. Small Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by December 13, 2021, which is approximately seventeen months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2b, the Exchange proposes to add paragraph (t)(2) to Rule 11.610 and amend paragraphs (c)(1) and (2) of Rule 11.695.

(i) Scope of Phase 2b Reporting

To implement the Phased Reporting with respect to Phase 2b, the Exchange proposes to add a definition of ''Phase 2b Industry Member Data'' as paragraph (t)(2) to Rule 11.610. Specifically, the Exchange proposes to define the term ''Phase 2b Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2b.'' Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. While the following summarizes the categories of Industry Member Data required for Phase 2b, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2b.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.[20] A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are also reportable in Phase 2b.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by Exchange rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

(ii) Timing of Phase 2b Reporting

Pursuant to paragraph (c)(1) of Rule 11.695, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 11.695 with new paragraph (c)(1)(B) of Rule 11.695, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (B) Phase 2b Industry Member Data by July 20, 2020.''

Pursuant to paragraph (c)(2) of Rule 11.695, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2b for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 11.695 with new paragraph (c)(2)(C) of Rule 11.695, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository Phase 2b Industry Member Data . . . by December 13, 2021.''

C. Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by April 26, 2021. Small Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by December 13, 2021, which is approximately seven months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2c, the Exchange proposes to add paragraph (t)(3) to Rule 11.610 and amend paragraphs (c)(1) and (2) of Rule 11.695.

(i) Scope of Phase 2c Reporting

To implement the Phased Reporting with respect to Phase 2c, the Exchange proposes to add a definition of ''Phase

[20] The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below in Section A.4.

2c Industry Member Data'' as paragraph (t)(3) to Rule 11.610. Specifically, the Exchange proposes to define the term ''Phase 2c Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2c.'' Phase 2c Industry Member Data'' would be Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data or Phase 2e Industry Member Data. Phase 2c Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. While the following summarizes the categories of Industry Member Data required for Phase 2c, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2c.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of large trader identifiers [21] (''LTID'') (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date [22] (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for all representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[23]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) An equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the Alternative Display Facility (ADF) operated by FINRA; or (b) for unlisted equity securities to an ''inter-dealer quotation system'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.

(ii) Timing of Phase 2c Reporting

Pursuant to paragraph (c)(1) of Rule 11.695, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2c for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 11.695 with new paragraph (c)(1)(C) of Rule 11.695, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Phase 2c Industry Member Data by April 26, 2021.''

Pursuant to paragraph (c)(2) of Rule 11.695, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2c for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 11.695 with new paragraph (c)(2)(C) of Rule 11.695, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2c Industry Member Data . . . by December 13, 2021.''

D. Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2d Industry Member Data'' by December 13, 2021. To implement the Phased Reporting for Phase 2d, the Exchange proposes to add paragraph (t)(4) to Rule 11.610 and amend paragraphs (c)(1) and (2) of Rule 11.695.

(i) Scope of Phase 2d Reporting

To implement the Phased Reporting with respect to Phase 2d, the Exchange proposes to add a definition of ''Phase 2d Industry Member Data'' as paragraph (t)(4) to Rule 11.610. Specifically, the Exchange proposes to define the term ''Phase 2d Industry Member Data'' as ''Industry Member Data required to be

[21] *See* definition of ''Customer Account Information'' in Section 1.1 of the CAT NMS Plan. *See also* Rule 13h–1 under the Exchange Act.

[22] *See* definition of ''Customer Account Information'' and ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan. Note that the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 11.610 to replace the references to November 15, 2018 and 2019 with references to the commencement of Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 11.610 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

[23] In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an OMS and represented by a principal order originated in an EMS that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

reported to the Central Repository commencing in Phase 2d.'' [24]

''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d. While the following summarizes the categories of Industry Member Data required for Phase 2d, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2d.

Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) Simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; [25] (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders.

Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: A listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition would be reportable in Phase 2d for options.

Phase 2d Industry Member Data also would include with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).

(ii) Timing of Phase 2d Reporting

Pursuant to paragraph (c)(1) of Rule 11.695, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2d for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 11.695 with new paragraph (c)(1)(D) of Rule 11.695, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (D) Phase 2d Industry Member Data by December 13, 2021.''

Pursuant to paragraph (c)(2) of Rule 11.695, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 11.695 with new paragraph (c)(2)(C) of Rule 11.695, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2d Industry Member Data by December 13, 2021.''

E. Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2e Industry Member Data'' by July 11, 2022. To implement the Phased Reporting for Phase 2e, the Exchange proposes to add paragraph (t)(5) to Rule 11.610 and amend paragraphs (c)(1) and (2) of Rule 11.695.

(i) Scope of Phase 2e Reporting

To implement the Phased Reporting with respect to Phase 2e, the Exchange proposes to add a definition of ''Phase 2e Industry Member Data'' as paragraph (t)(5) of Rule 11.610. Specifically, the Exchange proposes to define the term ''Phase 2e Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2e. The full scope of Industry Member Data required by the CAT NMS Plan will be required to be reported to the CAT when Phase 2e has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.'' LTIDs and Account Effective Date are both required to be reported in Phases 2c and 2d in certain circumstances, as discussed above. The terms ''Customer Account Information'' and ''Customer Identifying Information'' are defined in Rule 11.610 of the Compliance Rule.[26] The Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2e.

[24] The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

[25] As noted above, the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 11.610 to replace the references to November 15, 2018 and 2019 with references to the commencement of Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 11.610 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

[26] The term ''Customer Account Information'' includes account numbers, and the term ''Customer Identifying Information'' includes, with respect to individuals, dates of birth and SSNs. *See* Rule 11.610. The Participants have received exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). *See* also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020). Given the relief has been granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

(ii) Timing of Phase 2e Reporting

Pursuant to paragraph (c)(1) of Rule 11.695, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2e for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 11.695 with new paragraph (c)(1)(E) of Rule 11.695, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Phase 2e Industry Member Data by July 11, 2022.''

Pursuant to paragraph (c)(2) of Rule 11.695, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2e for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 11.695 with new paragraph (c)(2)(D) of Rule 11.695, which would state, in relevant part, that ''[e]ach Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Small Industry Members to report to the Central Repository Phase 2e Industry Member Data by July 11, 2022.''

F. Industry Member Testing Requirements

Rule 11.680(a) sets forth various compliance dates for the testing and development for connectivity, acceptance and the submission order data. In light of the intent to shift to Phased Reporting in place of the two specified dates for the commencement of reporting for Large and Small Industry Members, the Exchange correspondingly proposes to replace the Industry Member development testing milestones in Rule 11.680(a) with the testing milestones set forth in the exemptive relief. Specifically, the Exchange proposes to replace Rule 11.680(a) with the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.

(3) The Industry Member test environment shall open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment shall open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment shall open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting shall begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

iv. Granularity of Timestamps

On February 3, 2020, the Participants filed with the Commission a request for exemptive relief from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository.[27] On April 8, 2020, the Participants received the exemptive relief.[28] As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances. The timestamp granularity exemption remains in effect for five years, until April 8, 2025. After five years, the exemption would no longer be in effect unless the period the exemption is in effect is extended by the SEC.

Accordingly, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief. Specifically, the Exchange proposes to amend paragraph (a)(2) of Rule 11.660. Rule 11.660(a)(2) states that

Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment.

The Exchange proposes to amend this provision to read as follows to reflect the exemptive relief:

Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds; provided, that Industry Members that capture timestamps in increments more granular than nanoseconds must truncate the timestamps after the nanosecond level for submission to CAT, rather than rounding such timestamps up or down, until April 8, 2025.

v. Introducing Industry Members

On February 3, 2020, the Participants requested that the Commission exempt broker-dealers that do not qualify as Small Industry Members solely because they satisfy Rule 0–10(i)(2) under the Exchange Act and, as a result, are deemed affiliated with an entity that is not a small business or small organization (''Introducing Industry Member'') from the requirements in the CAT NMS Plan applicable to Industry Members other than Small Industry Members (''Large Industry Members'').[29] Instead, such Introducing Industry Members would comply with the requirements in the CAT NMS Plan applicable to Small Industry Members. On April 20, 2020, the SEC granted the Participants exemptive relief with regard to Introducing Industry Members.[30]

As a result, the Exchange proposes to amend its Compliance Rule to adopt a definition of ''Introducing Industry Member'' and to revise Rule 11.695 to require Introducing Industry Members to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members. Specifically, the Exchange proposes to define ''Introducing Industry Member'' in proposed paragraph (v) to Rule 11.610, as ''a broker-dealer that does not qualify as a Small Industry Member solely because such broker-dealer satisfies Rule 0–10(i)(2) under the Exchange Act in that it introduces transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations.'' The Exchange also proposes to add a new paragraph (3) to Rule 11.695(c) to state that ''Introducing

[27] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

[28] *See* Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

[29] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Small Industry Members (Feb. 3, 2020).

[30] *See* Securities Exchange Act Release No. 88703 (April 20, 2020), 85 FR 23115 (April 24, 2020).

Industry Members must comply with the requirements of the CAT NMS Plan applicable to Small Industry Members.'' With these changes, Introducing Industry Members would be required to comply with the requirements in the CAT NMS Plan applicable to Small Industry Members, rather than the requirements in the CAT NMS Plan applicable to Large Industry Members.

vi. CCID/PII

On January 29, 2020, the Participants filed with the Commission a request for exemptive relief from certain requirements related to reporting SSNs, dates of birth and account numbers to the CAT.[31] The Commission, Participants and others indicated security concerns with maintaining such sensitive Customer information in the CAT. On March 17, 2020, the Participants received the exemptive relief, subject to certain conditions.[32] Assuming the Participants comply with the conditions set forth in the PII Exemption Order, Industry Members would not be required to report SSNs, dates of birth and account numbers to the CAT NMS Plan.

As described in the request for exemptive relief, the Participants requested exemptive relief to allow for an alternative approach to generating a CAT Customer ID (''CCID'') without requiring Industry Members to report SSNs to the CAT (the ''CCID Alternative''). In lieu of retaining such SSNs in the CAT, the Participants would use the CCID Alternative, a strategy developed by the Chief Information Security Officer for the CAT and the Chief Information Security Officers from each of the Participants, in consultation with security experts from member firms of Securities Industry and Financial Markets Association. The CCID Alternative facilitates the ability of the Plan Processor to generate a CCID without requiring the Plan Processor to receive SSNs or store SSNs within the CAT. Under the CCID Alternative, the Plan Processor would generate a unique CCID using a two-phase transformation process that avoids having SSNs reported to or stored in the CAT. In the first transformation phase, a CAT Reporter would transform the SSN to an interim value (the ''transformed value''). This transformed value, and not the SSN, would be submitted to a separate system within the CAT (''CCID Subsystem''). The CCID Subsystem would then perform a second transformation to create the globally unique CCID for each Customer that is unknown to, and not shared with, the original CAT Reporter. The CCID would then be sent to the customer and account information system of the CAT, where it would be linked with the other customer and account information. The CCID may then be used by the Participants' regulatory staff and the SEC in queries and analysis of CAT Data. To implement the CCID Alternative, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report SSNs to the Central Repository for the original receipt of an order. As set forth in one condition of the PII Exemption Order, Industry Members would be required to transform an SSN to an interim value, and report the transformed value to the CAT.

The Participants also requested exemptive relief to allow for an alternative approach which would exempt the reporting of dates of birth and account numbers [33] to the CAT (''Modified PII Approach''), and instead would require Industry Members to report the year of birth and the Firm Designated ID for each trading account associated with the Customers. To implement the Modified PII Approach, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order dates of birth and account numbers for Customers. As conditions to the exemption, Industry Members would be required to report the year of birth of an individual to the Central Repository, and to report the Firm Designated ID to the Central Repository.

To implement the request for exemptive relief and to eliminate the requirement to report SSNs, date of birth and account numbers to the CAT, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief. Rule 11.630(a)(2)(C) states that

> [s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 11.630(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with Rule 11.640, Customer Account Information and Customer Identifying Information for the relevant Customer.

Similarly, Rule 11.640 requires the reporting of Customer Account Information and Customer Identifying Information to the Central Repository. Currently, Rule 11.610(m) defines ''Customer Identifying Information'' to include, with respect to individuals, ''date of birth'' and ''individual tax payer identification number (''ITIN'')/social security number (''SSN'').'' Accordingly, the Exchange proposes to replace ''date of birth'' in the definition of ''Customer Identifying Information'' in Rule 11.610(m) (now renumbered Rule 11.610(n)) with ''year of birth'' and to delete ''individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' from Rule 11.610(m) (now renumbered Rule 11.610(n)). In addition, currently, Rule 11.610(l) defines ''Customer Account Information'' to include account numbers. The Exchange proposes to delete ''account number'' from the definition of ''Customer Account Information'' in Rule 11.610(l) (now renumbered Rule 11.610(m)).

The Exchange also proposes to add a definition of the term ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to Rule 11.610. Specifically, the Exchange proposes to add paragraph (pp) to Rule 11.610 to define ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to mean ''the interim value created by an Industry Member based on a Customer ITIN/SSN.''

The Exchange proposes to revise Rule 11.630(a)(2)(C) to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''). Specifically, the Exchange proposes to revise Rule 11.630(a)(2)(C) to state:

[31] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

[32] *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020) (Order Granting Conditional Exemptive Relief, Pursuant to Section 36 and Rule 608(e) of the Securities Exchange Act of 1934, from Section 6.4(d)(ii)(C) and Appendix D Sections 4.1.6, 6.2, 8.1.1, 8.2, 9.1, 9.2, 9.4, 10.1, and 10.3 of the National Market System Plan Governing the Consolidated Audit Trail) (''PII Exemption Order''). The PII Exemption Order lists several conditions that must be met by the Exchange. If the Exchange does not satisfy the conditions, the PII Exemption Order would not apply to the Exchange.

[33] With respect to this aspect of the requested relief, the PII Exemption Order provided relief with regard to the reporting of all account numbers, not just account numbers for individuals as requested by the Participants.

[s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 11.630(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), and in accordance with Rule 11.640, Customer Account Information and Customer Identifying Information for the relevant Customer.

The Exchange also proposes to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') in the Customer information reporting required under Rule 11.640. Specifically, the Exchange proposes to revise Rule 11.640(a) to require each Industry Member to submit to the Central Repository the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), for each of its Customers with an Active Account prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 11.680. The Exchange also proposes to revise Rule 11.640(b) to require each Industry Member to submit to the Central Repository any updates, additions or other changes to the Transformed Value for individual tax payer identification number (''ITIN'')/ social security number (''SSN'') for each of its Customers with an Active Account on a daily basis. In addition, the Exchange proposes to revise Rule 11.640(c) to require, on a periodic basis as designated by the Plan Processor and approved by the Operating Committee, each Industry Member to submit to the Central Repository a complete set of the Transformed Value for individual tax payer identification number (''ITIN'')/ social security number (''SSN'') for each of its Customers with an Active Account. The Exchange also proposes to revise Rule 11.640(d) to require, for each Industry Member for which errors in the Transformed Value for individual tax payer identification number (''ITIN'')/ social security number (''SSN'') for each of its Customers with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member to submit corrected data to the Central Repository by 5:00 p.m. Eastern Time on T+3.

Paragraph (1)(B) of Rule 11.610(m), the definition of ''Customer Account Information'' states that ''in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will'' . . . ''provide the relationship identifier in lieu of the ''account number.'' As an account number will no longer be an element in ''Customer Account Information,'' the relationship identifier used in lieu of the account number will no longer be required as an element of Customer Account Information. Therefore, the Exchange proposes to delete the requirement set forth in Rule 11.610(m)(a)(B) regarding relationship identifiers from Rule 11.610(m).

With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers pursuant to Rule 11.630(a)(2)(C). However, Industry Members would be required to report the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') and the year of birth to the Central Repository.[34]

vii. FINRA Facility Data Linkage

On June 5, 2020, the Participants filed with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for an alternative approach to the reporting of clearing numbers and cancelled trade indicators.[35] The SEC provided this exemptive relief on June 11, 2020.[36] FINRA is required to report to the Central Repository data collected by FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility (collectively, ''FINRA Facility'') pursuant to applicable SRO rules (''FINRA Facility Data''). Included in this FINRA Facility Data is the clearing number of the clearing broker for a reported trade as well as the cancelled trade indicator. Under this alternative approach, the clearing number and the cancelled trade indicator of the FINRA Facility Data that is reported to the CAT would be linked to the related execution reports reported by Industry Members. To implement this approach in a phased manner, the Participants received exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository: (1) If the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable; and (2) if the trade is cancelled, a cancelled trade indicator, subject to certain conditions.

As a condition to this exemption, the Participants would continue to require Industry Members to submit a trade report for a trade, and, if the trade is cancelled, a cancellation, to a FINRA Facility pursuant to applicable SRO rules, and to report the corresponding execution to the Central Repository. In addition, Industry Members would be required to report to the Central Repository the unique trade identifier reported to a FINRA Facility with the corresponding trade report. Furthermore, if an Industry Member does not submit a cancellation to a FINRA Facility, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator and cancelled trade timestamp if the trade is cancelled. Similarly, if an Industry Member does not submit the clearing number of the clearing broker to a FINRA Facility for a trade, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository the clearing number as well as contra party information.

As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief to implement this alternative approach. Specifically, the Exchange proposes to require Industry Members to report to the CAT with an execution report the unique trade identifier reported to a FINRA facility with the corresponding trade report. For example, the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/ Nasdaq Trade Reporting Facility, it would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility, it would the FINRA Compliance Number. This unique trade identifier would be used to link the FINRA Facility Data with the execution report in the CAT. Specifically, the

[34] The Exchange anticipates that the Compliance Rule may be further amended when further details regarding the CCID Alternative are finalized.

[35] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (June 5, 2020).

[36] *See* Securities Exchange Act Release No. 89051 (June 11, 2020) (**Federal Register** publication pending).

Exchange proposes to add new paragraph (a)(2)(E) to Rule 11.630, which states that:

(E) If an Industry Member is required to submit and submits a trade report for a trade, and, if the trade is cancelled, a cancellation, to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution and/or cancellation to the Central Repository:

(1) The Industry Member is required to report to the Central Repository trade identifier reported by the Industry Member to such FINRA facility for the trade when the Industry Member reports the execution of an order pursuant to Rule 11.630(a)(1)(E) or cancellation of an order pursuant to Rule 11.630(a)(1)(D) beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters, and such trade identifier must be unique beginning October 26, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

The Exchange also proposes to relieve Industry Members of the obligation to report to the CAT data related to clearing brokers and trade cancellations pursuant to Rules 11.630(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT, except in certain circumstances. Accordingly, the Exchange proposes new paragraphs (a)(2)(E)(2) and (3) to Rule 11.630, which would state:

(2) If the order is executed in whole or in part, and the Industry Member submits the trade report to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the SRO-Assigned Market Participant Identifier of the clearing broker pursuant to Rule 11.630(a)(2)(A)(ii); provided, however, if the Industry Member does not report the clearing number of the clearing broker to such FINRA facility for a trade, or does not report the unique trade identifier to the Central Repository as required by Rule 11.630(a)(2)(E)(1), then the Industry Member would be required to record and report to the Central Repository the clearing number of the clearing broker as well as information about the contra party to the trade beginning April 26, 2021 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters; and

(3) if the trade is cancelled and the Industry Member submits the cancellation to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the cancelled trade indicator pursuant to Rule 11.630(a)(2)(B); provided, however, if the Industry Member does not report a cancellation for a canceled trade to such FINRA facility, or does not report the unique trade identifier as required by 11.630(a)(2)(E)(1), then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator as well as a cancelled trade timestamp beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[37] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[38] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

The Exchange believes that this proposal is consistent with the Act because it is consistent with certain exemptions from the CAT NMS Plan, because it facilitates the retirement of certain existing regulatory systems, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [39] To the extent that this proposal implements the Plan, including the exemptive relief, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes are consistent with certain exemptions from the CAT NMS Plan, facilitate the retirement of certain existing regulatory systems, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the amendments to the Compliance Rules will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing these amendments to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

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 Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) [40] of the Act and Rule 19b–4(f)(6) [41] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[42]

A proposed rule change filed under Rule 19b–4(f)(6) [43] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[44] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by June 22, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements exemptive relief from the CAT NMS

[37] 15 U.S.C. 78f(b)(6).

[38] 15 U.S.C. 78f(b)(8).

[39] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[40] 15 U.S.C. 78s(b)(3)(A).

[41] 17 CFR 240.19b–4(f)(6).

[42] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[43] 17 CFR 240.19b–4(f)(6).

[44] 17 CFR 240.19b–4(f)(6)(iii).

Plan granted by the Commission and facilitates the start of Industry Member reporting on June 22, 2020. In addition, as noted by the Exchange, the proposed rule change is based on a filing recently approved by the Commission.[45] Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative as of June 22, 2020.[46]

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 under Section 19(b)(2)(B)[47] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2020–08 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–IEX–2020–08. This file number should be included in 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 Section, 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 will also 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–IEX–2020–08 and should be submitted on or before July 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13773 Filed 6–25–20; 8:45 am]

BILLING CODE 8011–01–P

[45] *See* Securities Exchange Act Release No. 89108 (June 19, 2020).

[46] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[47] 15 U.S.C. 78s(b)(2)(B).

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89117; File No. SR–MIAX–2020–18]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Chapter XVII, Consolidated Audit Trail Compliance Rule

June 22, 2020.

Pursuant to the provisions of 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 June 22, 2020, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Chapter XVII, MIAX's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'')[3] to be consistent with certain exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' 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 this proposed rule change is to amend the Chapter XVII, the Compliance Rule regarding the CAT NMS Plan, to be consistent with certain exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. As described more fully below, the proposed rule change would make the following changes to the Compliance Rule:

- Add additional data elements to the CAT reporting requirements for Industry Members to facilitate the retirement of the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System (''OATS'');
- Add additional data elements related to OTC Equity Securities that FINRA currently receives from alternative trading systems (''ATSs'')

[3] Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) (''Adopting Release''). Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

that trade OTC Equity Securities for regulatory oversight purposes to the CAT reporting requirements for Industry Members;

- Implement a phased approach for Industry Member reporting to the CAT (''Phased Reporting'');
- To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, revise the timestamp granularity requirement to require such Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds;
- Require Introducing Industry Members (as defined below) to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members;
- Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, ''individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' (collectively, referred to as ''SSNs'') or account numbers; and
- Revise the CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA's trade reports submitted to the CAT.

i. CAT–OATS Data Gaps

The Participants have worked to identify gaps between data reported to existing systems and data to be reported to the CAT to ''ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.'' [4] As a result of this process, the Participants identified several data elements that must be included in the CAT reporting requirements before existing systems can be retired. In particular, the Participants identified certain data elements that are required by OATS, but not currently enumerated in the CAT NMS Plan. Accordingly, MIAX proposes to amend its Compliance Rule to include these OATS data elements in the CAT. Each of such OATS data elements are discussed below. With the addition of these OATS data elements to the CAT, the CAT will have the data elements necessary to retire OATS.

A. Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members [5] to record the identification of information barriers for certain order events, including when an order is received or originated, transmitted to a department within the OATS Reporting Member, and when it is modified. The Participants propose to amend the Compliance Rule to incorporate these requirements into the CAT.

Specifically, FINRA Rule 7440(b)(20) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.'' [6] The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, MIAX proposes to add new paragraph (a)(1)(A)(vii) to Rule 1703, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member where the order was received or originated.''

In addition, FINRA Rule 7440(c)(1) states that ''[w]hen a Reporting Member transmits an order to a department within the member, the Reporting Member shall record: . . . (H) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.'' The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, MIAX proposes to revise paragraph (a)(1)(B)(vi) of Rule 1703 to require, for the routing of an order, if routed internally at the Industry Member, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member to which the order was transmitted.''

FINRA Rule 7440(c)(2)(B) and 7440(c)(4)(B) require an OATS Reporting Member that receives an order transmitted from another member to report the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rule not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, MIAX proposes to add new paragraph (a)(1)(C)(vii) to Rule 1703, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received the order.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification to the terms of an order to report the unique identification of any appropriate information barriers in place at the department within the member to which the modification was originated or received. The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, MIAX proposes to add new paragraph (a)(1)(D)(vii) to Rule 1703, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received or originated the modification.''

B. Reporting Requirements for ATSs

Under FINRA Rule 4554, ATSs that receive orders in NMS stocks are required to report certain order information to OATS, which FINRA uses to reconstruct ATS order books and perform order-based surveillance, including layering, spoofing, and mid-point pricing manipulation surveillance.[7] The Participants believe that Industry Members operating ATSs—whether such ATS trades NMS stocks or OTC Equity Securities—should likewise be required to report this information to the CAT. Because ATSs that trade NMS stocks are already recording this information and reporting it to OATS, the Participants believe that reporting the same information to the

[4] Letter from Participants to Brent J. Fields, Secretary, SEC re: File Number 4–698; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail (September 23, 2016) at 21 (''Participants' Response to Comments'') (available at *https://www.sec.gov/comments/4-698/4698-32.pdf*).

[5] An OATS ''Reporting Member'' is defined in FINRA Rule 7410(o).

[6] FINRA Rule 5320 prohibits trading ahead of customer orders.

[7] *See* FINRA *Regulatory Notice* 16–28 (August 2016).

CAT should impose little burden on these ATSs. Moreover, including this information in the CAT is also necessary for FINRA to be able to retire the OATS system. The Participants similarly believe that obtaining the same information from ATSs that trade OTC Equity Securities will be important for purposes of reconstructing ATS order books and surveillance. Accordingly, MIAX proposes to add to the data reporting requirements in the Compliance Rule the reporting requirements for ATSs in FINRA Rule 4554,[8] but to expand such requirements so that they are applicable to all ATSs rather than solely to ATSs that trade NMS stocks.

(i) New Definition

MIAX proposes to add a definition of ''ATS'' to new paragraph (d) of Rule 1701 to facilitate the addition to the CAT of the reporting requirements for ATSs set forth in FINRA Rule 4554. MIAX proposes to define an ''ATS'' to mean ''an alternative trading system, as defined in Rule 300(a)(1) of Regulation ATS under the Exchange Act.''

(ii) ATS Order Type

FINRA Rule 4554(b)(5) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

A unique identifier for each order type offered by the ATS. An ATS must provide FINRA with (i) a list of all of its order types 20 days before such order types become effective and (ii) any changes to its order types 20 days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

The Compliance Rule does not require Industry Members to report such order type information to the Central Repository. To address this OATS–CAT data gap, MIAX proposes to incorporate these requirements into four new provisions to the Compliance Rule: Paragraphs (a)(1)(A)(xi)(1), (a)(1)(C)(x)(1), (a)(1)(D)(ix)(1) and (a)(2)(D) of Rule 1703.

Proposed paragraph (a)(1)(A)(xi)(1) of Rule 1703 would require an Industry Member that operates an ATS to record and report to the Central Repository for the original receipt or origination of an order ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(C)(x)(1) of Rule 1703 would require an Industry Member that operates an ATS to record and report to the Central Repository for the receipt of an order that has been routed ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(D)(ix)(1) of Rule 1703 would require an Industry Member that operates an ATS to record and report to the Central Repository if the order is modified or cancelled ''the ATS's unique identifier for the order type of the order.'' Furthermore, as with the requirements in FINRA Rule 4554(b)(5), proposed paragraph (a)(2)(D) of Rule 1703 would state that:

An Industry Member that operates an ATS must provide to the Central Repository: (1) A list of all of its order types twenty (20) days before such order types become effective; and (2) any changes to its order types twenty (20) days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

(iii) National Best Bid and Offer

FINRA Rules 4554(b)(6) and (7) require the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

(6) The NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(7) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (6). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, FINRA Rule 4554(c) requires the following information to be recorded and reported to FINRA by ATSs when reporting the execution of an order to OATS:

(1) The NBBO (or relevant reference price) in effect at the time of order execution;

(2) The timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(3) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (1). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

The Compliance Rule does not require Industry Members to report such NBBO information to the Central Repository. To address this OATS–CAT data gap, MIAX proposes to incorporate these requirements into four new provisions to the Compliance Rule: (a)(1)(A)(xi)(2)–(3), (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 1703.

Specifically, proposed paragraph (a)(1)(A)(xi)(2)–(3) of Rule 1703 would require an Industry Member that operates an ATS to record and report to the Central Repository the following information when reporting the original receipt or origination of order:

(2) The National Best Bid and National Best Offer (or relevant reference price) at the time of order receipt or origination, and the date and time at which the ATS recorded such National Best Bid and National Best Offer (or relevant reference price);

(3) the identification of the market data feed used by the ATS to record the National Best Bid and National Best Offer (or relevant reference price) for purposes of subparagraph (xi)(2). If for any reason the ATS uses an alternative market data feed than what was reported on its ATS data submission, the ATS must provide notice to the Central Repository of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, proposed paragraphs (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 1703 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed, when reporting if the order is modified or cancelled, and when an order has been executed, respectively.

(iv) Sequence Numbers

FINRA Rule 4554(d) states that ''[f]or all OATS-reportable event types, all ATSs must record and report to FINRA the sequence number assigned to the order event by the ATS's matching engine.'' The Compliance Rule does not require Industry Members to report ATS sequence numbers to the Central Repository. To address this OATS–CAT data gap, MIAX proposes to incorporate this requirement regarding ATS sequence numbers into each of the Reportable Events for the CAT. Specifically, MIAX proposes to add proposed paragraph (a)(1)(A)(xi)(4) to Rule 1703, which would require an

[8] FINRA Rule 4554 was approved by the SEC on May 10, 2016, while the CAT NMS Plan was pending with the Commission. *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (Order Approving SR–FINRA–2016–010). As noted in the Participants' Response to Comments, throughout the process of developing the Plan, the Participants worked to keep the gap analyses for OATS, electronic blue sheets, and the CAT up-to-date, which included adding data fields related to the tick size pilot and ATS order book amendments to the OATS rules. *See* Participants' Response to Comments at 21. However, due to the timing of the expiration of the tick size pilot, the Participants decided not to include those data elements into the CAT NMS Plan.

Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt or origination of the order by the ATS's matching engine.'' MIAX proposes to add proposed paragraph (a)(1)(B)(viii) to Rule 1703, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the routing of the order by the ATS's matching engine.'' MIAX also proposes to add proposed paragraph (a)(1)(C)(x)(4) to Rule 1703, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt of the order by the ATS's matching engine.'' In addition, MIAX proposes to add proposed paragraph (a)(1)(D)(ix)(4) to Rule 1703, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the modification or cancellation of the order by the ATS's matching engine.'' Finally, MIAX proposes to add proposed paragraph (a)(1)(E)(viii)(3) to Rule 1703, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the execution of the order by the ATS's matching engine.''

(v) Modification or Cancellation of Orders by ATSs

FINRA Rule 4554(f) states that ''[f]or an ATS that displays subscriber orders, each time the ATS's matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report to OATS the time of such modification,'' and ''the applicable new display price or size.'' MIAX proposes adding a comparable requirement into new paragraph (a)(1)(D)(ix)(5) to Rule 1703. Specifically, proposed new paragraph (a)(1)(D)(ix)(5) of Rule 1703 would require an Industry Member that operates an ATS to report to the Central Repository, if the order is modified or cancelled, ''each time the ATS's matching engine re-prices an order or changes the quantity of an order,'' the ATS must report to the Central Repository ''the time of such modification, and the applicable new price or size.'' Proposed paragraph (a)(1)(D)(ix)(5) of Rule 1703 would apply to all ATSs, not just ATSs that display orders.

(vi) Display of Subscriber Orders

FINRA Rule 4554(b)(1) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

> Whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data);

The Compliance Rule does not require Industry Members to report to the CAT such information about the displaying of subscriber orders. MIAX proposes to add comparable requirements into proposed paragraphs (a)(1)(A)(xi)(5) and (a)(1)(C)(x)(5) of Rule 1703. Specifically, proposed paragraph (a)(1)(A)(xi)(5) would require an Industry Member that operates an ATS to report to the Central Repository, for the original receipt or origination of an order,

> whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data.

Similarly, proposed paragraph (a)(1)(C)(x)(5) of Rule 1703 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed.

C. Customer Instruction Flag

FINRA Rule 7440(b)(14) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Compliance Rule does not require Industry Members to report to the CAT such a customer instruction flag. To address this OATS–CAT data gap, MIAX proposes to add new paragraph (a)(1)(A)(viii) to Rule 1703, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' MIAX also proposes to add new paragraph (a)(1)(C)(ix) to Rule 1703, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification of an order to report the customer instruction flag. The Compliance Rule does not require Industry Members to report such a customer instruction flag. To address this OATS–CAT data gap, MIAX proposes to add new paragraph (a)(1)(D)(viii) to Rule 1703, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

D. Department Type

FINRA Rules 7440(b)(4) and (5) require an OATS Reporting Member that receives or originates an order to record the following information: ''the identification of any department or the identification number of any terminal where an order is received directly from a customer'' and ''where the order is originated by a Reporting Member, the identification of the department of the member that originates the order.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the department or terminal where the order is received or originated. To address this OATS–CAT data gap, MIAX proposes to add paragraph (a)(1)(A)(ix) to Rule 1703, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the nature of the department or desk that originated the order, or received the order from a Customer.''

Similarly, per FINRA Rules 7440(c)(2)(B) and (4)(B), when an OATS Reporting Member receives an order that has been transmitted by another Member, the receiving OATS Reporting Member is required to record the information required in 7440(b)(4) and (5) described above as applicable. The Compliance Rule does not require Industry Members to report to the CAT information regarding the department that received an order. To address this OATS–CAT data gap, MIAXs propose to add new paragraph (a)(1)(C)(viii) to Rule 1703, which would require Industry Members to record and report to the Central Repository upon the receipt of an order that has been routed ''the nature of the department or desk that received the order.''

E. Account Holder Type

FINRA Rule 7440(b)(18) requires an OATS Reporting Member that receives or originates an order to record the following information: ''the type of account, *i.e.,* retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the type of account holder for which the order is submitted. To address this OATS–CAT data gap, MIAX proposes to add new paragraph (a)(1)(A)(x) to Rule 1703, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the type of account holder for which the order is submitted.''

ii. OTC Equity Securities

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently receives from ATSs that trade OTC Equity Securities for regulatory oversight purposes, but are not currently included in CAT Data. In particular, the Participants identified three data elements that need to be added to the CAT: (1) Bids and offers for OTC Equity Securities; (2) a flag indicating whether a quote in OTC Equity Securities is solicited or unsolicited; and (3) unpriced bids and offers in OTC Equity Securities. The Participants believe that such data will continue to be important for regulators to oversee the OTC Equity Securities market when using the CAT. Moreover, the Participants do not believe that the proposed requirement would burden ATSs because they currently report this information to FINRA and thus the reporting requirement would merely shift from FINRA to the CAT. Accordingly, as discussed below, MIAX proposes to amend its Compliance Rule to include these data elements.

A. Bids and Offers for OTC Equity Securities

In performing its current regulatory oversight, FINRA receives a data feed of the best bids and offers in OTC Equity Securities from ATSs that trade OTC Equity Securities. These best bid and offer data feeds for OTC Equity Securities are similar to the best bid and offer SIP Data required to be collected by the Central Repository with regard to NMS Securities.[9] Accordingly, MIAX proposes to add paragraph (f)(1) to Rule 1703 to require the reporting of the best bid and offer data feeds for OTC Equity Securities to the CAT. Specifically, proposed paragraph (f)(1) of Rule 1703 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the best bid and best offer for each OTC Equity Security traded on such ATS.''

B. Unsolicited Bid or Offer Flag

FINRA also receives from ATSs that trade OTC Equity Securities an indication whether each bid or offer in OTC Equity Securities on such ATS was solicited or unsolicited. Therefore, MIAX proposes to add paragraph (f)(2) to Rule 1703 to require the reporting to the CAT of an indication as to whether a bid or offer was solicited or unsolicited. Specifically, proposed paragraph (f)(2) of Rule 1703 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''an indication of whether each bid and offer for OTC Equity Securities was solicited or unsolicited.''

C. Unpriced Bids and Offers

FINRA receives from ATSs that trade OTC Equity Securities certain unpriced bids and offers for each OTC Equity Security traded on the ATS. Therefore, MIAX proposes to add paragraph (f)(3) to Rule 1703, which would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the unpriced bids and offers for each OTC Equity Security traded on such ATS.''

iii. Revised Industry Member Reporting Timeline

On February 19, 2020, the Participants filed with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for the implementation of phased reporting to the CAT by Industry Members (''Phased Reporting'').[10] Specifically, in their exemptive request, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members other than Small Industry Members (''Large Industry Members'') to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Small Industry Members [11] to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Correspondingly, the Participants requested that the SEC provide an exemption from the requirement in Section 6.4 of the CAT NMS Plan that ''[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.'' On April 20, 2020, the SEC granted the Participants exemptive relief to implement Phased Reporting, subject to certain timeline changes and conditions.[12]

As a condition to the exemption, each Participant would implement Phased Reporting through its Compliance Rule by requiring:

(1) Its Large Industry Members and its Small Industry Members that are required to record or report information to OATS pursuant to applicable SRO rules (''Small Industry OATS Reporters'') to commence reporting to the Central Repository Phase 2a Industry Member Data by June 22, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by July 20, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member

[9] Section 6.5(a)(ii) of the CAT NMS Plan.

[10] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

[11] *See* Section 1.1 of the CAT NMS Plan.

[12] *See* Securities Exchange Act Release No. 88702 (April 20, 2020), 85 FR 23075 (April 24, 2020). As discussed in the SEC's exemptive order, the Commission granted the Participants conditional exemptive relief from the CAT NMS Plan so that the Compliance Rules may require Phase 2a reporting to commence on June 22, 2020, rather than the April 20, 2020 date set forth in the exemptive request, and Phase 2b reporting to commence on July 20, 2020, rather than the May 18, 2020 date set forth in the exemptive request. As a condition to the exemptive relief, Industry Members who elect to report to the CAT prior to such dates will be permitted to report to the CAT as early as April 20, 2020 for Phase 2a reporting and as early as May 18, 2020 for Phase 2b reporting.

Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data required under the CAT NMS Plan will be required to be reported when all five phases of the Phased Reporting have been implemented, subject to any applicable exemptive relief or amendments related to the CAT NMS Plan.

As a further condition to the exemption, each Participant proposes to implement the testing timelines described in Section F below through its Compliance Rule by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

As a result, MIAX proposes to amend its Compliance Rule to be consistent with the exemptive relief to implement Phased Reporting as described below.

A. Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by June 22, 2020.[13] To implement the Phased Reporting for Phase 2a, MIAX proposes to add paragraph (t)(1) of Rule 1701 (previously paragraph (s)) and amend paragraphs (c)(1) and (2) of Rule 1712.

(i) Scope of Reporting in Phase 2a

To implement the Phased Reporting with respect to Phase 2a, MIAX proposes to add a definition of ''Phase 2a Industry Member Data'' as paragraph (t)(1) of Rule 1703. Specifically, MIAX proposes to define the term ''Phase 2a Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2a.'' Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. While the following summarizes categories of Industry Member Data required for Phase 2a, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2a.[14]

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a. The inclusion of all OATS events and scenarios in the CAT is intended to facilitate the retirement of OATS.

Phase 2a Industry Member Data also would include Reportable Events for:

- Proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF'');
- electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''IDQS''); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by paragraphs (a)(1)(A)(i), and (a)(2)(C) of Rule 1703. Paragraph (a)(1)(A)(i) of Rule 1703 requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Paragraph (a)(2)(C) of Rule 1703 requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID if the order is executed, in whole or in part.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) The representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Rule 1703, Industry Members would be required to provide a timestamp pursuant to Rule 1706. Rule 1706(b)(i) states that

[13] Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters'') would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by December 13, 2021, which is approximately seventeen months after Large Industry Members and Small Industry OATS Reporters begin reporting.

[14] The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c or Phase 2d, as discussed below.

Each Industry Member may record and report: Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Members shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member (''*Electronic Capture Time*'') in milliseconds.

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.[15]

Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (''ISO''). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.[16] In addition, in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.

(ii) Timing of Phase 2a Reporting

Pursuant to paragraph (c)(1) of Rule 1712, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2a for Large Industry Members, MIAX proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 1712 with new paragraph (c)(1)(A) of Rule 1712, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by June 22, 2020.''

Pursuant to paragraph (c)(2) of Rule 1712, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2a for Small Industry Members, MIAX proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 1712 with new paragraphs (c)(2)(A) and (B) of Rule 1712. Proposed paragraph (c)(2)(A) of Rule 1712 would state that

Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: (A) Small Industry Members that are required to record or report information to FINRA's Order Audit Trail System pursuant to applicable MIAX rules (''Small Industry OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by June 22, 2020.

Proposed paragraph (c)(2)(B) of Rule 1712 would state that ''Small Industry Members that are not required to record or report information to FINRA's Order Audit Trail System pursuant to applicable MIAX rules (''Small Industry Non-OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by December 13, 2021.''

B. Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by July 20, 2020. Small Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by December 13, 2021, which is approximately seventeen months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2b, MIAX proposes to add paragraph (t)(2) to Rule 1701 and amend paragraphs (c)(1) and (2) of Rule 1712.

(i) Scope of Phase 2b Reporting

To implement the Phased Reporting with respect to Phase 2b, MIAX proposes to add a definition of ''Phase 2b Industry Member Data'' as paragraph (t)(2) to Rule 1701. Specifically, MIAX proposes to define the term ''Phase 2b Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2b.'' Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. While the following summarizes the categories of Industry Member Data required for Phase 2b, the Industry Member Technical Specifications provide detailed guidance regarding reporting for Phase 2b.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.[17] A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are also reportable in Phase 2b.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by MIAX rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

(ii) Timing of Phase 2b Reporting

Pursuant to paragraph (c)(1) of Rule 1712, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, MIAX

[15] Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

[16] This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

[17] The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below in Section A.4.

proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 1712 with new paragraph (c)(1)(B) of Rule 1712, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (B) Phase 2b Industry Member Data by July 20, 2020.''

Pursuant to paragraph (c)(2) of Rule 1712, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2b for Small Industry Members, MIAX proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 1712 with new paragraph (c)(2)(C) of Rule 1712, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository Phase 2b Industry Member Data . . . by December 13, 2021.''

C. Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by April 26, 2021. Small Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by December 13, 2021, which is approximately seven months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2c, MIAX proposes to add paragraph (t)(3) to Rule 1701 and amend paragraphs (c)(1) and (2) of Rule 1712.

(i) Scope of Phase 2c Reporting

To implement the Phased Reporting with respect to Phase 2c, MIAX proposes to add a definition of ''Phase 2c Industry Member Data'' as paragraph (t)(3) to Rule 1701. Specifically, MIAX proposes to define the term ''Phase 2c Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2c.'' Phase 2c Industry Member Data'' would be Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data or Phase 2e Industry Member Data. Phase 2c Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. While the following summarizes the categories of Industry Member Data required for Phase 2c, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2c.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of large trader identifiers [18] (''LTID'') (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date [19] (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for all representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[20]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) An equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the Alternative Display Facility (ADF) operated by FINRA; or (b) for unlisted equity securities to an ''inter-dealer quotation system'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.

(ii) Timing of Phase 2c Reporting

Pursuant to paragraph (c)(1) of Rule 1712, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2c for Large Industry Members, MIAX proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 1712 with new paragraph

[18] *See* definition of ''Customer Account Information'' in Section 1.1 of the CAT NMS Plan. *See also* Rule 13h-1 under the Exchange Act.

[19] *See* definition of ''Customer Account Information'' and ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan. Note that SRO also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, SRO proposes to amend paragraph (m)(2) of Rule 1701 to replace the references to November 15, 2018 and 2019 with references to the commencement of Phase 2c and Phase 2d. SRO also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

[20] In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an OMS and represented by a principal order originated in an EMS that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

(c)(1)(C) of Rule 1712, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Phase 2c Industry Member Data by April 26, 2021.''

Pursuant to paragraph (c)(2) of Rule 1712, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2c for Small Industry Members, MIAX proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 1712 with new paragraph (c)(2)(C) of Rule 1712, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2c Industry Member Data . . . by December 13, 2021.''

D. Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2d Industry Member Data'' by December 13, 2021. To implement the Phased Reporting for Phase 2d, MIAX proposes to add paragraph (t)(4) to Rule 1701 and amend paragraphs (c)(1) and (2) of Rule 1712.

(i) Scope of Phase 2d Reporting

To implement the Phased Reporting with respect to Phase 2d, MIAX proposes to add a definition of ''Phase 2d Industry Member Data'' as paragraph (t)(4) to Rule 1701. Specifically, MIAX proposes to define the term ''Phase 2d Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2d.'' [21]

''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d. While the following summarizes the categories of Industry Member Data required for Phase 2d, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2d.

Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) Simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; [22] (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders.

Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: A listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition would be reportable in Phase 2d for options.

Phase 2d Industry Member Data also would include with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).

(ii) Timing of Phase 2d Reporting

Pursuant to paragraph (c)(1) of Rule 1712, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2d for Large Industry Members, MIAX proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 1712 with new paragraph (c)(1)(D) of Rule 1712, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (D) Phase 2d Industry Member Data by December 13, 2021.''

Pursuant to paragraph (c)(2) of Rule 1712, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, MIAX proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 1712 with new paragraph (c)(2)(C) of Rule 1712, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2d Industry Member Data by December 13, 2021.''

E. Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2e Industry Member Data'' by July 11, 2022. To implement the Phased Reporting for Phase 2e, MIAX proposes

[21] The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

[22] As noted above, SRO also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, SRO proposes to amend paragraph (m)(2) of Rule 1701 to replace the references to November 15, 2018 and 2019 with references to the commencement of Phase 2c and Phase 2d. SRO also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

to add paragraph (t)(5) to Rule 1701 and amend paragraphs (c)(1) and (2) of Rule 1712.

(i) Scope of Phase 2e Reporting

To implement the Phased Reporting with respect to Phase 2e, MIAX proposes to add a definition of ''Phase 2e Industry Member Data'' as paragraph (t)(5) of Rule 1701. Specifically, MIAX proposes to define the term ''Phase 2e Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2e. The full scope of Industry Member Data required by the CAT NMS Plan will be required to be reported to the CAT when Phase 2e has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.'' LTIDs and Account Effective Date are both required to be reported in Phases 2c and 2d in certain circumstances, as discussed above. The terms ''Customer Account Information'' and ''Customer Identifying Information'' are defined in Rule 1701 of the Compliance Rule.[23] The Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2e.

(ii) Timing of Phase 2e Reporting

Pursuant to paragraph (c)(1) of Rule 1712, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2e for Large Industry Members, MIAX proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 1712 with new paragraph (c)(1)(E) of Rule 1712, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Phase 2e Industry Member Data by July 11, 2022.''

Pursuant to paragraph (c)(2) of Rule 1712, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2e for Small Industry Members, MIAX proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 1712 with new paragraph (c)(2)(D) of Rule 1712, which would state, in relevant part, that ''[e]ach Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Small Industry Members to report to the Central Repository Phase 2e Industry Member Data by July 11, 2022.''

F. Industry Member Testing Requirements

Rule 1709(a) sets forth various compliance dates for the testing and development for connectivity, acceptance and the submission order data. In light of the intent to shift to Phased Reporting in place of the two specified dates for the commencement of reporting for Large and Small Industry Members, MIAX correspondingly proposes to replace the Industry Member development testing milestones in Rule 6880(a) with the testing milestones set forth in the exemptive relief. Specifically, MIAX proposes to replace Rule 6880(a) with the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.

(3) The Industry Member test environment shall open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment shall open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment shall open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting shall begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

vi. Granularity of Timestamps

On February 3, 2020, the Participants filed with the Commission a request for exemptive relief from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository.[24] On April 8, 2020, the Participants received the exemptive relief.[25] As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances. The timestamp granularity exemption remains in effect for five years, until April 8, 2025. After five years, the exemption would no longer be in effect unless the period the exemption is in effect is extended by the SEC.

Accordingly, MIAX proposes to amend its Compliance Rule to reflect the exemptive relief. Specifically, MIAX proposes to amend paragraph (a)(2) of Rule 1706. Rule 1706(a)(2) states that

> Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment.

MIAX proposes to amend this provision to read as follows to reflect the exemptive relief:

> Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds; provided, that Industry Members that capture timestamps in increments more granular than nanoseconds

[23] The term ''Customer Account Information'' includes account numbers, and the term ''Customer Identifying Information'' includes, with respect to individuals, dates of birth and SSNs. *See* Rule 1701. The Participants have received exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). *See* also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020). Given the relief has been granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

[24] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

[25] *See* Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

must truncate the timestamps after the nanosecond level for submission to CAT, rather than rounding such timestamps up or down, until April 8, 2025.

v. Introducing Industry Members

On February 3, 2020, the Participants requested that the Commission exempt broker-dealers that do not qualify as Small Industry Members solely because they satisfy Rule 0–10(i)(2) under the Exchange Act and, as a result, are deemed affiliated with an entity that is not a small business or small organization (''Introducing Industry Member'') from the requirements in the CAT NMS Plan applicable to Industry Members other than Small Industry Members (''Large Industry Members'').[26] Instead, such Introducing Industry Members would comply with the requirements in the CAT NMS Plan applicable to Small Industry Members. On April 20, 2020, the SEC granted the Participants exemptive relief with regard to Introducing Industry Members.[27]

As a result, MIAX proposes to amend its Compliance Rule to adopt a definition of ''Introducing Industry Member'' and to revise Rule 1712 to require Introducing Industry Members to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members. Specifically, the Exchange proposes to define ''Introducing Industry Member'' in proposed paragraph (v) to Rule 1701, as ''a broker-dealer that does not qualify as a Small Industry Member solely because such broker-dealer satisfies Rule 0–10(i)(2) under the Exchange Act in that it introduces transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations.'' The Exchange also proposes to add a new paragraph (3) to Rule 1712(c) to state that ''Introducing Industry Members must comply with the requirements of the CAT NMS Plan applicable to Small Industry Members.'' With these changes, Introducing Industry Members would be required to comply with the requirements in the CAT NMS Plan applicable to Small Industry Members, rather than the requirements in the CAT NMS Plan applicable to Large Industry Members.

vi. CCID/PII

On January 29, 2020, the Participants filed with the Commission a request for exemptive relief from certain requirements related to reporting SSNs, dates of birth and account numbers to the CAT.[28] The Commission, Participants and others indicated security concerns with maintaining such sensitive Customer information in the CAT. On March 17, 2020, the Participants received the exemptive relief, subject to certain conditions.[29] Assuming the Participants comply with the conditions set forth in the PII Exemption Order, Industry Members would not be required to report SSNs, dates of birth and account numbers to the CAT NMS Plan.

As described in the request for exemptive relief, the Participants requested exemptive relief to allow for an alternative approach to generating a CAT Customer ID (''CCID'') without requiring Industry Members to report SSNs to the CAT (the ''CCID Alternative''). In lieu of retaining such SSNs in the CAT, the Participants would use the CCID Alternative, a strategy developed by the Chief Information Security Officer for the CAT and the Chief Information Security Officers from each of the Participants, in consultation with security experts from member firms of Securities Industry and Financial Markets Association. The CCID Alternative facilitates the ability of the Plan Processor to generate a CCID without requiring the Plan Processor to receive SSNs or store SSNs within the CAT. Under the CCID Alternative, the Plan Processor would generate a unique CCID using a two-phase transformation process that avoids having SSNs reported to or stored in the CAT. In the first transformation phase, a CAT Reporter would transform the SSN to an interim value (the ''transformed value''). This transformed value, and not the SSN, would be submitted to a separate system within the CAT (''CCID Subsystem''). The CCID Subsystem would then perform a second transformation to create the globally unique CCID for each Customer that is unknown to, and not shared with, the original CAT Reporter. The CCID would then be sent to the customer and account information system of the CAT, where it would be linked with the other customer and account information. The CCID may then be used by the Participants' regulatory staff and the SEC in queries and analysis of CAT Data. To implement the CCID Alternative, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report SSNs to the Central Repository for the original receipt of an order. As set forth in one condition of the PII Exemption Order, Industry Members would be required to transform an SSN to an interim value, and report the transformed value to the CAT.

The Participants also requested exemptive relief to allow for an alternative approach which would exempt the reporting of dates of birth and account numbers [30] to the CAT (''Modified PII Approach''), and instead would require Industry Members to report the year of birth and the Firm Designated ID for each trading account associated with the Customers. To implement the Modified PII Approach, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order dates of birth and account numbers for Customers. As conditions to the exemption, Industry Members would be required to report the year of birth of an individual to the Central Repository, and to report the Firm Designated ID to the Central Repository.

To implement the request for exemptive relief and to eliminate the requirement to report SSNs, date of birth and account numbers to the CAT, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief. Rule 1703(a)(2)(C) states that

> [s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information

[26] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Small Industry Members (Feb. 3, 2020).

[27] *See* Securities Exchange Act Release No. 88703 (April 20, 2020), 85 FR 23115 (April 24, 2020).

[28] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

[29] *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020) (Order Granting Conditional Exemptive Relief, Pursuant to Section 36 and Rule 608(e) of the Securities Exchange Act of 1934, from Section 6.4(d)(ii)(C) and Appendix D Sections 4.1.6, 6.2, 8.1.1, 8.2, 9.1, 9.2, 9.4, 10.1, and 10.3 of the National Market System Plan Governing the Consolidated Audit Trail) (''PII Exemption Order''). The PII Exemption Order lists several conditions that must be met by the Exchange. If the Exchange does not satisfy the conditions, the PII Exemption Order would not apply to the Exchange.

[30] With respect to this aspect of the requested relief, the PII Exemption Order provided relief with regard to the reporting of all account numbers, not just account numbers for individuals as requested by the Participants.

referred to in Rule 6830(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with Rule 6840, Customer Account Information and Customer Identifying Information for the relevant Customer.

Similarly, Rule 1704 requires the reporting of Customer Account Information and Customer Identifying Information to the Central Repository. Currently, Rule 1701(m) defines ''Customer Identifying Information'' to include, with respect to individuals, ''date of birth'' and ''individual tax payer identification number (''ITIN'')/social security number (''SSN'').'' Accordingly, the Exchange proposes to replace ''date of birth'' in the definition of ''Customer Identifying Information'' in Rule 1701(m) (now renumbered Rule 1701(n)) with ''year of birth'' and to delete ''individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' from Rule 6810(m) (now renumbered Rule 6810(n)). In addition, currently, Rule 1701(l) defines ''Customer Account Information'' to include account numbers. The Exchange proposes to delete ''account number'' from the definition of ''Customer Account Information'' in Rule 1701(l) (now renumbered Rule 6810(m)).

The Exchange also proposes to add a definition of the term ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to Rule 1701. Specifically, the Exchange proposes to add paragraph (pp) to Rule 1701 to define ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to mean ''the interim value created by an Industry Member based on a Customer ITIN/SSN.''

The Exchange proposes to revise Rule 1703(a)(2)(C) to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''). Specifically, the Exchange proposes to revise Rule 6830(a)(2)(C) to state:

[s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 1703(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), and in accordance with Rule 1704, Customer Account Information and Customer Identifying Information for the relevant Customer.

The Exchange also proposes to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') in the Customer information reporting required under Rule 1704. Specifically, the Exchange proposes to revise Rule 1704(a) to require each Industry Member to submit to the Central Repository the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), for each of its Customers with an Active Account prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 6880. The Exchange also proposes to revise Rule 1704(b) to require each Industry Member to submit to the Central Repository any updates, additions or other changes to the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account on a daily basis. In addition, the Exchange proposes to revise Rule 6840(c) to require, on a periodic basis as designated by the Plan Processor and approved by the Operating Committee, each Industry Member to submit to the Central Repository a complete set of the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account. The Exchange also proposes to revise Rule 6840(d) to require, for each Industry Member for which errors in the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member to submit corrected data to the Central Repository by 5:00 p.m. Eastern Time on T+3.

Paragraph (1)(B) of Rule 1701(m), the definition of ''Customer Account Information'' states that ''in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will'' . . . ''provide the relationship identifier in lieu of the ''account number.'' As an account number will no longer be an element in ''Customer Account Information,'' the relationship identifier used in lieu of the account number will no longer be required as an element of Customer Account Information. Therefore, the Exchange proposes to delete the requirement set forth in Rule 6810(m)(a)(B) regarding relationship identifiers from Rule 1701(m).

With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers pursuant to Rule 1703(a)(2)(C). However, Industry Members would be required to report the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') and the year of birth to the Central Repository.[31]

vii. FINRA Facility Data Linkage

On June 5, 2020, the Participants filed with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for an alternative approach to the reporting of clearing numbers and cancelled trade indicators.[32] The SEC provided this exemptive relief on June 11, 2020.[33] FINRA is required to report to the Central Repository data collected by FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility (collectively, ''FINRA Facility'') pursuant to applicable SRO rules (''FINRA Facility Data''). Included in this FINRA Facility Data is the clearing number of the clearing broker for a reported trade as well as the cancelled trade indicator. Under this alternative approach, the clearing number and the cancelled trade indicator of the FINRA Facility Data that is reported to the CAT would be linked to the related execution reports reported by Industry Members. To implement this approach in a phased manner, the Participants received exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository: (1) If the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable; and (2) if the trade is cancelled, a cancelled

[31] The Exchange anticipates that the Compliance Rule may be further amended when further details regarding the CCID Alternative are finalized.

[32] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (June 5, 2020).

[33] *See* Securities Exchange Act Release No. 89051 (June 11, 2020) (**Federal Register** publication pending).

trade indicator, subject to certain conditions.

As a condition to this exemption, the Participants would continue to require Industry Members to submit a trade report for a trade, and, if the trade is cancelled, a cancellation, to a FINRA Facility pursuant to applicable SRO rules, and to report the corresponding execution to the Central Repository. In addition, Industry Members would be required to report to the Central Repository the unique trade identifier reported to a FINRA Facility with the corresponding trade report. Furthermore, if an Industry Member does not submit a cancellation to a FINRA Facility, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator and cancelled trade timestamp if the trade is cancelled. Similarly, if an Industry Member does not submit the clearing number of the clearing broker to a FINRA Facility for a trade, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository the clearing number as well as contra party information.

As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief to implement this alternative approach. Specifically, the Exchange proposes to require Industry Members to report to the CAT with an execution report the unique trade identifier reported to a FINRA facility with the corresponding trade report. For example, the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting Facility, it would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility, it would the FINRA Compliance Number. This unique trade identifier would be used to link the FINRA Facility Data with the execution report in the CAT. Specifically, the Exchange proposes to add new paragraph (a)(2)(E) to Rule 1703, which states that:

(E) If an Industry Member is required to submit and submits a trade report for a trade, and, if the trade is cancelled, a cancellation, to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution and/or cancellation to the Central Repository:

(1) the Industry Member is required to report to the Central Repository trade identifier reported by the Industry Member to such FINRA facility for the trade when the Industry Member reports the execution of an order pursuant to Rule 1703(a)(1)(E) or cancellation of an order pursuant to Rule 1703(a)(1)(D) beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters, and such trade identifier must be unique beginning October 26, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

The Exchange also proposes to relieve Industry Members of the obligation to report to the CAT data related to clearing brokers and trade cancellations pursuant to Rules 1703(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT, except in certain circumstances. Accordingly, the Exchange proposes new paragraphs (a)(2)(E)(2) and (3) to Rule 1703, which would state:

(2) if the order is executed in whole or in part, and the Industry Member submits the trade report to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the SRO-Assigned Market Participant Identifier of the clearing broker pursuant to Rule 1703(a)(2)(A)(ii); provided, however, if the Industry Member does not report the clearing number of the clearing broker to such FINRA facility for a trade, or does not report the unique trade identifier to the Central Repository as required by Rule 1703(a)(2)(E)(1), then the Industry Member would be required to record and report to the Central Repository the clearing number of the clearing broker as well as information about the contra party to the trade beginning April 26, 2021 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters; and

(3) if the trade is cancelled and the Industry Member submits the cancellation to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the cancelled trade indicator pursuant to Rule 1703(a)(2)(B); provided, however, if the Industry Member does not report a cancellation for a canceled trade to such FINRA facility, or does not report the unique trade identifier as required by Rule 1703(a)(2)(E)(1), then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator as well as a cancelled trade timestamp beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

2. Statutory Basis

MIAX believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act [34], which requires, among other things, that the MIAX rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[35] which requires that MIAX rules not impose any burden on competition that is not necessary or appropriate.

MIAX believes that this proposal is consistent with the Act because it is consistent with certain exemptions from the CAT NMS Plan, because it facilitates the retirement of certain existing regulatory systems, and is designed to assist MIAX and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [36] To the extent that this proposal implements the Plan, including the exemptive relief, and applies specific requirements to Industry Members, MIAX believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. MIAX notes that the proposed rule changes are consistent with certain exemptions from the CAT NMS Plan, facilitate the retirement of certain existing regulatory systems, and are designed to assist MIAX in meeting its regulatory obligations pursuant to the Plan. MIAX also notes that the amendments to the Compliance Rules will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing these amendments to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it

[34] 15 U.S.C. 78f(b)(6).

[35] 15 U.S.C. 78f(b)(8).

[36] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[37] and Rule 19b–4(f)(6) thereunder.[38]

A proposed rule change filed under Rule 19b–4(f)(6)[39] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[40] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by June 22, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements exemptive relief from the CAT NMS Plan granted by the Commission and facilitates the start of Industry Member reporting on June 22, 2020. In addition, as noted by the Exchange, the proposed rule change is based on a filing recently approved by the Commission.[41] Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative as of June 22, 2020.[42]

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–MIAX–2020–18 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–MIAX–2020–18. 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–MIAX–2020–18 and should be submitted on or before July 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13766 Filed 6–25–20; 8:45 am]

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[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[39] 17 CFR 240.19b–4(f)(6).

[40] 17 CFR 240.19b–4(f)(6)(iii).

[41] *See* Securities Exchange Act Release No. 89108 (June 19, 2020).

[42] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89120; File No. SR–LTSE–2020–09]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the LTSE Rule 11.600 Series (Consolidated Audit Trail Compliance Rule)

June 22, 2020.

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 June 22, 2020, Long-Term Stock Exchange, Inc. (''LTSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

LTSE proposes a rule change to amend the Rule 11.600 Series, the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'')[3] to be consistent with certain exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems.

The text of the proposed rule change is available at the Exchange's website at *https://longtermstockexchange.com/,* at the principal office of the Exchange, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 on the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 11.600 Series, the Compliance Rule regarding the CAT NMS Plan, to be consistent with certain exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. As described more fully below, the proposed rule change would make the following changes to the Compliance Rule:

- Add additional data elements to the consolidated audit trail (''CAT'') reporting requirements for Industry Members to facilitate the retirement of the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System (''OATS'');
- Add additional data elements related to OTC Equity Securities that FINRA currently receives from alternative trading systems (''ATSs'') that trade OTC Equity Securities for regulatory oversight purposes to the CAT reporting requirements for Industry Members;
- Implement a phased approach for Industry Member reporting to the CAT (''Phased Reporting'');
- To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, revise the timestamp granularity requirement to require such Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds;
- Require Introducing Industry Members (as defined below) to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members;
- Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, ''individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' (collectively, referred to as ''SSNs'') or account numbers; and
- Revise the CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA's trade reports submitted to the CAT.

i. CAT–OATS Data Gaps

The Participants have worked to identify gaps between data reported to existing systems and data to be reported to the CAT to ''ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.'' [4] As a result of this process, the Participants identified several data elements that must be included in the CAT reporting requirements before existing systems can be retired. In particular, the Participants identified certain data elements that are required by OATS, but not currently enumerated in the CAT NMS Plan. Accordingly, the Exchange proposes to amend its Compliance Rule to include these OATS data elements in the CAT. Each of such OATS data elements are discussed below. With the addition of these OATS data elements to the CAT, the CAT will have the data elements necessary to retire OATS.

A. Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members [5] to record the identification of information barriers for certain order events, including when an order is received or originated, transmitted to a department within the OATS Reporting Member, and when it is modified. The Participants propose to amend the Compliance Rule to incorporate these requirements into the CAT.

Specifically, FINRA Rule 7440(b)(20) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''If the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.'' [6] The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(vii) to Rule 11.630, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member where the order was received or originated.''

In addition, FINRA Rule 7440(c)(1) states that ''[w]hen a Reporting Member transmits an order to a department within the member, the Reporting Member shall record: . . . (H) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.'' The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to revise paragraph (a)(1)(B)(vi) of Rule 11.630 to require, for the routing of an order, if routed internally at the Industry Member, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member to which the order was transmitted.''

FINRA Rule 7440(c)(2)(B) and 7440(c)(4)(B) require an OATS Reporting Member that receives an order transmitted from another member to report the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rule not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(C)(vii) to Rule 11.630, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''the unique identification of any appropriate information barriers in place at the

[4] Letter from Participants to Brent J. Fields, Secretary, SEC, re: File Number 4–698; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail (September 23, 2016) at 21 (''Participants' Response to Comments'') (available at *https://www.sec.gov/comments/4-698/4698-32.pdf*).

[5] An OATS ''Reporting Member'' is defined in FINRA Rule 7410(o).

[6] FINRA Rule 5320 prohibits trading ahead of customer orders.

department within the Industry Member which received the order.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification to the terms of an order to report the unique identification of any appropriate information barriers in place at the department within the member to which the modification was originated or received. The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(vii) to Rule 11.630, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received or originated the modification.''

B. Reporting Requirements for ATSs

Under FINRA Rule 4554, ATSs that receive orders in NMS stocks are required to report certain order information to OATS, which FINRA uses to reconstruct ATS order books and perform order-based surveillance, including layering, spoofing, and mid-point pricing manipulation surveillance.[7] The Participants believe that Industry Members operating ATSs—whether such ATS trades NMS stocks or OTC Equity Securities—should likewise be required to report this information to the CAT. Because ATSs that trade NMS stocks are already recording this information and reporting it to OATS, the Participants believe that reporting the same information to the CAT should impose little burden on these ATSs. Moreover, including this information in the CAT is also necessary for FINRA to be able to retire the OATS system. The Participants similarly believe that obtaining the same information from ATSs that trade OTC Equity Securities will be important for purposes of reconstructing ATS order books and surveillance. Accordingly, the Exchange proposes to add to the data reporting requirements in the Compliance Rule the reporting requirements for ATSs in FINRA Rule 4554,[8] but to expand such requirements so that they are applicable to all ATSs rather than solely to ATSs that trade NMS stocks.

(i) New Definition

The Exchange proposes to add a definition of ''ATS'' to new paragraph (d) of Rule 11.610 to facilitate the addition to the CAT of the reporting requirements for ATSs set forth in FINRA Rule 4554. The Exchange proposes to define an ''ATS'' to mean ''an alternative trading system, as defined in Rule 300(a)(1) of Regulation ATS under the Exchange Act.''

(ii) ATS Order Type

FINRA Rule 4554(b)(5) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

A unique identifier for each order type offered by the ATS. An ATS must provide FINRA with (i) a list of all of its order types 20 days before such order types become effective and (ii) any changes to its order types 20 days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

The Compliance Rule does not require Industry Members to report such order type information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: Paragraphs (a)(1)(A)(xi)(1), (a)(1)(C)(x)(1), (a)(1)(D)(ix)(1) and (a)(2)(D) of Rule 11.630.

Proposed paragraph (a)(1)(A)(xi)(1) of Rule 11.630 would require an Industry Member that operates an ATS to record and report to the Central Repository for the original receipt or origination of an order ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(C)(x)(1) of Rule 11.630 would require an Industry Member that operates an ATS to record and report to the Central Repository for the receipt of an order that has been routed ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(D)(ix)(1) of Rule 11.630 would require an Industry Member that operates an ATS to record and report to the Central Repository if the order is modified or cancelled ''the ATS's unique identifier for the order type of the order.'' Furthermore, as with the requirements in FINRA Rule 4554(b)(5), proposed paragraph (a)(2)(D) of Rule 11.630 would state that:

An Industry Member that operates an ATS must provide to the Central Repository: (1) A list of all of its order types twenty (20) days before such order types become effective; and (2) any changes to its order types twenty (20) days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

(iii) National Best Bid and Offer

FINRA Rules 4554(b)(6) and (7) require the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

(6) The NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(7) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (6). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, FINRA Rule 4554(c) requires the following information to be recorded and reported to FINRA by ATSs when reporting the execution of an order to OATS:

(1) The NBBO (or relevant reference price) in effect at the time of order execution;

(2) The timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(3) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (1). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

The Compliance Rule does not require Industry Members to report such NBBO information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: (a)(1)(A)(xi)(2)–(3), (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 11.630.

Specifically, proposed paragraph (a)(1)(A)(xi)(2)–(3) of Rule 11.630 would require an Industry Member that operates an ATS to record and report to the Central Repository the following

[7] *See* FINRA *Regulatory Notice* 16–28 (August 2016).

[8] FINRA Rule 4554 was approved by the SEC on May 10, 2016, while the CAT NMS Plan was pending with the Commission. *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (Order Approving SR–FINRA–2016–010). As noted in the Participants' Response to Comments, throughout the process of developing the Plan, the Participants worked to keep the gap analyses for OATS, electronic blue sheets, and the CAT up-to-date, which included adding data fields related to the tick size pilot and ATS order book amendments to the OATS rules. *See* Participants' Response to Comments at 21. However, due to the timing of the expiration of the tick size pilot, the Participants decided not to include those data elements into the CAT NMS Plan.

information when reporting the original receipt or origination of order:

(2) The National Best Bid and National Best Offer (or relevant reference price) at the time of order receipt or origination, and the date and time at which the ATS recorded such National Best Bid and National Best Offer (or relevant reference price);

(3) the identification of the market data feed used by the ATS to record the National Best Bid and National Best Offer (or relevant reference price) for purposes of subparagraph (xi)(2). If for any reason the ATS uses an alternative market data feed than what was reported on its ATS data submission, the ATS must provide notice to the Central Repository of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, proposed paragraphs (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 11.630 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed, when reporting if the order is modified or cancelled, and when an order has been executed, respectively.

(iv) Sequence Numbers

FINRA Rule 4554(d) states that ''[f]or all OATS-reportable event types, all ATSs must record and report to FINRA the sequence number assigned to the order event by the ATS's matching engine.'' The Compliance Rule does not require Industry Members to report ATS sequence numbers to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate this requirement regarding ATS sequence numbers into each of the Reportable Events for the CAT. Specifically, the Exchange proposes to add proposed paragraph (a)(1)(A)(xi)(4) to Rule 11.630, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt or origination of the order by the ATS's matching engine.'' The Exchange proposes to add proposed paragraph (a)(1)(B)(viii) to Rule 11.630, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the routing of the order by the ATS's matching engine.'' The Exchange also proposes to add proposed paragraph (a)(1)(C)(x)(4) to Rule 11.630, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt of the order by the ATS's matching engine.'' In addition, the Exchange proposes to add proposed paragraph (a)(1)(D)(ix)(4) to Rule 11.630, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the modification or cancellation of the order by the ATS's matching engine.'' Finally, the Exchange proposes to add proposed paragraph (a)(1)(E)(viii)(3) to Rule 11.630, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the execution of the order by the ATS's matching engine.''

(v) Modification or Cancellation of Orders by ATSs

FINRA Rule 4554(f) states that ''[f]or an ATS that displays subscriber orders, each time the ATS's matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report to OATS the time of such modification,'' and ''the applicable new display price or size.'' The Exchange proposes adding a comparable requirement into new paragraph (a)(1)(D)(ix)(5) to Rule 11.630. Specifically, proposed new paragraph (a)(1)(D)(ix)(5) of Rule 11.630 would require an Industry Member that operates an ATS to report to the Central Repository, if the order is modified or cancelled, ''each time the ATS's matching engine re-prices an order or changes the quantity of an order,'' the ATS must report to the Central Repository ''the time of such modification, and the applicable new price or size.'' Proposed paragraph (a)(1)(D)(ix)(5) of Rule 11.630 would apply to all ATSs, not just ATSs that display orders.

(vi) Display of Subscriber Orders

FINRA Rule 4554(b)(1) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

Whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data);

The Compliance Rule does not require Industry Members to report to the CAT such information about the displaying of subscriber orders. The Exchange proposes to add comparable requirements into proposed paragraphs (a)(1)(A)(xi)(5) and (a)(1)(C)(x)(5) of Rule 11.630. Specifically, proposed paragraph (a)(1)(A)(xi)(5) would require an Industry Member that operates an ATS to report to the Central Repository, for the original receipt or origination of an order,

whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data.

Similarly, proposed paragraph (a)(1)(C)(x)(5) of Rule 11.630 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed.

C. Customer Instruction Flag

FINRA Rule 7440(b)(14) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''Any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Compliance Rule does not require Industry Members to report to the CAT such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(A)(viii) to Rule 11.630, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Exchange also proposes to add paragraph (a)(1)(C)(ix) to Rule 11.630, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification of an order to report the customer instruction flag. The Compliance Rule does not require Industry Members to report such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(D)(viii) to Rule 11.630, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''any request by a Customer that a limit order not be displayed, or that a block size limit

order be displayed, pursuant to applicable rules.''

D. Department Type

FINRA Rules 7440(b)(4) and (5) require an OATS Reporting Member that receives or originates an order to record the following information: ''The identification of any department or the identification number of any terminal where an order is received directly from a customer'' and ''where the order is originated by a Reporting Member, the identification of the department of the member that originates the order.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the department or terminal where the order is received or originated. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(A)(ix) to Rule 11.630, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the nature of the department or desk that originated the order, or received the order from a Customer.''

Similarly, per FINRA Rules 7440(c)(2)(B) and (4)(B), when an OATS Reporting Member receives an order that has been transmitted by another Member, the receiving OATS Reporting Member is required to record the information required in 7440(b)(4) and (5) described above as applicable. The Compliance Rule does not require Industry Members to report to the CAT information regarding the department that received an order. To address this OATS–CAT data gap, the Exchange propose to add paragraph (a)(1)(C)(viii) to Rule 11.630, which would require Industry Members to record and report to the Central Repository upon the receipt of an order that has been routed ''the nature of the department or desk that received the order.''

E. Account Holder Type

FINRA Rule 7440(b)(18) requires an OATS Reporting Member that receives or originates an order to record the following information: ''The type of account, *i.e.,* retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the type of account holder for which the order is submitted. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(A)(x) to Rule 11.630, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the type of account holder for which the order is submitted.''

ii. OTC Equity Securities

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently receives from ATSs that trade OTC Equity Securities for regulatory oversight purposes, but are not currently included in CAT Data. In particular, the Participants identified three data elements that need to be added to the CAT: (1) Bids and offers for OTC Equity Securities; (2) a flag indicating whether a quote in OTC Equity Securities is solicited or unsolicited; and (3) unpriced bids and offers in OTC Equity Securities. The Participants believe that such data will continue to be important for regulators to oversee the OTC Equity Securities market when using the CAT. Moreover, the Participants do not believe that the proposed requirement would burden ATSs because they currently report this information to FINRA and thus the reporting requirement would merely shift from FINRA to the CAT. Accordingly, as discussed below, the Exchange proposes to amend its Compliance Rule to include these data elements.

A. Bids and Offers for OTC Equity Securities

In performing its current regulatory oversight, FINRA receives a data feed of the best bids and offers in OTC Equity Securities from ATSs that trade OTC Equity Securities. These best bid and offer data feeds for OTC Equity Securities are similar to the best bid and offer SIP Data required to be collected by the Central Repository with regard to NMS Securities.[9] Accordingly, the Exchange proposes to add paragraph (f)(1) to Rule 11.630 to require the reporting of the best bid and offer data feeds for OTC Equity Securities to the CAT. Specifically, proposed paragraph (f)(1) of Rule 11.630 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the best bid and best offer for each OTC Equity Security traded on such ATS.''

B. Unsolicited Bid or Offer Flag

FINRA also receives from ATSs that trade OTC Equity Securities an indication whether each bid or offer in OTC Equity Securities on such ATS was solicited or unsolicited. Therefore, the Exchange proposes to add paragraph (f)(2) to Rule 11.630 to require the reporting to the CAT of an indication as to whether a bid or offer was solicited or unsolicited. Specifically, proposed paragraph (f)(2) of Rule 11.630 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''an indication of whether each bid and offer for OTC Equity Securities was solicited or unsolicited.''

C. Unpriced Bids and Offers

FINRA receives from ATSs that trade OTC Equity Securities certain unpriced bids and offers for each OTC Equity Security traded on the ATS. Therefore, the Exchange proposes to add paragraph (f)(3) to Rule 11.630, which would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the unpriced bids and offers for each OTC Equity Security traded on such ATS.''

iii. Revised Industry Member Reporting Timeline

On February 19, 2020, the Participants filed with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for the implementation of phased reporting to the CAT by Industry Members (''Phased Reporting'').[10] Specifically, in their exemptive request, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members other than Small Industry Members (''Large Industry Members'') to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Small Industry Members [11] to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Correspondingly, the Participants requested that the SEC provide an exemption from the requirement in Section 6.4 of the CAT NMS Plan that ''[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second

[9] Section 6.5(a)(ii) of the CAT NMS Plan.

[10] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

[11] *See* Section 1.1 of the CAT NMS Plan.

anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.'' On April 20, 2020, the SEC granted the Participants exemptive relief to implement Phased Reporting, subject to certain timeline changes and conditions.[12]

As a condition to the exemption, each Participant would implement Phased Reporting through its Compliance Rule by requiring:

(1) its Large Industry Members and its Small Industry Members that are required to record or report information to OATS pursuant to applicable SRO rules (''Small Industry OATS Reporters'') to commence reporting to the Central Repository Phase 2a Industry Member Data by June 22, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by July 20, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data required under the CAT NMS Plan will be required to be reported when all five phases of the Phased Reporting have been implemented, subject to any applicable exemptive relief or amendments related to the CAT NMS Plan.

As a further condition to the exemption, each Participant proposes to implement the testing timelines described in Section F below through its Compliance Rule by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

As a result, the Exchange proposes to amend its Compliance Rule to be consistent with the exemptive relief to implement Phased Reporting as described below.

A. Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by June 22, 2020.[13] To implement the Phased Reporting for Phase 2a, the Exchange proposes to add paragraph (t)(1) of Rule 11.610 (previously paragraph (s)) and amend paragraphs (c)(1) and (2) of Rule 11.695.

(i) Scope of Reporting in Phase 2a

To implement the Phased Reporting with respect to Phase 2a, the Exchange proposes to add a definition of ''Phase 2a Industry Member Data'' as paragraph (t)(1) of Rule 11.610. Specifically, the Exchange proposes to define the term ''Phase 2a Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2a.'' Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. While the following summarizes categories of Industry Member Data required for Phase 2a, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2a.[14]

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a. The inclusion of all OATS events and scenarios in the CAT is intended to facilitate the retirement of OATS.

Phase 2a Industry Member Data also would include Reportable Events for:

- Proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF'');
- electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''*IDQS*''); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by paragraphs (a)(1)(A)(i), and (a)(2)(C) of Rule 11.630. Paragraph (a)(1)(A)(i) of Rule 11.630 requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Paragraph (a)(2)(C) of Rule 11.630 requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID if the order is executed, in whole or in part.

[12] *See* Securities Exchange Act Release No. 88702 (April 20, 2020), 85 FR 23075 (April 24, 2020). As discussed in the SEC's exemptive order, the Commission granted the Participants conditional exemptive relief from the CAT NMS Plan so that the Compliance Rules may require Phase 2a reporting to commence on June 22, 2020, rather than the April 20, 2020 date set forth in the exemptive request, and Phase 2b reporting to commence on July 20, 2020, rather than the May 18, 2020 date set forth in the exemptive request. As a condition to the exemptive relief, Industry Members who elect to report to the CAT prior to such dates will be permitted to report to the CAT as early as April 20, 2020 for Phase 2a reporting and as early as May 18, 2020 for Phase 2b reporting.

[13] Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters'') would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by December 13, 2021, which is approximately seventeen months after Large Industry Members and Small Industry OATS Reporters begin reporting.

[14] The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c or Phase 2d, as discussed below.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) The representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Rule 11.630, Industry Members would be required to provide a timestamp pursuant to Rule 11.660. Rule 11.660(b)(1) states that

> Each Industry Member may record and report Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Member shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member (''Electronic Capture Time'') in milliseconds[.]

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.[15]

Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (''ISO''). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.[16] In addition, in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.

(ii) Timing of Phase 2a Reporting

Pursuant to paragraph (c)(1) of Rule 11.695, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2a for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 11.695 with new paragraph (c)(1)(A) of Rule 11.695, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by June 22, 2020.''

Pursuant to paragraph (c)(2) of Rule 11.695, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2a for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 11.695 with new paragraphs (c)(2)(A) and (B) of Rule 11.695. Proposed paragraph (c)(2)(A) of Rule 11.695 would state that

> Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: (A) Small Industry Members that are required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by June 22, 2020.

Proposed paragraph (c)(2)(B) of Rule 11.695 would state that ''Small Industry Members that are not required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry Non-OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by December 13, 2021.''

B. Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by July 20, 2020. Small Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by December 13, 2021, which is approximately seventeen months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2b, the Exchange proposes to add paragraph (t)(2) to Rule 11.610 and amend paragraphs (c)(1) and (2) of Rule 11.695.

(i) Scope of Phase 2b Reporting

To implement the Phased Reporting with respect to Phase 2b, the Exchange proposes to add a definition of ''Phase 2b Industry Member Data'' as paragraph (t)(2) to Rule 11.610. Specifically, the Exchange proposes to define the term ''Phase 2b Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2b.'' Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. While the following summarizes the categories of Industry Member Data required for Phase 2b, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2b.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.[17] A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an

[15] Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

[16] This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

[17] The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below in Section A.4.

order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are also reportable in Phase 2b.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by Exchange rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

(ii) Timing of Phase 2b Reporting

Pursuant to paragraph (c)(1) of Rule 11.695, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 11.695 with new paragraph (c)(1)(B) of Rule 11.695, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (B) Phase 2b Industry Member Data by July 20, 2020.''

Pursuant to paragraph (c)(2) of Rule 11.695, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2b for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 11.695 with new paragraph (c)(2)(C) of Rule 11.695, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository Phase 2b Industry Member Data . . . by December 13, 2021.''

C. Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by April 26, 2021. Small Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by December 13, 2021, which is approximately seven months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2c, the Exchange proposes to add paragraph (t)(3) to Rule 11.610 and amend paragraphs (c)(1) and (2) of Rule 11.695.

(i) Scope of Phase 2c Reporting

To implement the Phased Reporting with respect to Phase 2c, the Exchange proposes to add a definition of ''Phase 2c Industry Member Data'' as paragraph (t)(3) to Rule 11.610. Specifically, the Exchange proposes to define the term ''Phase 2c Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2c.'' Phase 2c Industry Member Data'' would be Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data or Phase 2e Industry Member Data. Phase 2c Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. While the following summarizes the categories of Industry Member Data required for Phase 2c, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2c.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of large trader identifiers [18] (''LTID'') (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date [19] (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for all representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[20]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) An equity bid or offer is

[18] *See* definition of ''Customer Account Information'' in Section 1.1 of the CAT NMS Plan. *See also* Rule 13h–1 under the Exchange Act.

[19] *See* definition of ''Customer Account Information'' and ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan. Note that the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 11.610 to replace the references to November 15, 2018 and 2019 with references to the commencement of Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 11.610 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

[20] In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an OMS and represented by a principal order originated in an EMS that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

displayed publicly or has been communicated (a) for listed securities to the Alternative Display Facility (ADF) operated by FINRA; or (b) for unlisted equity securities to an ''inter-dealer quotation system'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.

(ii) Timing of Phase 2c Reporting

Pursuant to paragraph (c)(1) of Rule 11.695, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2c for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 11.695 with new paragraph (c)(1)(C) of Rule 11.695, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Phase 2c Industry Member Data by April 26, 2021.''

Pursuant to paragraph (c)(2) of Rule 11.695, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2c for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 11.695 with new paragraph (c)(2)(C) of Rule 11.695, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2c Industry Member Data . . . by December 13, 2021.''

D. Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2d Industry Member Data'' by December 13, 2021. To implement the Phased Reporting for Phase 2d, the Exchange proposes to add paragraph (t)(4) to Rule 11.610 and amend paragraphs (c)(1) and (2) of Rule 11.695.

(i) Scope of Phase 2d Reporting

To implement the Phased Reporting with respect to Phase 2d, the Exchange proposes to add a definition of ''Phase 2d Industry Member Data'' as paragraph (t)(4) to Rule 11.610. Specifically, the Exchange proposes to define the term ''Phase 2d Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2d.'' [21]

''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d. While the following summarizes the categories of Industry Member Data required for Phase 2d, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2d.

Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) Simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; [22] (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders.

Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition would be reportable in Phase 2d for options.

Phase 2d Industry Member Data also would include with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).

[21] The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

[22] As noted above, the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 11.610 to replace the references to November 15, 2018 and 2019 with references to the commencement of Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 11.610 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

(ii) Timing of Phase 2d Reporting

Pursuant to paragraph (c)(1) of Rule 11.695, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2d for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 11.695 with new paragraph (c)(1)(D) of Rule 11.695, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (D) Phase 2d Industry Member Data by December 13, 2021.''

Pursuant to paragraph (c)(2) of Rule 11.695, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 11.695 with new paragraph (c)(2)(C) of Rule 11.695, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2d Industry Member Data by December 13, 2021.''

E. Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2e Industry Member Data'' by July 11, 2022. To implement the Phased Reporting for Phase 2e, the Exchange proposes to add paragraph (t)(5) to Rule 11.610 and amend paragraphs (c)(1) and (2) of Rule 11.695.

(i) Scope of Phase 2e Reporting

To implement the Phased Reporting with respect to Phase 2e, the Exchange proposes to add a definition of ''Phase 2e Industry Member Data'' as paragraph (t)(5) of Rule 11.610. Specifically, the Exchange proposes to define the term ''Phase 2e Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2e. The full scope of Industry Member Data required by the CAT NMS Plan will be required to be reported to the CAT when Phase 2e has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.'' LTIDs and Account Effective Date are both required to be reported in Phases 2c and 2d in certain circumstances, as discussed above. The terms ''Customer Account Information'' and ''Customer Identifying Information'' are defined in Rule 11.610 of the Compliance Rule.[23] The Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2e.

(ii) Timing of Phase 2e Reporting

Pursuant to paragraph (c)(1) of Rule 11.695, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2e for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 11.695 with new paragraph (c)(1)(E) of Rule 11.695, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Phase 2e Industry Member Data by July 11, 2022.''

Pursuant to paragraph (c)(2) of Rule 11.695, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2e for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 11.695 with new paragraph (c)(2)(D) of Rule 11.695, which would state, in relevant part, that ''[e]ach Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Small Industry Members to report to the Central Repository Phase 2e Industry Member Data by July 11, 2022.''

F. Industry Member Testing Requirements

Rule 11.680(a) sets forth various compliance dates for the testing and development for connectivity, acceptance and the submission order data. In light of the intent to shift to Phased Reporting in place of the two specified dates for the commencement of reporting for Large and Small Industry Members, the Exchange correspondingly proposes to replace the Industry Member development testing milestones in Rule 11.680(a) with the testing milestones set forth in the exemptive relief. Specifically, the Exchange proposes to replace Rule 11.680(a) with the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.

(3) The Industry Member test environment shall open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment shall open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment shall open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting shall begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

iv. Granularity of Timestamps

On February 3, 2020, the Participants filed with the Commission a request for exemptive relief from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository.[24] On April 8, 2020, the

[23] The term ''Customer Account Information'' includes account numbers, and the term ''Customer Identifying Information'' includes, with respect to individuals, dates of birth and SSNs. *See* Rule 11.610. The Participants have received exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). *See* also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020). Given the relief has been granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

[24] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

Participants received the exemptive relief.[25] As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances. The timestamp granularity exemption remains in effect for five years, until April 8, 2025. After five years, the exemption would no longer be in effect unless the period the exemption is in effect is extended by the SEC.

Accordingly, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief. Specifically, the Exchange proposes to amend paragraph (a)(2) of Rule 11.660. Rule 11.660(a)(2) states that

> Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment.

The Exchange proposes to amend this provision to read as follows to reflect the exemptive relief:

> Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds; provided, that Industry Members that capture timestamps in increments more granular than nanoseconds must truncate the timestamps after the nanosecond level for submission to CAT, rather than rounding such timestamps up or down, until April 8, 2025.

v. Introducing Industry Members

On February 3, 2020, the Participants requested that the Commission exempt broker-dealers that do not qualify as Small Industry Members solely because they satisfy Rule 0–10(i)(2) under the Exchange Act and, as a result, are deemed affiliated with an entity that is not a small business or small organization (''Introducing Industry Member'') from the requirements in the CAT NMS Plan applicable to Industry Members other than Small Industry Members (''Large Industry Members'').[26] Instead, such Introducing Industry Members would comply with the requirements in the CAT NMS Plan applicable to Small Industry Members. On April 20, 2020, the SEC granted the Participants exemptive relief with regard to Introducing Industry Members.[27]

As a result, the Exchange proposes to amend its Compliance Rule to adopt a definition of ''Introducing Industry Member'' and to revise Rule 11.695 to require Introducing Industry Members to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members. Specifically, the Exchange proposes to define ''Introducing Industry Member'' in proposed paragraph (v) to Rule 11.610, as ''a broker-dealer that does not qualify as a Small Industry Member solely because such broker-dealer satisfies Rule 0–10(i)(2) under the Exchange Act in that it introduces transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations.'' The Exchange also proposes to add a new paragraph (3) to Rule 11.695(c) to state that ''Introducing Industry Members must comply with the requirements of the CAT NMS Plan applicable to Small Industry Members.'' With these changes, Introducing Industry Members would be required to comply with the requirements in the CAT NMS Plan applicable to Small Industry Members, rather than the requirements in the CAT NMS Plan applicable to Large Industry Members.

vi. CCID/PII

On January 29, 2020, the Participants filed with the Commission a request for exemptive relief from certain requirements related to reporting SSNs, dates of birth and account numbers to the CAT.[28] The Commission, Participants and others indicated security concerns with maintaining such sensitive Customer information in the CAT. On March 17, 2020, the Participants received the exemptive relief, subject to certain conditions.[29] Assuming the Participants comply with the conditions set forth in the PII Exemption Order, Industry Members would not be required to report SSNs, dates of birth and account numbers to the CAT NMS Plan.

As described in the request for exemptive relief, the Participants requested exemptive relief to allow for an alternative approach to generating a CAT Customer ID (''CCID'') without requiring Industry Members to report SSNs to the CAT (the ''CCID Alternative''). In lieu of retaining such SSNs in the CAT, the Participants would use the CCID Alternative, a strategy developed by the Chief Information Security Officer for the CAT and the Chief Information Security Officers from each of the Participants, in consultation with security experts from member firms of Securities Industry and Financial Markets Association. The CCID Alternative facilitates the ability of the Plan Processor to generate a CCID without requiring the Plan Processor to receive SSNs or store SSNs within the CAT. Under the CCID Alternative, the Plan Processor would generate a unique CCID using a two-phase transformation process that avoids having SSNs reported to or stored in the CAT. In the first transformation phase, a CAT Reporter would transform the SSN to an interim value (the ''transformed value''). This transformed value, and not the SSN, would be submitted to a separate system within the CAT (''CCID Subsystem''). The CCID Subsystem would then perform a second transformation to create the globally unique CCID for each Customer that is unknown to, and not shared with, the original CAT Reporter. The CCID would then be sent to the customer and account information system of the CAT, where it would be linked with the other customer and account information. The CCID may then be used by the Participants' regulatory staff and the SEC in queries and analysis of CAT Data. To implement the CCID Alternative, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report SSNs to the Central Repository for the original receipt of an order. As set forth in one condition of the PII Exemption Order, Industry Members would be required to transform an SSN to an interim value, and report the transformed value to the CAT.

[25] *See* Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

[26] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Small Industry Members (Feb. 3, 2020).

[27] *See* Securities Exchange Act Release No. 88703 (April 20, 2020), 85 FR 23115 (April 24, 2020).

[28] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

[29] *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020) (Order Granting Conditional Exemptive Relief, Pursuant to Section 36 and Rule 608(e) of the Securities Exchange Act of 1934, from Section 6.4(d)(ii)(C) and Appendix D Sections 4.1.6, 6.2, 8.1.1, 8.2, 9.1, 9.2, 9.4, 10.1, and 10.3 of the National Market System Plan Governing the Consolidated Audit Trail) (''PII Exemption Order''). The PII Exemption Order lists several conditions that must be met by the Exchange. If the Exchange does not satisfy the conditions, the PII Exemption Order would not apply to the Exchange.

The Participants also requested exemptive relief to allow for an alternative approach which would exempt the reporting of dates of birth and account numbers [30] to the CAT (''Modified PII Approach''), and instead would require Industry Members to report the year of birth and the Firm Designated ID for each trading account associated with the Customers. To implement the Modified PII Approach, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order dates of birth and account numbers for Customers. As conditions to the exemption, Industry Members would be required to report the year of birth of an individual to the Central Repository, and to report the Firm Designated ID to the Central Repository.

To implement the request for exemptive relief and to eliminate the requirement to report SSNs, date of birth and account numbers to the CAT, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief. Rule 11.630(a)(2)(C) [31] states that

> [s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 11.630(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with Rule 11.640, Customer Account Information and Customer Identifying Information for the relevant Customer.

Similarly, Rule 11.640 requires the reporting of Customer Account Information and Customer Identifying Information to the Central Repository. Currently, Rule 11.610(m) defines ''Customer Identifying Information'' to include, with respect to individuals, ''date of birth'' and ''individual tax payer identification number (''ITIN'')/social security number (''SSN'').'' Accordingly, the Exchange proposes to replace ''date of birth'' in the definition of ''Customer Identifying Information'' in Rule 11.610(m) (now renumbered Rule 11.610(n)) with ''year of birth'' and to delete ''individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' from Rule 11.610(m) (now renumbered Rule 11.610(n)). In addition, currently, Rule 11.610(l) defines ''Customer Account Information'' to include account numbers. The Exchange proposes to delete ''account number'' from the definition of ''Customer Account Information'' in Rule 11.610(l) (now renumbered Rule 11.610(m)).

The Exchange also proposes to add a definition of the term ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to Rule 11.610. Specifically, the Exchange proposes to add paragraph (pp) to Rule 11.610 to define ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to mean ''the interim value created by an Industry Member based on a Customer ITIN/SSN.''

The Exchange proposes to revise Rule 11.630(a)(2)(C) to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''). Specifically, the Exchange proposes to revise Rule 11.630(a)(2)(C) to state:

> [s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 11.630(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), and in accordance with Rule 11.640, Customer Account Information and Customer Identifying Information for the relevant Customer.

The Exchange also proposes to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') in the Customer information reporting required under Rule 11.640. Specifically, the Exchange proposes to revise Rule 11.640(a) to require each Industry Member to submit to the Central Repository the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), for each of its Customers with an Active Account prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 11.680. The Exchange also proposes to revise Rule 11.640(b) to require each Industry Member to submit to the Central Repository any updates, additions or other changes to the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account on a daily basis. In addition, the Exchange proposes to revise Rule 11.640(c) to require, on a periodic basis as designated by the Plan Processor and approved by the Operating Committee, each Industry Member to submit to the Central Repository a complete set of the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account. The Exchange also proposes to revise Rule 11.640(d) to require, for each Industry Member for which errors in the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member to submit corrected data to the Central Repository by 5:00 p.m. Eastern Time on T+3.

Paragraph (1)(B) of Rule 11.610(m), the definition of ''Customer Account Information'' states that ''in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will'' . . . ''provide the relationship identifier in lieu of the ''account number.'' As an account number will no longer be an element in ''Customer Account Information,'' the relationship identifier used in lieu of the account number will no longer be required as an element of Customer Account Information. Therefore, the Exchange proposes to delete the requirement set forth in Rule 11.610(m)(a)(B) regarding relationship identifiers from Rule 11.610(m).

With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers pursuant to Rule 11.630(a)(2)(C). However, Industry Members would be required to report the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') and the year of birth to the Central Repository.[32]

[30] With respect to this aspect of the requested relief, the PII Exemption Order provided relief with regard to the reporting of all account numbers, not just account numbers for individuals as requested by the Participants.

[31] Due to a clerical error, LTSE Rule 11.630(a)(2)(C) is designated as Rule 11.630(a)(2)(B)(ii). This has been corrected in the proposed rule change to provide format consistency with the rules of the other Plan Participants.

[32] The Exchange anticipates that the Compliance Rule may be further amended when further details regarding the CCID Alternative are finalized.

vii. FINRA Facility Data Linkage

On June 5, 2020, the Participants filed with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for an alternative approach to the reporting of clearing numbers and cancelled trade indicators.[33] The SEC provided this exemptive relief on June 11, 2020.[34] FINRA is required to report to the Central Repository data collected by FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility (collectively, ''FINRA Facility'') pursuant to applicable SRO rules (''FINRA Facility Data''). Included in this FINRA Facility Data is the clearing number of the clearing broker for a reported trade as well as the cancelled trade indicator. Under this alternative approach, the clearing number and the cancelled trade indicator of the FINRA Facility Data that is reported to the CAT would be linked to the related execution reports reported by Industry Members. To implement this approach in a phased manner, the Participants received exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository: (1) If the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable; and (2) if the trade is cancelled, a cancelled trade indicator, subject to certain conditions.

As a condition to this exemption, the Participants would continue to require Industry Members to submit a trade report for a trade, and, if the trade is cancelled, a cancellation, to a FINRA Facility pursuant to applicable SRO rules, and to report the corresponding execution to the Central Repository. In addition, Industry Members would be required to report to the Central Repository the unique trade identifier reported to a FINRA Facility with the corresponding trade report. Furthermore, if an Industry Member does not submit a cancellation to a FINRA Facility, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator and cancelled trade timestamp if the trade is cancelled. Similarly, if an Industry Member does not submit the clearing number of the clearing broker to a FINRA Facility for a trade, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository the clearing number as well as contra party information.

As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief to implement this alternative approach. Specifically, the Exchange proposes to require Industry Members to report to the CAT with an execution report the unique trade identifier reported to a FINRA facility with the corresponding trade report. For example, the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting Facility, it would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility, it would the FINRA Compliance Number. This unique trade identifier would be used to link the FINRA Facility Data with the execution report in the CAT. Specifically, the Exchange proposes to add new paragraph (a)(2)(E) to Rule 11.630, which states that:

(E) If an Industry Member is required to submit and submits a trade report for a trade, and, if the trade is cancelled, a cancellation, to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution and/or cancellation to the Central Repository:

(1) The Industry Member is required to report to the Central Repository trade identifier reported by the Industry Member to such FINRA facility for the trade when the Industry Member reports the execution of an order pursuant to Rule 11.630(a)(1)(E) or cancellation of an order pursuant to Rule 11.630(a)(1)(D) beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters, and such trade identifier must be unique beginning October 26, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

The Exchange also proposes to relieve Industry Members of the obligation to report to the CAT data related to clearing brokers and trade cancellations pursuant to Rules 11.630(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT, except in certain circumstances. Accordingly, the Exchange proposes new paragraphs (a)(2)(E)(2) and (3) to Rule 11.630, which would state:

(2) If the order is executed in whole or in part, and the Industry Member submits the trade report to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the SRO-Assigned Market Participant Identifier of the clearing broker pursuant to Rule 11.630(a)(2)(A)(ii); provided, however, if the Industry Member does not report the clearing number of the clearing broker to such FINRA facility for a trade, or does not report the unique trade identifier to the Central Repository as required by Rule 11.630(a)(2)(E)(1), then the Industry Member would be required to record and report to the Central Repository the clearing number of the clearing broker as well as information about the contra party to the trade beginning April 26, 2021 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters; and

(3) if the trade is cancelled and the Industry Member submits the cancellation to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the cancelled trade indicator pursuant to Rule 11.630(a)(2)(B); provided, however, if the Industry Member does not report a cancellation for a canceled trade to such FINRA facility, or does not report the unique trade identifier as required by 11.630(a)(2)(E)(1), then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator as well as a cancelled trade timestamp beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[35] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[36] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

The Exchange believes that this proposal is consistent with the Act because it is consistent with certain exemptions from the CAT NMS Plan, because it facilitates the retirement of

[33] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (June 5, 2020).

[34] *See* Securities Exchange Act Release No. 89051 (June 11, 2020) (**Federal Register** publication pending).

[35] 15 U.S.C. 78f(b)(6).

[36] 15 U.S.C. 78f(b)(8).

certain existing regulatory systems, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [37] To the extent that this proposal implements the Plan, including the exemptive relief, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes are consistent with certain exemptions from the CAT NMS Plan, facilitate the retirement of certain existing regulatory systems, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the amendments to the Compliance Rules will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing these amendments to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [38] and subparagraph (f)(6) of Rule 19b–4 thereunder.[39]

A proposed rule change filed under Rule 19b–4(f)(6) [40] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[41] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by June 22, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements exemptive relief from the CAT NMS Plan granted by the Commission and facilitates the start of Industry Member reporting on June 22, 2020. In addition, as noted by the Exchange, the proposed rule change is based on a filing recently approved by the Commission.[42] Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative as of June 22, 2020.[43]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–LTSE–2020–09 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–LTSE–2020–09. 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–LTSE–2020–09 and should be submitted on or before July 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13767 Filed 6–25–20; 8:45 am]

BILLING CODE 8011–01–P

[37] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[38] 15 U.S.C. 78s(b)(3)(A)(iii).

[39] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[40] 17 CFR 240.19b–4(f)(6).

[41] 17 CFR 240.19b–4(f)(6)(iii).

[42] *See* Securities Exchange Act Release No. 89108 (June 19, 2020).

[43] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 37119, June 19, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, June 24, 2020 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Wednesday, June 24, 2020 at 2:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: June 24, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–13933 Filed 6–24–20; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89110; File No. SR–NASDAQ–2020–032]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Nasdaq Rule 5750 To List and Trade Proxy Portfolio Shares

June 22, 2020.

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 June 11, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Nasdaq Rule 5750 to permit the listing and trading of Proxy Portfolio Shares, which are securities issued by an actively managed open-end management investment company.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Nasdaq Rule 5750 for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Proxy Portfolio Shares, which are securities issued by an actively managed open-end management investment company.[3] This proposed rule change to add new Nasdaq Rule 5750 is substantially similar to the recently approved rule change by Cboe BZX Exchange, Inc. (''Cboe BZX'') to adopt rule 14.11(m).[4]

Proposed Rule 5750

Proposed Nasdaq Rule 5750(c)(1) provides that the term ''Proxy Portfolio Share'' means a security that: (i) Represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of specified Proxy Basket securities and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid specified Proxy Basket securities and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Proposed Nasdaq Rule 5750(a) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Proxy Portfolio Shares that meet the criteria of Nasdaq Rule 5750.

Proposed Nasdaq Rule 5750(b) provides that Nasdaq Rule 5750 is applicable only to Proxy Portfolio Shares and that, except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Exchange's Board shall be applicable to the trading on the Exchange of such securities. Proposed Nasdaq Rule 5750(b) provides further that Proxy Portfolio Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Rules of the Exchange.

Proposed Nasdaq Rule 5750(b)(1)–(3) provides that the Exchange will file

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The basis of this proposal are several applications for exemptive relief that were filed with the Commission and for which public notice was issued on November 14, 2019 and subsequent order granting certain exemptive relief to, among others, Fidelity Management & Research Company and FMR Co., Inc., Fidelity Beach Street Trust, and Fidelity Distributors Corporation (File No. 812–14364), issued on December 10, 2019 (the ''Application,'' ''Notice,'' and ''Order,'' respectively, and, collectively, the ''Exemptive Order''). *See* Investment Company Act Release Nos. 33683 and 33712. The Order specifically notes that ''granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act.'' The Exchange notes that it also referred to the application for exemptive relief orders (collectively, with the Application, the ''Proxy Applications'') and notices thereof (collectively, with the Notice, the ''Proxy Notices'') for T. Rowe Price Associates, Inc. and T. Rowe Price Equity Series, Inc. (File No. 812–14214 and Investment Company Act Release Nos. 33685 and 33713), Natixis ETF Trust II, et al. (File No. 812–14870 and Investment Company Act Release Nos. 33684 and 33711), Blue Tractor ETF Trust and Blue Tractor Group, LLC (File No. 812–14625 and Investment Company Act Release Nos. 33682 and 33710), and Gabelli ETFs Trust, et al. (File No. 812–15036 and Investment Company Act Release Nos. 33681 and 33708). While there are certain differences between the applications, the Exchange believes that each would qualify as Proxy Portfolio Shares under proposed Nasdaq Rule 5750.

[4] *See* Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR–CboeBZX–2019–107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF).

separate proposals under Section 19(b) of the Act before the listing and trading of a series of Proxy Portfolio Shares; that transactions in Proxy Portfolio Shares will occur throughout the Exchange's trading hours.; and the minimum price variation for quoting and entry of orders in Proxy Portfolio Shares is $0.01.

Proposed Nasdaq Rule 5750(b)(4) provides that the Exchange will implement and maintain written surveillance procedures for Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA, the daily Fund Portfolio of each series of Proxy Portfolio Shares.

Proposed Nasdaq Rule 5750(b)(5) provides that if the investment adviser to the Investment Company issuing Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio and/or the Proxy Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Fund Portfolio and/or the Proxy Basket or has access to nonpublic information regarding the Fund Portfolio and/or the Proxy Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Proxy Basket or changes thereto.

Proposed Nasdaq Rule 5750(b)(6) provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Proxy Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Proxy Basket or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Proxy Basket.

Proposed Nasdaq Rule 5750(c)(2) provides that the term ''Fund Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

Proposed Nasdaq Rule 5750(c)(3) provides that the term ''Reporting Authority'' in respect of a particular series of Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares. A series of Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Nasdaq Rule 5750(c)(4) provides that the term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Nasdaq Rule 5750(c)(5) provides that the term ''Proxy Basket'' means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the Investment Company Act of 1940 (the ''1940 Act'') applicable to a series of Proxy Portfolio Shares. The website for each series of Proxy Portfolio Shares shall disclose the following information regarding the Proxy Basket as required under this Rule 5750, to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) Description of holding; (iv) Quantity of each security or other asset held; and (v) Percentage weight of the holding in the portfolio.

Proposed Nasdaq Rule 5750(d)(1) provides the initial listing criteria for a series of Proxy Portfolio Shares, which include the following: (A) Each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) For each series, the Exchange will establish a minimum number of Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: The net asset value, the Proxy Basket, and the Fund Portfolio; and (iii) all Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Nasdaq Rule 5750(d)(2) provides that each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria: (i) The Proxy Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time; (ii) the Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; (iii) upon termination of an Investment Company, the Exchange requires that Proxy Portfolio Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or Statement of Additional Information (''SAI'').

Additionally, proposed Nasdaq Rule 5750(d)(2)(C) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Proxy Portfolio Shares pursuant to Nasdaq Rule 5800 under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Proxy Portfolio Shares, there are fewer than 50 beneficial holders of the series of Proxy Portfolio Shares; (b) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Proxy Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission or the Commission Staff under the 1940 Act to the Investment Company with respect to the series of

Proxy Portfolio Shares; (d) if any of the requirements set forth in this rule are not continuously maintained; (e) if any of the applicable Continued Listing Representations for the issue of Proxy Portfolio Shares are not continuously met; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Nasdaq Rule 5750(d)(2)(D) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Proxy Portfolio Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: The net asset value, the Proxy Basket, or the Fund Portfolio with respect to a series of Proxy Portfolio Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable; and (c) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: The net asset value, the Proxy Basket, or the Fund Portfolio with respect to a series of Proxy Portfolio Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable.

Proposed Nasdaq Rule 5750(e) provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Proxy Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Policy Discussion—Proposed Nasdaq Rule 5750

The purpose of the structure of Proxy Portfolio Shares is to provide investors with the traditional benefits of ETFs [5] while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Proxy Portfolio Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Nasdaq Rule 5735), Proxy Portfolio Shares differ from Managed Fund Shares in one key way.[6] A series of Proxy Portfolio Shares will disclose the Proxy Basket on a daily basis, which, as described above, is designed to *closely track* the performance of the holdings of the Investment Company, instead of the *actual holdings* of the Investment Company, as provided by a series of Managed Fund Shares.[7]

For the arbitrage mechanism for any ETF to function effectively, authorized participants, arbitrageurs, and other market participants (collectively, ''Market Makers'') need sufficient information to accurately value shares of a fund to transact in both the primary and secondary market. The Proxy Basket is to be designed to closely track the daily performance of the Fund Portfolio.

Given the correlation between the Proxy Basket and the Fund Portfolio,[8] the Exchange believes that the Proxy Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of Proxy Portfolio Shares diverge. If shares began trading at a discount to the Proxy Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit,[9] redeem them in exchange for a redemption basket reflecting the Net Asset Value (''NAV'') per share of the Fund Portfolio. The purchases of shares would reduce the supply of shares in the market, and thus tend to drive up the shares' market price closer to the fund's NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a

[5] For purposes of this filing, the term ETF will include only Exchange Traded Fund Shares as defined in Nasdaq Rule 5704, Portfolio Depositary Receipts as defined in Nasdaq Rule 5705(a), Index Fund Shares as defined in Nasdaq Rule 5705(b), and Managed Fund Shares as defined in Nasdaq Rule 5735, along with the equivalent products defined in the rules of other national securities exchanges.

[6] The Exchange notes that there is an additional difference between proposed Nasdaq Rule 5750 and Nasdaq Rule 5735: Proposed Nasdaq Rule 5750 would require a rule filing under Section 19(b) prior to listing any product on the Exchange, meaning that no series of Proxy Portfolio Shares could be listed on the Exchange pursuant to Rule 19b–4(e) and there are no proposed rules comparable to the quantitative portfolio holdings standards from Nasdaq Rule 5735.

[7] Proposed Nasdaq Rule 5750(d)(2)(C) will, however, require each series of Proxy Portfolio Shares to at a minimum disclose the entirety of its portfolio holdings within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's SAI, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[8] As provided in the Proxy Notices, funds and their respective advisers will take remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund's crossing a threshold, the adviser will promptly call a meeting of the fund's board of directors and will present the board or committee with recommendations for appropriate remedial measures. The board would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any, action would be appropriate. Specifically, the Proxy Applications and Proxy Notices provide that such a meeting would occur: (1) If the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or bid/ask price, on one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

[9] Proxy Portfolio Shares will be purchased or redeemed only in large aggregations, or ''creation units,'' and the Proxy Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.

fund is trading at a premium to the Proxy Basket, Market Makers may sell shares short and take a long position in the Proxy Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Proxy Basket securities in an attempt to profit when shares are trading at a discount to the Proxy Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Proxy Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.[10] Consistent with the Commission's view, the Exchange believes that because the arbitrage mechanism for Proxy Portfolio Shares will be sufficient to keep secondary market prices in line with NAV.

The Exchange notes that a significant amount of information about each fund and its Fund Portfolio will be publicly available at all times. Each series will disclose the Proxy Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Proxy Portfolio Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per share basis for each fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Proxy Basket compared to the fund holdings for the prior business day and any information regarding the bid/ask spread for each fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. The website and information will be publicly available at no charge.

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material nonpublic information, the Exchange believes that proposed Nasdaq Rule 5750(b)(5) and (6) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Proxy Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under Nasdaq Rule 5750(b)(6) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Proxy Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Proxy Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Proxy Basket or changes thereto will act to prevent any individual or entity from sharing such information externally. Additionally, the requirement that any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Proxy Basket will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Proxy Portfolio Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Proxy Portfolio Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Proxy Portfolio Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Nasdaq Rule 5800. In addition, the Exchange also has a general policy prohibiting the distribution of material, nonpublic information by its employees.

As noted in proposed Nasdaq Rule 5750(b)(4), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of each series of Proxy Portfolio Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series of Proxy Portfolio Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well

[10] *See* Investment Company Act Release No. 33683 (November 14, 2019), 84 FR 64140 (November 20, 2019) at 64144. The Commission also notes that as long as arbitrage continues to keep the Fund's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs. *See Id.,* at 64145.

as the ability to surveil for manipulation of the shares.

Trading Halts

As described above, proposed Nasdaq Rule 5750(d)(2)(D) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Proxy Portfolio Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: The net asset value, the Proxy Basket, or the Fund Portfolio with respect to a series of Proxy Portfolio Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable.

Availability of Information

As noted above, Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's SAI, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.* The Exchange also notes that the Proxy Applications provide that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material nonpublic information, which otherwise do not apply to issuers of Proxy Portfolio Shares.

Information regarding market price and trading volume of the shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the shares will be published daily in the financial section of newspapers. Quotation and last sale information for the shares will be available via the Consolidated Tape Association (''CTA'') high-speed line.

Trading Rules

The Exchange deems Proxy Portfolio Shares to be equity securities, thus rendering trading in the shares subject to the Exchange's existing rules governing the trading of equity securities.[11] As provided in proposed Nasdaq Rule 5750(b)(3), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01. The Exchange has appropriate rules to facilitate trading in Proxy Portfolio Shares during all trading sessions.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[12] in general and Section 6(b)(5) of the Act[13] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Nasdaq Rule 5750 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Proxy Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Nasdaq Rule 5750(d)(1) provides the initial listing criteria for a series of Proxy Portfolio Shares, which include the following: (A) Each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) For each series, the Exchange will establish a minimum number of Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: The net asset value, the Proxy Basket, and the Fund Portfolio.

Proposed Nasdaq Rule 5750(d)(2) provides that each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria: (i) The Proxy Basket will be disseminated at least once daily and will be made available to all market participants at the same time; (ii) the Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; (iii) upon termination of an Investment Company, the Exchange requires that Proxy Portfolio Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or SAI.

Additionally, proposed Nasdaq Rule 5750(d)(2)(C) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Proxy Portfolio Shares pursuant to Nasdaq Rule 5800 under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Proxy Portfolio Shares, there are fewer than 50 beneficial holders of the series of Proxy Portfolio Shares; (b) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Proxy Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Proxy Portfolio Shares; (d) if any of the requirements set forth in this rule are not continuously maintained; (e) if any of the applicable Continued Listing Representations for the issue of Proxy Portfolio Shares are not continuously met; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Nasdaq Rule 5750(d)(2)(D) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Proxy Portfolio Shares inadvisable. These may include: (i) The extent to which trading is not occurring

[11] With respect to trading in Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange will continue to monitor its members for compliance with such requirements.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

in the securities and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: The net asset value, the Proxy Basket, or the Fund Portfolio with respect to a series of Proxy Portfolio Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material non-public information, the Exchange believes that proposed Nasdaq Rule 5750(b)(5) and (6) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Proxy Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Nasdaq Rule 5750(b)(6) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Proxy Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Proxy Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Proxy Basket or changes thereto will act to prevent any individual or entity from sharing such information externally. Additionally, the requirement that any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Proxy Basket will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Proxy Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the shares (the Proxy Basket) as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to firewalls and information protection will act as a strong safeguard against any misuse and improper dissemination of information related to the securities included in or changes made to the Fund Portfolio and/or the Proxy Basket. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange notes that a significant amount of information about each fund and its Fund Portfolio will be publicly available at all times. Each series will disclose the Proxy Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Proxy Portfolio Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per share basis for each fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Proxy Basket compared to the fund holdings for the prior business day and any information regarding the bid/ask spread for each fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. The website and information will be publicly available at no charge.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Proxy Portfolio Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Proxy Portfolio Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. Pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Nasdaq Rule 5800. In addition, the Exchange also has a general policy prohibiting the distribution of material, nonpublic information by its employees.

As noted in proposed Nasdaq Rule 5750(b)(4), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Proxy Portfolio Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series of Proxy Portfolio Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

As noted above, Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's SAI, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.* The Exchange also notes that the Proxy Applications provide that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material nonpublic information, which otherwise do not apply to issuers of Proxy Portfolio Shares.

Information regarding market price and trading volume of the shares will be

continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the shares will be published daily in the financial section of newspapers. Quotation and last sale information for the shares will be available via the CTA high-speed line. The Exchange deems Proxy Portfolio Shares to be equity securities, thus rendering trading in the shares subject to the Exchange's existing rules governing the trading of equity securities. As provided in proposed Nasdaq Rule 5750(b)(3), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of new types of actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2020–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2020–032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2020–032 and should be submitted on or before July 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release no. 33897]

Order Under Section 6(c) and Section 38(a) of the Investment Company Act of 1940 Granting Exemptions From Sections 15(c) and 32(a) of the Investment Company Act and Rules 12b–1(b)(2) and 15a–4(b)(2)(ii) Thereunder

June 19, 2020.

On March 25, 2020, the Commission issued an order[1] (the ''March 25 Order'') pursuant to its authority under Sections 6(c) and 38(a) of the Investment Company Act of 1940 (the ''Investment Company Act'' or ''Act'') granting exemptions from certain provisions of that Act and the rules thereunder. Section II of the March 25 Order provided exemptions from certain Investment Company Act sections and rules requiring that votes of the board of directors of either a registered management investment company or business development company (''BDC'') be cast in-person (the ''In-person Board Relief'').

The Commission has been monitoring the effects of COVID–19 and is now superseding in part the March 25 Order to extend the period during which the In-person Board Relief will be available, subject to the same conditions as the March 25 Order, in light of its current understanding of the circumstances. The health and safety of all participants in the securities markets is of paramount importance, and the Commission recognizes that boards of directors of registered management

[1] Investment Company Act Release No. 33824 (Mar. 25, 2020), available at *https://www.sec.gov/rules/other/2020/ic-33824.pdf.* The March 25 Order superseded a similar order dated March 13, 2020. *See* Investment Company Act Release No. 33817 (Mar. 13, 2020), available at *https://www.sec.gov/rules/other/2020/ic-33817.pdf.*

investment companies and BDCs continue to face challenges traveling in order to meet the in-person voting requirements under the Investment Company Act and rules thereunder. For this reason, the Commission finds that extending the time period for the In-person Board Relief, pursuant to its authority under Sections 6(c) and 38(a) of the Investment Company Act, is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act, and necessary and appropriate to the exercise of the powers conferred on it by the Investment Company Act. The necessity for prompt action of the Commission does not permit prior notice of the Commission's action.

This Order supersedes the March 25 Order with respect to the In-person Board Relief only. Relief provided in other sections of the March 25 Order, including the accompanying Commission statement regarding prospectus delivery, will expire as provided in that order.

I. Time Period for the Exemptive Relief

The relief provided in this Order is limited to the period from (and including) the date of the Original Order to (and including) the date to be specified in a public notice from Commission staff stating that the relief will terminate, which date will be at least two weeks from the date of the notice and no earlier than December 31, 2020.

The Commission intends to continue to monitor the current situation. The time period for the relief may, if necessary, be extended with any additional conditions that are deemed appropriate, and the Commission may issue other relief as necessary or appropriate.

II. In-Person Board Meeting Requirements for Registered Management Investment Companies and BDCs

It is *ordered,* pursuant to Sections 6(c) and 38(a) of the Act:

That for the period specified in Section I, a registered management investment company or BDC and any investment adviser of or principal underwriter for such registered management investment company or BDC is exempt from the requirements imposed under sections 15(c) and 32(a) of the Investment Company Act and Rules 12b–1(b)(2) and 15a–4(b)(2)(ii) under the Investment Company Act that votes of the board of directors of either the registered management investment company or BDC be cast in person, provided that:

(i) Reliance on this Order is necessary or appropriate due to circumstances related to current or potential effects of COVID–19;

(ii) the votes required to be cast at an in-person meeting are instead cast at a meeting in which directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting; and

(iii) the board of directors, including a majority of the directors who are not interested persons of the registered management investment company or BDC, ratifies the action taken pursuant to this exemption by vote cast at the next in-person meeting.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13790 Filed 6–25–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89119; File No. SR–FINRA–2020–018]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule)

June 22, 2020.

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 June 19, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the FINRA Rule 6800 Series, FINRA's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'')[4] to be consistent with certain exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 6800 Series, the Compliance Rule regarding the CAT NMS Plan, to be consistent with certain exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. As described more fully below, the proposed rule change would make the following changes to the Compliance Rule:

- Add additional data elements to the consolidated audit trail (''CAT'') reporting requirements for Industry Members to facilitate the retirement of FINRA's Order Audit Trail System (''OATS'');
- Add additional data elements related to OTC Equity Securities that FINRA currently receives from alternative trading systems (''ATSs'') that trade OTC Equity Securities for regulatory oversight purposes to the CAT reporting requirements for Industry Members;

[4] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

• Implement a phased approach for Industry Member reporting to the CAT (''Phased Reporting'');

• To the extent that any Industry Member's order handling or execution systems utilize timestamps in increments finer than milliseconds, revise the timestamp granularity requirement to require such Industry Member to record and report Industry Member Data to the Central Repository with timestamps in such finer increment up to nanoseconds;

• Require Introducing Industry Members (as defined below) to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members;

• Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN'') (collectively referred to as ''SSNs'') or account numbers; and

• Revise the CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA's trade reports submitted to the CAT.

i. CAT–OATS Data Gaps

The Participants have worked to identify gaps between data reported to existing systems and data to be reported to the CAT to ''ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.'' [5] As a result of this process, the Participants identified several data elements that must be included in the CAT reporting requirements before existing systems can be retired. In particular, the Participants identified certain data elements that are required by OATS, but not currently enumerated in the CAT NMS Plan. Accordingly, FINRA proposes to amend its Compliance Rules to include these OATS data elements in the CAT. Each such OATS data element is discussed below. With the addition of these OATS data elements to the CAT, the CAT will have the data elements necessary to retire OATS.

A. Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members [6] to record the identification of information barriers for certain order events, including when an order is received or originated, transmitted to a department within the OATS Reporting Member, and when it is modified. FINRA proposes to amend its Compliance Rule to incorporate these requirements into the CAT.

Specifically, FINRA Rule 7440(b)(20) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.'' [7] The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, FINRA proposes to add paragraph (a)(1)(A)(vii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member where the order was received or originated.''

In addition, FINRA Rule 7440(c)(1) states that ''[w]hen a Reporting Member transmits an order to a department within the member, the Reporting Member shall record: . . . (H) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.'' The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, FINRA proposes to revise paragraph (a)(1)(B)(vi) of Rule 6830 to require, for the routing of an order, if routed internally at the Industry Member, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member to which the order was transmitted.''

FINRA Rules 7440(c)(2)(B) and 7440(c)(4)(B) require an OATS Reporting Member that receives an order transmitted from another member to report the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, FINRA proposes to add paragraph (a)(1)(C)(vii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received the order.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification to the terms of an order to report the unique identification of any appropriate information barriers in place at the department within the member to which the modification was originated or received. The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, FINRA proposes to add paragraph (a)(1)(D)(vii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received or originated the modification.''

B. Reporting Requirements for ATSs

Under FINRA Rule 4554, ATSs that receive orders in NMS stocks are required to report certain order information to OATS, which FINRA uses to reconstruct ATS order books and perform order-based surveillance, including layering, spoofing, and mid-point pricing manipulation surveillance.[8] The Participants believe that Industry Members operating ATSs—whether such ATS trades NMS stocks or OTC Equity Securities—should likewise be required to report this information to the CAT. Because ATSs that trade NMS stocks are already recording this information and reporting it to OATS, the Participants believe that reporting the same information to the CAT should impose little burden on these ATSs. Moreover, including this information in the CAT is also necessary for FINRA to be able to retire the OATS system. The Participants similarly believe that obtaining the same information from ATSs that trade OTC

[5] *See* Letter from Participants to Brent J. Fields, Secretary, SEC, dated September 23, 2016, re: File Number 4–698 (Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail) (''Participants' Response to Comments'') at 21, available at *https://www.sec.gov/comments/4-698/4698-32.pdf*.

[6] An OATS ''Reporting Member'' is defined in FINRA Rule 7410(o).

[7] FINRA Rule 5320 prohibits trading ahead of customer orders.

[8] *See Regulatory Notice* 16–28 (August 2016).

Equity Securities will be important for purposes of reconstructing ATS order books and surveillance. Accordingly, FINRA proposes to add to the data reporting requirements in the Compliance Rule the reporting requirements for ATSs in FINRA Rule 4554,[9] but to expand such requirements so that they are applicable to all ATSs rather than solely to ATSs that trade NMS stocks.

(1) New Definition

FINRA proposes to add a definition of ''ATS'' to new paragraph (d) of Rule 6810 to facilitate the addition to the CAT of the reporting requirements for ATSs set forth in FINRA Rule 4554. FINRA proposes to define an ''ATS'' to mean ''an alternative trading system, as defined in Rule 300(a)(1) of Regulation ATS under the Exchange Act.''

(2) ATS Order Type

FINRA Rule 4554(b)(5) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

A unique identifier for each order type offered by the ATS. An ATS must provide FINRA with (i) a list of all of its order types 20 days before such order types become effective and (ii) any changes to its order types 20 days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

The Compliance Rule does not require Industry Members to report such order type information to the Central Repository. To address this OATS–CAT data gap, FINRA proposes to incorporate these requirements into four new provisions of the Compliance Rule: Paragraphs (a)(1)(A)(xi)a., (a)(1)(C)(x)a., (a)(1)(D)(ix)a. and (a)(2)(D) of Rule 6830.

Proposed paragraph (a)(1)(A)(xi)a. of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository for the original receipt or origination of an order ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(C)(x)a. of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository for the receipt of an order that has been routed ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(D)(ix)a. of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository if the order is modified or cancelled ''the ATS's unique identifier for the order type of the order.'' Furthermore, as with the requirements in FINRA Rule 4554(b)(5), proposed paragraph (a)(2)(D) of Rule 6830 would state that:

An Industry Member that operates an ATS must provide to the Central Repository: (i) A list of all of its order types twenty (20) days before such order types become effective; and (ii) any changes to its order types twenty (20) days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

(3) National Best Bid and Offer

FINRA Rules 4554(b)(6) and (7) require the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

(6) The NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(7) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (6). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, FINRA Rule 4554(c) requires the following information to be recorded and reported to FINRA by ATSs when reporting the execution of an order to OATS:

(1) The NBBO (or relevant reference price) in effect at the time of order execution;

(2) The timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(3) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (1). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

The Compliance Rule does not require Industry Members to report such NBBO information to the Central Repository. To address this OATS–CAT data gap, FINRA proposes to incorporate these requirements into four new provisions of the Compliance Rule: (a)(1)(A)(xi)b. through c., (a)(1)(C)(x)b. through c., (a)(1)(D)(ix)b. through c., and (a)(1)(E)(viii)a. through b. of Rule 6830.

Specifically, proposed paragraph (a)(1)(A)(xi)b. through c. of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository the following information when reporting the original receipt or origination of order:

b. The National Best Bid and National Best Offer (or relevant reference price) at the time of order receipt or origination, and the date and time at which the ATS recorded such National Best Bid and National Best Offer (or relevant reference price);

c. the identification of the market data feed used by the ATS to record the National Best Bid and National Best Offer (or relevant reference price) for purposes of subparagraph (xi)b. If for any reason the ATS uses an alternative market data feed than what was reported on its ATS data submission, the ATS must provide notice to the Central Repository of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, proposed paragraphs (a)(1)(C)(x)b. through c., (a)(1)(D)(ix)b. through c., and (a)(1)(E)(viii)a. through b. of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed, when reporting if the order is modified or cancelled, and when an order has been executed, respectively.

(4) Sequence Numbers

FINRA Rule 4554(d) states that ''[f]or all OATS-reportable event types, all ATSs must record and report to FINRA the sequence number assigned to the order event by the ATS's matching engine.'' The Compliance Rule does not require Industry Members to report ATS sequence numbers to the Central Repository. To address this OATS–CAT data gap, FINRA proposes to incorporate this requirement regarding ATS sequence numbers into each of the Reportable Events for the CAT. Specifically, FINRA proposes to add paragraph (a)(1)(A)(xi)d. to Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt or origination of the order by the ATS's matching engine.'' FINRA proposes to add paragraph (a)(1)(B)(viii) to Rule 6830, which would require an

[9] FINRA Rule 4554 was approved by the SEC on May 10, 2016, while the CAT NMS Plan was pending with the Commission. *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (Order Approving File No. SR–FINRA–2016–010). As noted in the Participants' Response to Comments, throughout the process of developing the Plan, the Participants worked to keep the gap analyses for OATS, electronic blue sheets, and the CAT up-to-date, which included adding data fields related to the tick size pilot and ATS order book amendments to the OATS rules. *See* Participants' Response to Comments at 21. However, due to the timing of the expiration of the tick size pilot, the Participants decided not to include those data elements into the CAT NMS Plan.

Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the routing of the order by the ATS's matching engine.'' FINRA also proposes to add paragraph (a)(1)(C)(x)d. to Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt of the order by the ATS's matching engine.'' In addition, FINRA proposes to add paragraph (a)(1)(D)(ix)d. to Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the modification or cancellation of the order by the ATS's matching engine.'' Finally, FINRA proposes to add paragraph (a)(1)(E)(viii)c. to Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the execution of the order by the ATS's matching engine.''

(5) Modification or Cancellation of Orders by ATSs

FINRA Rule 4554(f) states that ''[f]or an ATS that displays subscriber orders, each time the ATS's matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report to OATS the time of such modification,'' and ''the applicable new display price or size.'' FINRA proposes adding a comparable requirement in new paragraph (a)(1)(D)(ix)e. to Rule 6830. Specifically, proposed paragraph (a)(1)(D)(ix)e. of Rule 6830 would require an Industry Member that operates an ATS to report to the Central Repository, if the order is modified or cancelled, ''each time the ATS's matching engine re-prices an order or changes the quantity of an order,'' the ATS must report to the Central Repository ''the time of such modification, and the applicable new price or size.'' Proposed paragraph (a)(1)(D)(ix)e. of Rule 6830 would apply to all ATSs, not just ATSs that display orders.

(6) Display of Subscriber Orders

FINRA Rule 4554(b)(1) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

Whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data;

The Compliance Rule does not require Industry Members to report to the CAT such information about the displaying of subscriber orders. FINRA proposes to add comparable requirements in new paragraphs (a)(1)(A)(xi)e. and (a)(1)(C)(x)e. of Rule 6830. Specifically, proposed paragraph (a)(1)(A)(xi)e. would require an Industry Member that operates an ATS to report to the Central Repository, for the original receipt or origination of an order,

whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data.

Similarly, proposed paragraph (a)(1)(C)(x)e. of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed.

C. Customer Instruction Flag

FINRA Rule 7440(b)(14) requires an OATS Reporting Member to record the following when an order is received or originated: ''Any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Compliance Rule does not require Industry Members to report to the CAT such a customer instruction flag. To address this OATS–CAT data gap, FINRA proposes to add paragraph (a)(1)(A)(viii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' FINRA also proposes to add paragraph (a)(1)(C)(ix) to Rule 6830, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification of an order to report the customer instruction flag. The Compliance Rule does not require Industry Members to report such a customer instruction flag. To address this OATS–CAT data gap, FINRA proposes to add paragraph (a)(1)(D)(viii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

D. Department Type

FINRA Rules 7440(b)(4) and (5) require an OATS Reporting Member that receives or originates an order to record the following information: ''the identification of any department or the identification number of any terminal where an order is received directly from a customer'' and ''where the order is originated by a Reporting Member, the identification of the department of the member that originates the order.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the department or terminal where the order is received or originated. To address this OATS–CAT data gap, FINRA proposes to add paragraph (a)(1)(A)(ix) to Rule 6830, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the nature of the department or desk that originated the order, or received the order from a Customer.''

Similarly, per FINRA Rules 7440(c)(2)(B) and (4)(B), when an OATS Reporting Member receives an order that has been transmitted by another Member, the receiving OATS Reporting Member is required to record the information required in 7440(b)(4) and (5) described above as applicable. The Compliance Rule does not require Industry Members to report to the CAT information regarding the department that received an order. To address this OATS–CAT data gap, FINRA proposes to add paragraph (a)(1)(C)(viii) to Rule 6830, which would require Industry Members to record and report to the Central Repository upon the receipt of an order that has been routed ''the nature of the department or desk that received the order.''

E. Account Holder Type

FINRA Rule 7440(b)(18) requires an OATS Reporting Member that receives or originates an order to record the following information: ''the type of account, *i.e.,* retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the type of

account holder for which the order is submitted. To address this OATS–CAT data gap, FINRA proposes to add paragraph (a)(1)(A)(x) to Rule 6830, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the type of account holder for which the order is submitted.''

ii. OTC Equity Securities

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently receives from ATSs that trade OTC Equity Securities for regulatory oversight purposes, but are not currently included in CAT Data. In particular, the Participants identified three data elements that need to be added to the CAT: (1) Bids and offers for OTC Equity Securities; (2) a flag indicating whether a quote in OTC Equity Securities is solicited or unsolicited; and (3) unpriced bids and offers in OTC Equity Securities. The Participants believe that such data will continue to be important for regulators to oversee the OTC Equity Securities market when using the CAT. Moreover, the Participants do not believe that the proposed requirement would burden ATSs because they currently report this information to FINRA and thus the reporting requirement would merely shift from FINRA to the CAT. Accordingly, as discussed below, FINRA proposes to amend its Compliance Rule to include these data elements.

A. Bids and Offers for OTC Equity Securities

In performing its current regulatory oversight, FINRA receives a data feed of the best bids and offers in OTC Equity Securities from ATSs that trade OTC Equity Securities. These best bid and offer data feeds for OTC Equity Securities are similar to the best bid and offer SIP Data required to be collected by the Central Repository with regard to NMS Securities.[10] Accordingly, FINRA proposes to add paragraph (f)(1) to Rule 6830 to require the reporting of the best bid and offer data feeds for OTC Equity Securities to the CAT. Specifically, proposed paragraph (f)(1) of Rule 6830 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the best bid and best offer for each OTC Equity Security traded on such ATS.''

B. Unsolicited Bid or Offer Flag

FINRA also receives from ATSs that trade OTC Equity Securities an indication whether each bid or offer in OTC Equity Securities on such ATS was solicited or unsolicited. Therefore, FINRA proposes to add paragraph (f)(2) to Rule 6830 to require the reporting to the CAT of an indication as to whether a bid or offer was solicited or unsolicited. Specifically, proposed paragraph (f)(2) of Rule 6830 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''an indication of whether each bid and offer for OTC Equity Securities was solicited or unsolicited.''

C. Unpriced Bids and Offers

FINRA receives from ATSs that trade OTC Equity Securities certain unpriced bids and offers for each OTC Equity Security traded on the ATS. Therefore, FINRA proposes to add paragraph (f)(3) to Rule 6830, which would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the unpriced bids and offers for each OTC Equity Security traded on such ATS.''

iii. Revised Industry Member Reporting Timeline

On February 19, 2020, the Participants filed with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for the implementation of phased reporting to the CAT by Industry Members (''Phased Reporting'').[11] Specifically, in their exemptive request, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members other than Small Industry Members (''Large Industry Members'') to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Small Industry Members [12] to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Correspondingly, the Participants requested that the SEC provide an exemption from the requirement in Section 6.4 of the CAT NMS Plan that ''[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.'' On April 20, 2020, the SEC granted the Participants exemptive relief to implement Phased Reporting, subject to certain timeline changes and conditions.[13]

As a condition to the exemption, each Participant would implement Phased Reporting through its Compliance Rule by requiring:

(1) Its Large Industry Members and its Small Industry Members that are required to record or report information to OATS pursuant to applicable SRO rules (''Small Industry OATS Reporters'') to commence reporting to the Central Repository Phase 2a Industry Member Data by June 22, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by July 20, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and

[10] Section 6.5(a)(ii) of the CAT NMS Plan.

[11] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC, dated February 19, 2020, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates.

[12] *See* Section 1.1 of the CAT NMS Plan.

[13] *See* Securities Exchange Act Release No. 88702 (April 20, 2020), 85 FR 23075 (April 24, 2020). As discussed in the SEC's exemptive order, the Commission granted the Participants conditional exemptive relief from the CAT NMS Plan so that the Compliance Rules may require Phase 2a reporting to commence on June 22, 2020, rather than the April 20, 2020 date set forth in the exemptive request, and Phase 2b reporting to commence on July 20, 2020, rather than the May 18, 2020 date set forth in the exemptive request. As a condition to the exemptive relief, Industry Members that elect to report to the CAT prior to such dates will be permitted to report to the CAT as early as April 20, 2020 for Phase 2a reporting and as early as May 18, 2020 for Phase 2b reporting.

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data required under the CAT NMS Plan will be required to be reported when all five phases of the Phased Reporting have been implemented, subject to any applicable exemptive relief or amendments related to the CAT NMS Plan.

As a further condition to the exemption, each Participant proposes to implement the testing timelines, described in Section F below, through its Compliance Rule by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

As a result, FINRA proposes to amend its Compliance Rule to be consistent with the exemptive relief to implement Phased Reporting as described below.

A. Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by June 22, 2020.[14] To implement the Phased Reporting for Phase 2a, FINRA proposes to add paragraph (t)(1) of Rule 6810 (previously paragraph (s)) and amend paragraphs (c)(1) and (2) of Rule 6895.

(1) Scope of Reporting in Phase 2a

To implement the Phased Reporting with respect to Phase 2a, FINRA proposes to add a definition of ''Phase 2a Industry Member Data'' as paragraph (t)(1) of Rule 6810. Specifically, FINRA proposes to define the term ''Phase 2a Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2a.'' Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. While the following summarizes categories of Industry Member Data required for Phase 2a, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2a.[15]

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a. The inclusion of all OATS events and scenarios in the CAT is intended to facilitate the retirement of OATS.

Phase 2a Industry Member Data also would include Reportable Events for:

- Proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF'');
- electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''IDQS''); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by paragraphs (a)(1)(A)(i) and (a)(2)(C) of Rule 6830. Paragraph (a)(1)(A)(i) of Rule 6830 requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Paragraph (a)(2)(C) of Rule 6830 requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID if the order is executed, in whole or in part.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders, and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) The representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Rule 6830, Industry Members would be required to provide a timestamp pursuant to Rule 6860. Rule 6860(b)(1) states that

[14] Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters'') would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by December 13, 2021, which is approximately 17 months after Large Industry Members and Small Industry OATS Reporters begin reporting.

[15] The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c or Phase 2d, as discussed below.

Each Industry Member may record and report Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Member shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member (''Electronic Capture Time'') in milliseconds.

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.[16]

Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (''ISO''). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than in Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.[17] In addition, in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.

(2) Timing of Phase 2a Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2a for Large Industry Members, FINRA proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(A) of Rule 6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) (''Large Industry Member'') shall record and report the Industry Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by June 22, *COM007*2020.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2a for Small Industry Members, FINRA proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 6895 with new paragraphs (c)(2)(A) and (B) of Rule 6895. Proposed paragraph (c)(2)(A) of Rule 6895 would state that

Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: (A) Small Industry Members that are required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by June 22, 2020.

Proposed paragraph (c)(2)(B) of Rule 6895 would state that ''Small Industry Members that are not required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry Non-OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by December 13, 2021.''

B. Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by July 20, 2020. Small Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by December 13, 2021, which is approximately 17 months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2b, FINRA proposes to add new paragraph (t)(2) to Rule 6810 and amend paragraphs (c)(1) and (2) of Rule 6895.

(1) Scope of Phase 2b Reporting

To implement the Phased Reporting with respect to Phase 2b, FINRA proposes to add a definition of ''Phase 2b Industry Member Data'' as paragraph (t)(2) of Rule 6810. Specifically, FINRA proposes to define the term ''Phase 2b Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2b.'' Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. While the following summarizes the categories of Industry Member Data required for Phase 2b, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2b.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.[18] A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are reportable in Phase 2b.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

(2) Timing of Phase 2b Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for

[16] Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

[17] This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

[18] The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below.

Large Industry Members, FINRA proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(B) of Rule 6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) (''Large Industry Member'') shall record and report the Industry Member Data to the Central Repository, as follows: . . . (B) Phase 2b Industry Member Data by July 20, 2020.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2b for Small Industry Members, FINRA proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 6895 with new paragraph (c)(2)(C) of Rule 6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository Phase 2b Industry Member Data . . . by December 13, 2021.''

C. Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by April 26, 2021. Small Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by December 13, 2021, which is approximately seven months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2c, FINRA proposes to add new paragraph (t)(3) to Rule 6810 and amend paragraphs (c)(1) and (2) of Rule 6895.

(1) Scope of Phase 2c Reporting

To implement the Phased Reporting with respect to Phase 2c, FINRA proposes to add a definition of ''Phase 2c Industry Member Data'' as paragraph (t)(3) of Rule 6810. Specifically, FINRA proposes to define the term ''Phase 2c Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2c.'' Phase 2c Industry Member Data would be Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data or Phase 2e Industry Member Data. Phase 2c Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. While the following summarizes the categories of Industry Member Data required for Phase 2c, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2c.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter, which are reportable by the Industry Member sending the quotes (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of large trader identifiers [19] (''LTID'') (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date [20] (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for all representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[21]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) An equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the Alternative Display Facility (ADF) operated by FINRA; or (b) for unlisted equity securities to an ''inter-dealer quotation system'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.

(2) Timing of Phase 2c Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2c for Large Industry Members, FINRA proposes to delete the November 15,

[19] *See* definition of ''Customer Account Information'' in Section 1.1 of the CAT NMS Plan. *See also* Rule 13h–1 under the Exchange Act.

[20] *See* definition of ''Customer Account Information'' and ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan. FINRA also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, FINRA proposes to amend paragraph (m)(2) of Rule 6810 to replace the references to November 15, 2018 and 2019 with references to the commencement of Phase 2c and Phase 2d. FINRA also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2) through (5) of Rule 6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

[21] In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an OMS and represented by a principal order originated in an EMS that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

2018 date and to supplement paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(C) of Rule 6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) (''Large Industry Member'') shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Phase 2c Industry Member Data by April 26, 2021.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2c for Small Industry Members, FINRA proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 6895 with new paragraph (c)(2)(C) of Rule 6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2c Industry Member Data . . . by December 13, 2021.''

D. Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2d Industry Member Data'' by December 13, 2021. To implement the Phased Reporting for Phase 2d, FINRA proposes to add new paragraph (t)(4) to Rule 6810 and amend paragraphs (c)(1) and (2) of Rule 6895.

(1) Scope of Phase 2d Reporting

To implement the Phased Reporting with respect to Phase 2d, FINRA proposes to add a definition of ''Phase 2d Industry Member Data'' as paragraph (t)(4) of Rule 6810. Specifically, FINRA proposes to define the term ''Phase 2d Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2d.'' [22]

Phase 2d Industry Member Data is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d. While the following summarizes the categories of Industry Member Data required for Phase 2d, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2d.

Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) Simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; [23] (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders.

Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: A listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition would be reportable in Phase 2d for options.

Phase 2d Industry Member Data also would include with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).

(2) Timing of Phase 2d Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2d for Large Industry Members, FINRA proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(D) of Rule 6895, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) (''Large Industry Member'') shall record and report the Industry Member Data to the Central Repository, as follows: . . . (D) Phase 2d Industry Member Data by December 13, 2021.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, FINRA proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 6895 with new paragraph (c)(2)(C) of Rule 6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2d Industry Member Data by December 13, 2021.''

E. Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry

[22] The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

[23] As noted above, FINRA also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, FINRA proposes to amend paragraph (m)(2) of Rule 6810 to replace the references to November 15, 2018 and 2019 with references to the commencement of Phase 2c and Phase 2d. FINRA also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2) through (5) of Rule 6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

Members would be required to report to the Central Repository ''Phase 2e Industry Member Data'' by July 11, 2022. To implement the Phased Reporting for Phase 2e, FINRA proposes to add new paragraph (t)(5) to Rule 6810 and amend paragraphs (c)(1) and (2) of Rule 6895.

(1) Scope of Phase 2e Reporting

To implement the Phased Reporting with respect to Phase 2e, FINRA proposes to add a definition of ''Phase 2e Industry Member Data'' as paragraph (t)(5) of Rule 6810. Specifically, FINRA proposes to define the term ''Phase 2e Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2e. The full scope of Industry Member Data required by the CAT NMS Plan will be required to be reported to the CAT when Phase 2e has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan'' LTIDs and Account Effective Date are both required to be reported in Phases 2c and 2d in certain circumstances, as discussed above. The terms ''Customer Account Information'' and ''Customer Identifying Information'' are defined in Rule 6810 of the Compliance Rule.[24] The Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2e.

(2) Timing of Phase 2e Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2e for Large Industry Members, FINRA proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(E) of Rule 6895, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) (''Large Industry Member'') shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Phase 2e Industry Member Data by July 11, 2022.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2e for Small Industry Members, FINRA proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 6895 with new paragraph (c)(2)(D) of Rule 6895, which would state, in relevant part, that ''[e]ach Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Small Industry Members to report to the Central Repository Phase 2e Industry Member Data by July 11, 2022.''

F. Industry Member Testing Requirements

Rule 6880(a) sets forth various compliance dates for the testing and development for connectivity, acceptance and the submission of order data. In light of the intent to shift to Phased Reporting in place of the two specified dates for the commencement of reporting for Large and Small Industry Members, FINRA correspondingly proposes to replace the Industry Member development testing milestones in Rule 6880(a) with the testing milestones set forth in the exemptive relief. Specifically, FINRA proposes to replace Rule 6880(a) with the following:

(a)(1) Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.

(a)(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.

(a)(3) The Industry Member test environment shall open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(a)(4) The Industry Member test environment shall open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(a)(5) The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(a)(6) The Industry Member test environment shall open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(a)(7) Participant exchanges that support options market making quoting shall begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(a)(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

iv. Granularity of Time Stamps

On February 3, 2020, the Participants filed with the Commission a request for exemptive relief from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize time stamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository.[25] On April 8, 2020, the Participants received the exemptive relief.[26] As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture time stamps in increments more granular than nanoseconds to truncate the time stamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances. The timestamp granularity exemption remains in effect for five years, until April 8, 2025. After five years, the exemption would no longer be in effect unless the period the exemption is in effect is extended by the SEC.

Accordingly, FINRA proposes to amend its Compliance Rule to reflect the exemptive relief. Specifically, FINRA proposes to amend paragraph (a)(2) of Rule 6860. Rule 6860(a)(2) states that:

Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment.

FINRA proposes to amend this provision to read as follows to reflect the exemptive relief:

Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds; provided, that Industry Members that capture timestamps in increments more granular than nanoseconds

[24] The term ''Customer Account Information'' includes account numbers, and the term ''Customer Identifying Information'' includes, with respect to individuals, dates of birth and SSNs. *See* Rule 6810. The Participants have received exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). *See also* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC, dated January 29, 2020, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers. Given that the relief has been granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

[25] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC, dated February 3, 2020, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers.

[26] *See* Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

must truncate the timestamps after the nanosecond level for submission to CAT, rather than rounding such timestamps up or down, until April 8, 2025.

v. Introducing Industry Members

On February 3, 2020, the Participants requested that the Commission exempt broker-dealers that do not qualify as Small Industry Members solely because they satisfy Rule 0–10(i)(2) under the Exchange Act and, as a result, are deemed affiliated with an entity that is not a small business or small organization (''Introducing Industry Member'') from the requirements in the CAT NMS Plan applicable to Industry Members other than Small Industry Members (''Large Industry Members'').[27] Instead, such Introducing Industry Members would comply with the requirements in the CAT NMS Plan applicable to Small Industry Members. On April 20, 2020, the SEC granted the Participants exemptive relief with regard to Introducing Industry Members.[28]

As a result, FINRA proposes to amend its Compliance Rule to adopt a definition of ''Introducing Industry Member'' and to revise Rule 6985 to require Introducing Industry Members to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members. Specifically, FINRA proposes to define ''Introducing Industry Member'' in proposed paragraph (v) to Rule 6810, as ''a broker-dealer that does not qualify as a Small Industry Member solely because such broker-dealer satisfies Rule 0–10(i)(2) under the Exchange Act in that it introduces transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations.'' FINRA also proposes to add a new paragraph (c)(3) to Rule 6895 to state that ''Introducing Industry Members must comply with the requirements of the CAT NMS Plan applicable to Small Industry Members.'' With these changes, Introducing Industry Members would be required to comply with the requirements in the CAT NMS Plan applicable to Small Industry Members, rather than the requirements in the CAT NMS Plan applicable to Large Industry Members.

vi. CCID/PII

On January 29, 2020, the Participants filed with the Commission a request for exemptive relief from certain requirements related to reporting SSNs, dates of birth and account numbers to the CAT.[29] The Commission, Participants and others indicated security concerns with maintaining such sensitive Customer information in the CAT. On March 17, 2020, the Participants received the exemptive relief, subject to certain conditions.[30] Assuming the Participants comply with the conditions set forth in the PII Exemption Order, Industry Members would not be required to report SSNs, dates of birth and account numbers to the CAT NMS Plan.

As described in the request for exemptive relief, the Participants requested exemptive relief to allow for an alternative approach to generating a CAT Customer ID (''CCID'') without requiring Industry Members to report SSNs to the CAT (the ''CCID Alternative''). In lieu of retaining such SSNs in the CAT, the Participants would use the CCID Alternative, a strategy developed by the Chief Information Security Officer for the CAT and the Chief Information Security Officers from each of the Participants, in consultation with security experts from member firms of Securities Industry and Financial Markets Association. The CCID Alternative facilitates the ability of the Plan Processor to generate a CCID without requiring the Plan Processor to receive SSNs or store SSNs within the CAT. Under the CCID Alternative, the Plan Processor would generate a unique CCID using a two-phase transformation process that avoids having SSNs reported to or stored in the CAT. In the first transformation phase, a CAT Reporter would transform the SSN to an interim value (the ''transformed value''). This transformed value, and not the SSN, would be submitted to a separate system within the CAT (''CCID Subsystem''). The CCID Subsystem would then perform a second transformation to create the globally unique CCID for each Customer that is unknown to, and not shared with, the original CAT Reporter. The CCID would then be sent to the customer and account information system of the CAT, where it would be linked with the other customer and account information. The CCID may then be used by the Participants' regulatory staff and the SEC in queries and analysis of CAT Data. To implement the CCID Alternative, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report SSNs to the Central Repository for the original receipt of an order. As set forth in one condition of the PII Exemption Order, Industry Members would be required to transform an SSN to an interim value, and report the transformed value to the CAT.

The Participants also requested exemptive relief to allow for an alternative approach, which would exempt the reporting of dates of birth and account numbers [31] to the CAT (''Modified PII Approach''), and instead would require Industry Members to report the year of birth and the Firm Designated ID for each trading account associated with the Customers. To implement the Modified PII Approach, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order dates of birth and account numbers for Customers. As conditions to the exemption, Industry Members would be required to report the year of birth of an individual to the Central Repository, and to report the Firm Designated ID to the Central Repository.

To implement the request for exemptive relief and to eliminate the requirement to report SSNs, date of birth and account numbers to the CAT, FINRA proposes to amend its Compliance Rule to reflect the exemptive relief. Rule 6830(a)(2)(C) states that:

[s]ubject to paragraph (a)(3) below, each Industry Member shall record and report to the Central Repository the following, as

[27] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC, dated February 3, 2020, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Small Industry Members.

[28] *See* Securities Exchange Act Release No. 88703 (April 20, 2020), 85 FR 23115 (April 24, 2020).

[29] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC, dated January 29, 2020, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers.

[30] *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020) (Order Granting Conditional Exemptive Relief, Pursuant to Section 36 and Rule 608(e) of the Securities Exchange Act of 1934, from Section 6.4(d)(ii)(C) and Appendix D Sections 4.1.6, 6.2, 8.1.1, 8.2, 9.1, 9.2, 9.4, 10.1, and 10.3 of the National Market System Plan Governing the Consolidated Audit Trail) (''PII Exemption Order''). The PII Exemption Order lists several conditions that must be met by FINRA. If FINRA does not satisfy the conditions, the PII Exemption Order would not apply to FINRA.

[31] With respect to this aspect of the requested relief, the PII Exemption Order provided relief with regard to the reporting of all account numbers, not just account numbers for individuals as requested by the Participants.

applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 6830(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with Rule 6840, Customer Account Information and Customer Identifying Information for the relevant Customer.

Similarly, Rule 6840 requires the reporting of Customer Account Information and Customer Identifying Information to the Central Repository. Currently, Rule 6810(m) defines ''Customer Identifying Information'' to include, with respect to individuals, ''date of birth'' and ''individual tax payer identification number (''ITIN'')/social security number (''SSN'').'' Accordingly, FINRA proposes to replace ''date of birth'' in the definition of ''Customer Identifying Information'' in Rule 6810(m) (now renumbered Rule 6810(n)) with ''year of birth'' and to delete ''individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' from Rule 6810(m) (now renumbered Rule 6810(n)). In addition, currently, Rule 6810(l) defines ''Customer Account Information'' to include account numbers. FINRA proposes to delete ''account number'' from the definition of ''Customer Account Information'' in Rule 6810(l) (now renumbered Rule 6810(m)).

FINRA also proposes to add a definition of the term ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to Rule 6810. Specifically, FINRA proposes to add paragraph (pp) to Rule 6810 to define ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to mean ''the interim value created by an Industry Member based on a Customer ITIN/SSN.''

FINRA proposes to revise Rule 6830(a)(2)(C) to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''). Specifically, FINRA proposes to revise Rule 6830(a)(2)(C) to state:

[s]ubject to paragraph (a)(3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 6830(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), and in accordance with Rule 6840, Customer Account Information and Customer Identifying Information for the relevant Customer.

FINRA also proposes to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') in the Customer information reporting required under Rule 6840. Specifically, FINRA proposes to revise Rule 6840(a) to require each Industry Member to submit to the Central Repository the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), for each of its Customers with an Active Account prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 6880. FINRA also proposes to revise Rule 6840(b) to require each Industry Member to submit to the Central Repository any updates, additions or other changes to the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account on a daily basis. In addition, FINRA proposes to revise Rule 6840(c) to require, on a periodic basis as designated by the Plan Processor and approved by the Operating Committee, each Industry Member to submit to the Central Repository a complete set of the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account. FINRA also proposes to revise Rule 6840(d) to require, for each Industry Member for which errors in the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member to submit corrected data to the Central Repository by 5:00 p.m. Eastern Time on T+3.

Subparagraph (1)(B) of Rule 6810(m), the definition of ''Customer Account Information'' states that ''in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will . . . provide the relationship identifier in lieu of the '' 'account number.' '' As an account number will no longer be an element in ''Customer Account Information,'' the relationship identifier used in lieu of the account number will no longer be required as an element of Customer Account Information. Therefore, FINRA proposes to delete the requirement set forth in Rule 6810(m)(1)(B) regarding relationship identifiers from Rule 6810(m).

With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers pursuant to Rule 6830(a)(2)(C). However, Industry Members would be required to report the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') and the year of birth to the Central Repository.[32]

vii. FINRA Facility Data Linkage

On June 5, 2020, the Participants filed with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for an alternative approach to the reporting of clearing numbers and cancelled trade indicators.[33] The SEC provided this exemptive relief on June 11, 2020.[34] FINRA is required to report to the Central Repository data collected by FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility (collectively, ''FINRA Facility'') pursuant to applicable SRO rules (''FINRA Facility Data''). Included in this FINRA Facility Data is the clearing number of the clearing broker for a reported trade as well as the cancelled trade indicator. Under this alternative approach, the clearing number and the cancelled trade indicator of the FINRA Facility Data that is reported to the CAT would be linked to the related execution reports reported by Industry Members. To implement this approach in a phased manner, the Participants received exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository: (1) If the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable; and (2) if the trade is cancelled, a cancelled

[32] FINRA anticipates that the Compliance Rule may be further amended when further details regarding the CCID Alternative are finalized.

[33] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC, dated June 5, 2020, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage.

[34] *See* Securities Exchange Act Release No. 89051 (June 11, 2020), 85 FR 36631 (June 17, 2020).

trade indicator, subject to certain conditions.

As a condition to this exemption, the Participants would continue to require Industry Members to submit a trade report for a trade and, if the trade is cancelled, a cancellation, to a FINRA Facility pursuant to applicable SRO rules, and to report the corresponding execution to the Central Repository. In addition, Industry Members would be required to report to the Central Repository the unique trade identifier reported to a FINRA Facility with the corresponding trade report. Furthermore, if an Industry Member does not submit a cancellation to a FINRA Facility, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator and cancelled trade timestamp if the trade is cancelled. Similarly, if an Industry Member does not submit the clearing number of the clearing broker to a FINRA Facility for a trade, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository the clearing number as well as contra party information.

As a result, FINRA proposes to amend its Compliance Rule to reflect the exemptive relief to implement this alternative approach. Specifically, FINRA proposes to require Industry Members to report to the CAT with an execution report the unique trade identifier reported to a FINRA Facility with the corresponding trade report. For example, the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting Facility, it would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility, it would the FINRA Compliance Number. This unique trade identifier would be used to link the FINRA Facility Data with the execution report in the CAT. Specifically, FINRA proposes to add new paragraph (a)(2)(E) to Rule 6830, which states that:

(E) If an Industry Member is required to submit and submits a trade report for a trade, and, if the trade is cancelled, a cancellation, to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution and/or cancellation to the Central Repository:

(i) The Industry Member is required to report to the Central Repository the trade identifier reported by the Industry Member to such FINRA facility for the trade when the Industry Member reports the execution of an order pursuant to Rule 6830(a)(1)(E) or cancellation of an order pursuant to Rule 6830(a)(1)(D) beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters, and such trade identifier must be unique beginning October 26, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

FINRA also proposes to relieve Industry Members of the obligation to report to the CAT data related to clearing brokers and trade cancellations pursuant to Rules 6830(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT, except in certain circumstances. Accordingly, FINRA proposes new paragraphs (a)(2)(E)(ii) and (iii) of Rule 6830, which would state:

(ii) If the order is executed in whole or in part, and the Industry Member submits the trade report to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the SRO-Assigned Market Participant Identifier of the clearing broker pursuant to Rule 6830(a)(2)(A)(ii); provided, however, if the Industry Member does not report the clearing number of the clearing broker to such FINRA facility for a trade, or does not report the unique trade identifier to the Central Repository as required by Rule 6830(a)(2)(E)(i), then the Industry Member would be required to record and report to the Central Repository the clearing number of the clearing broker as well as information about the contra party to the trade beginning April 26, 2021 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters; and

(iii) if the trade is cancelled and the Industry Member submits the cancellation to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the cancelled trade indicator pursuant to Rule 6830(a)(2)(B); provided, however, if the Industry Member does not report a cancellation for a cancelled trade to such FINRA facility, or does not report the unique trade identifier as required by 6830(a)(2)(E)(i), then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator as well as a cancelled trade time stamp beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the proposed rule change can become operative on June 22, 2020.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[35] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,[36] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that the proposed rule change is consistent with the Act because it is consistent with certain exemptions from the CAT NMS Plan, facilitates the retirement of certain existing regulatory systems, and is designed to assist FINRA and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [37] To the extent that this proposed rule change implements the Plan, including the exemptive relief, and applies specific requirements to Industry Members, FINRA believes that the proposed rule change furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA notes that the proposed rule change is consistent with certain exemptions from the CAT NMS Plan, will facilitate the retirement of certain existing regulatory systems, and is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan. FINRA also notes that the proposed amendments to the Compliance Rules

[35] 15 U.S.C. 78*o*–3(b)(6).

[36] 15 U.S.C. 78*o*–3(b)(9).

[37] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, FINRA and all national securities exchanges are proposing these amendments to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[38] and Rule 19b–4(f)(6) thereunder.[39]

A proposed rule change filed under Rule 19b–4(f)(6)[40] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[41] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by June 22, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements exemptive relief from the CAT NMS Plan granted by the Commission and facilitates the start of Industry Member reporting on June 22, 2020. In addition, as noted by the FINRA, the proposed rule change is based on a filing recently approved by the Commission.[42] Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative as of June 22, 2020.[43]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2020–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2020–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2020–018 and should be submitted on or before July 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[38] 15 U.S.C. 78s(b)(3)(A).

[39] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[40] 17 CFR 240.19b–4(f)(6).

[41] 17 CFR 240.19b–4(f)(6)(iii).

[42] *See* Securities Exchange Act Release No. 89108 (June 19, 2020).

[43] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[44] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11147]

Notice of Department of State Sanctions Actions Pursuant to Executive Order 13894 of October 14, 2019, Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria

SUMMARY: The Secretary of State imposed sanctions on fifteen individuals pursuant to E.O. 13894, Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria.

DATES: The Secretary of State's determination and selection of certain sanctions to be imposed upon the one individual identified in the **SUPPLEMENTARY INFORMATION** section are effective on June 17, 2020.

FOR FURTHER INFORMATION CONTACT: Taylor Ruggles, Director, Office of Economic Sanctions Policy and Implementation, Bureau of Economic and Business Affairs, Department of State, Washington, DC 20520, tel.: (202) 647 7677, email: *RugglesTV@state.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2(a) of E.O. 13894, the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Homeland Security, and the United States Trade Representative, and with the President of the Export-Import Bank, the Chairman of the Board of Governors of the Federal Reserve System, and other agencies and officials as appropriate, is authorized to impose on a person any of the sanctions described in sections 2(b) and 2(c) of E.O. 13894

upon determining that the person met any criteria set forth in section 2(a)(i)(A), 2(a)(i)(D), or 2(a)(ii) of E.O. 13894.

The Secretary of State has determined, pursuant to Section 2(a)(i)(A) of E.O. 13894, that Bashar al-Assad, Maher al-Assad, Ghassan Bilal, Samer al-Dana, and the Fourth Division of the Syrian Arab Army are responsible for or complicit in, have directly or indirectly engaged in, attempted to engage in, or financed, the obstruction, disruption, or prevention of a ceasefire in northern Syria.

The Secretary of State determined, pursuant to Section 2(a)(i)(D) of E.O. 13894, that Mohamed Hamsho and the Fatemiyoun Division are responsible for or complicit in, have directly or indirectly engaged in, attempted to engage in, or financed, the obstruction, disruption, or prevention of efforts to promote a political solution to the conflict in Syria.

The Secretary of State determined, pursuant to Section 2(a)(ii) of E.O. 13894, that Asma al-Assad, and Bushra al-Assad are adult family members of Bashar al-Assad; Manal al-Assad is an adult family member of Maher al-Assad; and Ahmed Hamsho, Amre Hamsho, Ali Hamsho, Rania al-Dabbas, and Sumaia Hamcho are adult family members of Mohamed Hamsho.

Pursuant to Sections 2(b) and 2(c) of E.O. 13894, the Secretary of State has selected the following sanctions to be imposed upon Bashar al-Assad, Asma al-Assad, Bushra al-Assad, Maher al-Assad, Ghassan Bilal, Samer al-Dana, Manal al-Assad, the Fourth Division of the Syrian Arab Army, Mohamed Hamsho, Ahmed Hamsho, Amre Hamsho, Ali Hamsho, Rania al-Dabbas, Sumaia Hamcho, and the Fatemiyoun Division:

- Agencies shall not procure, or enter into a contract for the procurement of, any goods or services from the individuals and entities. (Section 2(b)(i) of E.O. 13894);
- prohibit any United States financial institution that is a U.S. person from making loans or providing credits to the individuals and entities totaling more than $10,000,000 in any 12-month period, unless the individuals and entities are engaged in activities to relieve human suffering and the loans or credits are provided for such activities (Section 2(c)(i) of E.O. 13894);
- prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the individuals and entities have any interest (Section 2(c)(ii) of E.O. 13894);
- prohibit any transfers of credit or payments between banking institutions or by, through, or to any banking institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the individuals and entities (Section 2(c)(iii) of E.O. 13894);
- block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the individuals and entities, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in (Section 2(c)(iv) of E.O. 13894);
- prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of the individuals and entities (Section 2(c)(v) of E.O. 13894); and
- restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the individuals and entities (Section 2(c)(vi) of E.O. 13894).

Taylor V. Ruggles,

Director, Office of Economic Sanctions Policy and Implementation, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2020–13806 Filed 6–25–20; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0027]

Request for Comments Concerning the Extension of Particular Exclusions Granted Under the $300 Billion Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: On August 20, 2019, at the direction of the President, the U.S. Trade Representative determined to modify the action being taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by imposing additional duties of 10 percent *ad valorem* on goods of China with an annual trade value of approximately $300 billion. The additional duties on products in List 1, which is set out in Annex A of that action, became effective on September 1, 2019. On August 30, 2019, at the direction of the President, the U.S. Trade Representative determined to increase the rate of the additional duty applicable to the tariff subheadings covered by the action announced in the August 20 notice from 10 to 15 percent. On January 22, 2020, the U.S. Trade Representative determined to reduce the rate from 15 to 7.5 percent. The U.S. Trade Representative initiated a product exclusion process in October 2019, and as of June 12, 2020, had issued five product exclusion notices under this action. The product exclusions granted under these notices are scheduled to expire on September 1, 2020. The U.S. Trade Representative has decided to consider a possible extension for up to 12 months of particular exclusions granted under these initial five product exclusion notices. The Office of the U.S. Trade Representative (USTR) invites public comment on whether to extend particular exclusions.

DATES: July 1, 2020: The public docket on the web portal at *https://comments.USTR.gov* will open for parties to submit comments on the possible extension of particular exclusions.

July 30, 2020 at 11:59 p.m. ET: To be assured of consideration, submit written comments on the public docket by this deadline.

ADDRESSES: You must submit all comments through the online portal: *https://comments.USTR.gov.*

FOR FURTHER INFORMATION CONTACT: Associate General Counsel Philip Butler or Assistant General Counsel Benjamin Allen at (202) 395–5725.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 84 FR 22564 (May 17, 2019), 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019), 84 FR 69447 (December 18, 2019), 85 FR 3741 (January 22, 2020), 85 FR 13970 (March 10, 2020), 85 FR 15244 (March 17, 2020), 85 FR 17936 (March 31, 2020), 85 FR 28693 (May 13, 2020), 85 FR 32099 (May 28, 2020), and 85 FR 35975 (June 12, 2020).

In a notice published on August 20, 2019, the U.S. Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing an

additional 10 percent *ad valorem* duty on products of China with an annual aggregate trade value of approximately $300 billion. 84 FR 43304 (August 20, 2019) (the August 20 notice). The August 20 notice contains two separate lists of tariff subheadings, with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, was effective on September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, was scheduled to take effect on December 15, 2019.

On August 30, 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 to 15 percent *ad valorem* on the goods of China specified in Annex A (List 1) and Annex C (List 2) of the August 20 notice. *See* 84 FR 45821. On October 24, 2019, the U.S. Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading covered by List 1 of the $300 billion action from the additional duties. *See* 84 FR 57144 (the October 24 notice). Subsequently, the U.S. Trade Representative announced a determination to suspend until further notice the additional duties on products set out in Annex C (List 2) of the August 20 notice. *See* 84 FR 69447 (December 18, 2019). The U.S. Trade Representative later determined to modify the action being taken by reducing the additional duties for the products covered in Annex A of the August 20 notice (List 1) from 15 to 7.5 percent. *See* 85 FR 3741 (January 22, 2020).

The October 24 notice required submission of requests for exclusion from the $300 billion action no later than January 31, 2020, and noted that the U.S. Trade Representative periodically would announce decisions. As of June 12, 2020, the U.S. Trade Representative had issued five notices of product exclusions under the $300 billion action. These exclusions are scheduled to expire on September 1, 2020.

B. Possible Extensions of Particular Product Exclusions

The U.S. Trade Representative has decided to consider a possible extension for up to 12 months of particular exclusions granted under the initial five product exclusion notices under the $300 billion action. At this time, USTR is not considering product exclusion notices issued after June 12, 2020. Accordingly, USTR invites public comments on whether to extend particular exclusions granted under the following notices of product exclusions:

- 85 FR 13970 (March 10, 2020)
- 85 FR 15244 (March 17, 2020)
- 85 FR 17936 (March 31, 2020)
- 85 FR 28693 (May 13, 2020)
- 85 FR 35975 (June 12, 2020)

For exclusions amended or corrected by a later issued notice of product exclusions, Parties should provide their extension comments on the docket corresponding to the initial notice of product exclusions.

USTR will evaluate the possible extension of each exclusion on a case-by-case basis. The focus of the evaluation will be whether, despite the first imposition of these additional duties in September 2019, the particular product remains available only from China. In addressing this factor, commenters should address specifically:

- Whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.
- Any changes in the global supply chain since September 2019 with respect to the particular product or any other relevant industry developments.
- The efforts, if any, the importers or U.S. purchasers have undertaken since September 2019 to source the product from the United States or third countries.

In addition, USTR will continue to consider whether the imposition of additional duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.

C. Procedures To Comment on the Extension of Particular Exclusions

To submit a comment regarding the extension of a particular exclusion granted under the above referenced product exclusion notices under the $300 billion action, commenters first must register on the portal at *https://comments.USTR.gov.* As noted above, the public docket on the portal will be open from July 1 to July 30, 2020. After registration, the commenter may submit an exclusion extension comment form to the public docket.

Fields on the comment form marked with an asterisk (*) are required fields. Fields with a gray (BCI) notation are for Business Confidential Information and the information entered will not be publicly available. Fields with a green (Public) notation will be publicly available. Additionally, parties will be able to upload documents and indicate whether the documents are BCI or public. Commenters will be able to review the public version of their comments before they are posted.

In order to facilitate the preparation of comments prior to the July 1 opening of the public docket, a facsimile of the exclusion extension comment form to be used on the portal is annexed to this notice. Please note that the color-coding of public fields and BCI fields is not visible on the attached facsimile, but will be apparent on the actual comment form used on the portal.

Set out below is a summary of the information to be entered on the exclusion extension comment form.

- Contact information, including the full legal name of the organization making the comment, whether the commenter is a third party (*e.g.,* law firm, trade association, or customs broker) submitting on behalf of an organization or industry, and the name of the third party organization, if applicable.
- The number for the exclusion on which you are commenting as provided in the Annex of the **Federal Register** notice granting the exclusion and the description. For descriptions, amended or corrected by a later issued notice of product exclusions, parties should use the amended or corrected description.
- Whether the product or products covered by the exclusion are subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce.
- Whether you support or oppose extending the exclusion and an explanation of your rationale. Commenters must provide a public version of their rationale, even if the commenter also intends to submit a more detailed business confidential rationale.
- Whether the products covered by the exclusion or comparable products are available from sources in the U.S. or in third countries. Please include information concerning any changes in the global supply chain since September 2019 with respect to the particular product.
- The efforts you have undertaken since September 2019 to source the product from the United States or third countries.
- The value and quantity of the Chinese-origin product covered by the specific exclusion request purchased in 2018 and 2019. Whether these purchases are from a related company, and if so, the name of and relationship to the related company.
- Whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of duties.

- The value and quantity of the product covered by the exclusion purchased from domestic and third country sources in 2018 and 2019.
- If applicable, the commenter's gross revenue for 2018 and 2019.
- Whether the Chinese-origin product of concern is sold as a final product or as an input.
- Whether the imposition of duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.
- Any additional information in support of or in opposition to extending the exclusion.

Commenters also may provide any other information or data that they consider relevant.

D. Submission Instructions

To be assured of consideration, you must submit your comment between the opening of the public docket on the portal on July 1, 2020 and the July 30, 2020 submission deadline. Parties seeking to comment on two or more exclusions must submit a separate comment for each exclusion.

By submitting a comment, the commenter certifies that the information provided is complete and correct to the best of their knowledge.

E. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 and its implementing regulations, the Office of Management and Budget has assigned control number 0350–0015, which expires January 31, 2023.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

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ANNEX

OMB Control Number: 0350-0015 Expiration Date: January 31, 2023

Exclusion Extension Comment Form

1. Submitter Information

Full Organization Legal Name **(Public)**	
Commenter First Name **(BCI)**	
Commenter Last Name **(BCI)**	
Commenter Phone Number **(BCI)**	
Commenter Mailing Address **(BCI)**	
Contact Email Address **(BCI)**	

Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry? (Public)

Note: If you are submitting on behalf of an organization/industry, the information below is required.

Third Party Firm/Association Name **(Public)**	
Third Party First Name **(BCI)**	
Third Party Last Name **(BCI)**	
Third Party Phone Number **(BCI)**	
Third Party Mailing Address **(BCI)**	
Third Party Email Address **(BCI)**	

2. a) From the Annex of the Federal Register Notice granting the exclusion, please provide the number and product description for the exclusion you are commenting on. For descriptions subsequently amended or corrected by a later notice, parties should use the amended or corrected description. Click the magnifying glass in the box below to search for and select the number and product description applicable to your comment. You may search by the HTS code or key words in the exclusion. (Public)

b) Is this product subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce? (Public)

3. Do you support extending the exclusion (yes or no)? Please explain your rationale. (You must provide a public version of your rationale.) (Public)

4. Please explain whether the products covered by the exclusion, or comparable products, are available from sources in the United States? (Please include information concerning any changes in the global supply chain since September 2019 with respect to the particular product or any other relevant industry developments.) (Public)

5. Please explain whether the products covered by the exclusion, or a comparable products, are available from sources in third countries? (Please include information concerning any changes in the global supply chain since September 2019 with respect to the particular product.) (Public)

6.

a) Please provide the value in USD and quantity (with units) of the Chinese-origin product covered by the specific exclusion that you purchased in 2018 and 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:		**2018 Quantity:**	
2019 Value:		**2019 Quantity:**	

Are the provided figures estimates? (BCI)

Are any of these purchases from a related company? (BCI)

Please list the name and relationship of the related company. (BCI)

Name:		**Relationship:**	

b) Please discuss whether Chinese suppliers have lowered their prices for products covered by the exclusion following imposition of the duties. (BCI)

7. Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from any third-country source in 2018 and 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:		**2018 Quantity:**	
2019 Value:		**2019: Quantity:**	

Are the provided figures estimates? (BCI)

8. Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from domestic sources in 2018 and 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:		**2018 Quantity:**	
2019 Value:		**2019 Quantity:**	

Are the provided figures estimates? (BCI)

9. Please discuss any efforts you have undertaken since September 2019 to source this product from United States or third countries. (BCI)

10. Please provide information regarding your company's gross revenue in USD for 2018 and 2019. (BCI)

2018 Gross Revenue:	
2019 Gross Revenue:	

Are the provided gross revenue figures estimates? (BCI)

11. Is the Chinese-origin product of concern sold as a final product or as an input used in the production of a final product or products? (BCI)

12. Please comment on whether the imposition of additional duties on the product(s) covered by the exclusion you are seeking an extension for, will result in severe economic harm to your company or other U.S. interests. (BCI)

13. Please provide any additional information in support of your comment, taking account of the instructions provided in Section B of the Federal Register notice. (BCI)

14. You may upload additional attachments in support of your comment. Please specify whether the attachment is Public or contains Business Confidential Information. (Submitter Determines Public or BCI)

[FR Doc. 2020–13805 Filed 6–25–20; 8:45 am]
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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2020–0023]

Review of Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: The U.S. Trade Representative is conducting a review of the action being taken in the Section 301 investigation involving the enforcement of U.S. World Trade Organization (WTO) rights in the Large Civil Aircraft dispute. In connection with this review, the U.S. Trade Representative is considering modifying the list of products of certain current or former European Union (EU) member States that currently are subject to additional duties. Annex I to this notice contains the list of products currently subject to additional duties. Annex II contains a list of products, originally published in the April and July 2019 notices in this investigation, under consideration but not currently subject to additional duties. Annex III contains a new list of products being considered for imposition of additional duties. The Office of the United States Trade Representative (USTR) requests comments with respect to whether products listed in Annex I should be removed from the list or remain on the list; whether the rate of additional duty on specific products should be increased, up to a level of 100 percent; whether additional duties should be imposed on specific products listed in Annex II or Annex III; and on the rate of additional duty of up to 100 percent to be applied to any products drawn from Annex II or Annex III. On June 26, 2020, USTR is opening an electronic portal for submission of comments regarding the review of the action.

DATES:

June 26, 2020: The docket entitled ''Comments Concerning the Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute'' will open on USTR's comment portal: *https://comments.ustr.gov/s/.*

July 26, 2020: To be assured of consideration, you must submit comments by this date.

ADDRESSES: You must submit comments through the online comment portal: *https://comments.ustr.gov/s/.* Follow the instructions for submitting comments in section D below. For issues with on-line submissions, please contact the USTR Section 301 line at (202) 395–5725.

FOR FURTHER INFORMATION CONTACT: For questions about the investigation, contact Associate General Counsel Megan Grimball at (202) 395–5725, or Director for Europe Michael Rogers at (202) 395–3320. For questions on customs classification of products identified in the annexes to this notice, contact *Traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Proceedings in the Investigation

For background on the proceedings in this investigation, please see the prior notices issued in the investigation: 84 FR 15028 (April 12, 2019), 84 FR 32248 (July 5, 2019), 84 FR 54245 (October 9, 2019), 84 FR 55998 (October 18, 2019), 84 FR 67992 (December 12, 2019), 85 FR 10204 (February 21, 2020), 85 FR 14517 (March 12, 2020) and, 85 FR 31845 (May 27, 2020).

B. Review of the Action in the Investigation

The U.S. Trade Representative is conducting a review of the action being taken in the investigation to facilitate a possible modification of the action in accordance with Section 306(b)(2)(B)(i) of the 1974 Trade Act, as amended. USTR invites public comments with respect to the maintenance or imposition of additional duties on the specific products of specific current or former EU member States indicated on the lists in the Annexes to this notice. Annex I lists the specific products of current or former EU member States that currently are subject to additional duties of 15 or 25 percent. *See* 85 FR 10204. Annex II lists products of current or former EU member States for which additional duties of up to 100 percent previously were proposed, but for which no additional duties currently are imposed in this investigation. *See* 84 FR 15028 and 84 FR 32248.

In addition, the U.S. Trade Representative is considering an additional list of products of France, Germany, Spain, and the United Kingdom that may be included on a final list of products subject to additional *ad valorem* duties of up to 100 percent. The additional list of products (included in Annex III to this notice) contains 30 tariff subheadings with an approximate value of $3.1 billion in terms of the estimated import trade value for calendar year 2018. If the U.S. Trade Representative determines to modify the action being taken in the investigation, the final list of products subject to additional duties in the action may be drawn from the list of products in Annexes I, II, or III.

C. Request for Public Comments

With respect to products listed in Annex I, USTR invites comments on whether specific products of current or former EU member States should remain on or be removed from the list, and if a product remains on the list, whether the current rate of additional duty should be increased to as high as 100 percent.

With respect to products listed in Annexes II and III, USTR invites comments on whether specific products of specific current or former EU member States should be included on a revised list of products subject to additional duties, and the rate of additional duty (as high as 100 percent) that should be imposed.

USTR invites interested persons to address:

- Whether maintaining or imposing additional duties on a specific product of one or more current or former EU member States would be appropriate to enforce U.S. WTO rights or to obtain the elimination of the EU's WTO-inconsistent measures, and/or would likely result in the implementation of the Dispute Settlement Body (DSB) recommendations in the Large Civil Aircraft dispute or in achieving a mutually satisfactory solution.
- Whether maintaining or imposing additional duties on specific products of one or more current or former EU member States would cause disproportionate economic harm to U.S. interests, including small or medium-size businesses and consumers.

D. Procedures for Submission of Comments

You must submit comments regarding review of the action using the electronic portal at *https://comments.ustr.gov/s/.* As stated above, the docket regarding the review of this action will open on June 26, 2020. On that date, you will be able to view a docket entitled ''Comments Concerning the Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute'' on the portal. A facsimile of the Large Civil Aircraft (LCA) comment form is attached as Annex IV to this notice.

You do not need to establish an account to submit comments. Fields with a gray (BCI) notation are for Business Confidential Information and the information entered will not be publicly available. Required fields are marked 'Required' and will have a red asterisk (*). Fields with a green (Public)

notation will be viewable by the public. Please note that the color-coding of public fields and BCI fields is not visible on the attached facsimile, but will be apparent on the actual LCA Form used on the portal.

The first screen of the portal requires you to enter identification and contact information. Third party organizations, such as law firms, trade associations, or customs brokers, should identify the full legal name of the organization they represent, and identify the primary point of contact for the submission. The remaining fields of the form are optional.

After entering the identification and contact information, you can complete the remainder of questionnaire, or any portion of it by clicking 'Next.' You can provide narrative comments at the second screen of the portal. You can comment on multiple products in a single entry, or submit multiple comments. You will be able to navigate through each screen of the form by clicking 'Next,' with or without entering a response to each field on an individual screen or page. Additionally, you will be able to upload documents at the end of the LCA Form and designate whether USTR should treat the documents as business confidential or public information. You will be able to review the public version of your submission before it is posted on the public docket.

E. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 and its implementing regulations (PRA), the Office of Management and Budget (OMB) assigned control number 0350–0015, which expires December 31, 2020. As part of this emergency processing request (85 FR 31845), over 100 comments were submitted. OMB reviewed the comments and USTR made changes to the LCA Form in response to the comments that are intended to make the LCA Form easier to navigate and complete. The changes include the ability to provide narrative comments at the beginning of the form, and the designation of fields as ''optional'' or ''required.'' You can view the PRA comments here: *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202005-0350-001.*

Joseph Barloon.

General Counsel, Office of the United States Trade Representative.

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ANNEX I

Products Currently Subject to Additional Duties in the Investigation

Note: The product descriptions that are contained in this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the action, except as specified below. In all cases, the formal language in notices published at 85 FR 10204, 84 FR 54245, 84 FR 55998, 85 FR 10204, and 85 FR 14517 governs the tariff treatment of products covered by the action.

Part 1 – Products of France, Germany, Spain, or the United Kingdom described below are subject to additional import duties of 15 percent ad valorem:

Note: For purposes of the 8-digit subheading of HTS listed below, the product description defines and limits the scope of the proposed action.

HTS Subheading	Product Description
8802.40.00**	New airplanes and other new aircraft, as defined in U.S. note 21(b), (other than military airplanes or other military aircraft), of an unladen weight exceeding 30,000 kg (described in statistical reporting numbers 8802.40.0040, 8802.40.0060 or 8802.40.0070)

**Only a portion of HS8 digit is covered

Part 2 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0403.10.50	Yogurt, in dry form, whether or not flavored or containing added fruit or cocoa, not subject to gen note 15 or add. US note 10 to Ch.4
0403.90.85	Fermented milk o/than dried fermented milk or o/than dried milk with added lactic ferments
0403.90.90	Curdled milk/cream/kephir & other fermentd or acid. milk/cream subject to add US note 10 to Ch.4
0405.20.20	Butter substitute dairy spreads, over 45% butterfat weight, subject to quota pursuant to chapter 4 additional US note 14
0406.10.28	Fresh (unripened/uncured) cheddar cheese, cheese/subs for cheese cont or proc from cheddar cheese, not subj to Ch4 US note 18, not GN15
0406.10.54	Fresh (unripened/uncured) Italian-type cheeses from cow milk, cheese/substitutes containing such Italian-type cheeses or processed therefrom, subj to Ch4 US note 21, not subject to general note 15

HTS Subheading	Product Description
0406.10.58	Fresh (unrip./uncured) Italian-type cheeses from cow milk, cheese/substitutes cont or proc therefrom, not subj to Ch4 US note 21 or GN15
0406.10.68	Fresh (unripened/uncured) Swiss/Emmentaler cheeses, except those with eye formation, gruyere-process cheese and cheese cont or proc. from such, not subject to additional US note 22 to ch4.
0406.20.51	Romano, reggiano, provolone, provoletti, sbrinz and goya, made from cow's milk, grated or powdered, subject to additional US note 21 to Ch.4
0406.20.53	Romano, reggiano, provolone, provoletti, sbrinz and goya, made from cow's milk, grated or powdered, not subject to Ch4 US note 21 or GN15
0406.20.69	Cheese containing or processed from american-type cheese (except cheddar), grated or powdered, subject to additional US note 19 to Ch. 4
0406.20.77	Cheese containing or processed from italian-type cheeses made from cow's milk, grated or powdered, subject to additional US note 21 to Ch. 4
0406.20.79	Cheese containing or processed from italian-type cheeses made from cow's milk, grated or powdered, not subject to additional US note 21 to Ch. 4
0406.20.87	Cheese (including mixtures), nesoi, n/o 0.5 percent by wt. of butterfat, grated or powdered, not subject to additional US note 23 to Ch. 4
0406.20.91	Cheese (including mixtures), nesoi, o/0.5 percent by wt of butterfat, w/cow's milk, grated or powdered, not subject to additional US note 16 to Ch. 4
0406.30.05	Stilton cheese, processed, not grated or powdered, subject to additional US note 24 to Ch. 4
0406.30.18	Blue-veined cheese (except roquefort), processed, not grated or powdered, not subject to gen. note 15 or additional US note 17 to Ch. 4
0406.30.28	Cheddar cheese, processed, not grated or powdered, not subject to gen note 15 or to additional US note 18 to Ch. 4
0406.30.34	Colby cheese, processed, not grated or powdered, subject to additional US note 19 to Ch. 4
0406.30.38	Colby cheese, processed, not grated or powdered, not subject to gen note 15 or additional US note 19 to Ch. 4
0406.30.55	Processed cheeses made from sheep's milk, including mixtures of such cheeses, not grated or powdered
0406.30.69	Processed cheese containing or processed from american-type cheese (except cheddar), not grated/powdered, subject to additional US note 19 to Ch. 4, not subject to GN15
0406.30.79	Processed cheese containing or processed from Italian-type, not grated/powdered, not subject to additional US note 21 to Ch. 4, not

HTS Subheading	Product Description
	GN15
0406.40.44	Stilton cheese, nesoi, in original loaves, subject to additional US note 24 to Ch. 4
0406.40.48	Stilton cheese, nesoi, not in original loaves, subject to additional US note 24 to Ch. 4
0406.90.32	Goya cheese from cow's milk, not in original loaves, nesoi, not subject to gen. note 15 or to additional US note 21 to Ch. 4
0406.90.43	Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, not from cow's milk, not subject to gen. note 15
0406.90.52	Colby cheese, nesoi, subject to additional US note 19 to Ch. 4 and entered pursuant to its provisions
0406.90.54	Colby cheese, nesoi, not subject to gen. note 15 or to add. US note 19 to Ch. 4
0406.90.68	Cheeses & subst. for cheese(incl. mixt.), nesoi, w/romano/reggiano/parmesan/provolone/etc, f/cow milk, not subj. Ch4 US note 21, not GN15
0406.90.72	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from blue-veined cheese, subj. to add. US note 17 to Ch.4, not GN15
0406.90.74	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from blue-veined cheese, not subj. to add. US note 17 to Ch.4, not GN15
0406.90.82	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from Am. cheese except cheddar, subj. to add. US note 19 to Ch.4, not GN15
0406.90.92	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from swiss, emmentaler or gruyere, not subj. Ch4 US note 22, not GN15
0406.90.94	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/butterfat n/o 0.5 percent by wt, not subject to additional US note 23 to Ch. 4, not GN15
0805.10.00	Oranges, fresh or dried
0805.21.00	Mandarins and other similar citrus hybrids including tangerines, satsumas, clementines, wilkings, fresh or dried
0805.22.00	Clementines, fresh or dried, other
0805.50.20	Lemons, fresh or dried
0812.10.00	Cherries, provisionally preserved, but unsuitable in that state for immediate consumption
0813.40.30	Cherries, dried
1602.49.10	Prepared or preserved pork offal, including mixtures
1605.53.05	Mussels, containing fish meats or in prepared meals
1605.56.05	Products of clams, cockles, and arkshells containing fish meat; prepared meals
1605.56.10	Razor clams, in airtight containers, prepared or preserved, nesoi
1605.56.15	Boiled clams in immediate airtight containers, the contents of which do not exceed 680 g gross weight
1605.56.20	Clams, prepared or preserved, excluding boiled clams, in immediate

HTS Subheading	Product Description
	airtight containers, nesoi
1605.56.30	Clams, prepared or preserved, other than in airtight containers
1605.56.60	Cockles and arkshells, prepared or preserved
1605.59.05	Products of molluscs nesoi containing fish meat; prepared meals of molluscs nesoi
1605.59.60	Molluscs nesoi, prepared or preserved

Part 3 – Products of Germany, Spain, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0203.29.40	Frozen meat of swine, other than retail cuts, nesoi
0404.10.05	Whey protein concentrates
0406.10.84	Fresh cheese, and substitutes for cheese, cont. cows milk, neosi, over 0.5 percent by wt. of butterfat, descr in add US note 16 to Ch 4, not GN15
0406.10.88	Fresh cheese, and substitutes for cheese, cont. cows milk, neosi, over 0.5 percent by wt. of butterfat, not descr in add US note 16 to Ch 4, not GN 15
0406.10.95	Fresh cheese, and substitutes for cheese, not cont. cows milk, neosi, over 0.5 percent by wt. of butterfat
0406.90.16	Edam and gouda cheese, nesoi, subject to additional US note 20 to Ch. 4
0406.90.56	Cheeses, nesoi, from sheep's milk in original loaves and suitable for grating
1509.10.20	Virgin olive oil and its fractions, whether or not refined, not chemically modified, weighing with the immediate container under 18 kg
1509.90.20	Olive oil, other than virgin olive oil, and its fractions, not chemically modified, weighing with the immediate container under 18 kg
2005.70.12	Olives, green, not pitted, in saline, not ripe
2005.70.25	Olives, green, in a saline solution, pitted or stuffed, not place packed

Part 4 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0403.10.90	Yogurt, not in dry form, whether or not flavored or containing add

HTS Subheading	Product Description
	fruit or cocoa
0405.10.10	Butter subject to quota pursuant to chapter 4 additional US note 6
0405.10.20	Butter not subject to general note 15 and in excess of quota in chapter 4 additional U.S. note 6
0406.30.89	Processed cheese (incl. mixtures), nesoi, w/cow's milk, not grated or powdered, subject to add US note 16 to Ch. 4, not subject to GN15
0406.90.99	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/o cows milk, w/butterfat over 0.5 percent by wt, not subject to GN15
0811.90.80	Fruit, nesoi, frozen, whether or not previously steamed or boiled
1601.00.20	Pork sausages and similar products of pork, pork offal or blood; food preparations based on these products
2008.60.00	Cherries, otherwise prepared or preserved, nesoi
2008.70.20	Peaches (excluding nectarines), otherwise prepared or preserved, not elsewhere specified or included
2008.97.90	Mixtures of fruit or other edible parts of plants, otherwise prepared or preserved, nesoi (excluding tropical fruit salad)
2009.89.65	Cherry juice, concentrated or not concentrated
2009.89.80	Juice of any single vegetable, other than tomato, concentrated or not concentrated

Part 5 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0405.20.30	Butter substitute dairy spreads, over 45 percent butterfat weight, not subj to gen note 15 and in excess of quota in ch. 4 additional US note 14
0405.20.80	Other dairy spreads, not butter substitutes or of a type provided for in chapter 4 additional US note 1
0406.30.85	Processed cheese (incl. mixtures), nesoi, not over 0.5 percent by wt. butterfat, not grated or powdered, subject to Ch4 US note 23, not GN15
0406.90.78	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from cheddar cheese, not subj. to add. US note 18 to Ch.4, not GN15
1602.41.90	Prepared or preserved pork hams and cuts thereof, not containing cereals or vegetables, nesoi
1602.42.20	Pork shoulders and cuts thereof, boned and cooked and packed in airtight containers
1602.42.40	Prepared or preserved pork shoulders and cuts thereof, other than

HTS Subheading	Product Description
	boned and cooked and packed in airtight containers
1602.49.40	Prepared or preserved pork, not containing cereals or vegetables, nesoi
1602.49.90	Prepared or preserved pork, nesoi

Part 6 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0405.90.10	Fats and oils derived from milk, other than butter or dairy spreads, subject to quota pursuant to chapter 4 additional US note 14
0406.30.51	Gruyere-process cheese, processed, not grated or powdered, subject to additional US note 22 to Ch. 4
0406.30.53	Gruyere-process cheese, processed, not grated or powdered, not subject to gen note 15 or additional US note 22 to Ch. 4
0406.40.54	Blue-veined cheese, nesoi, in original loaves, subject to add. US note 17 to Ch. 4
0406.90.08	Cheddar cheese, neosi, subject to add. US note 18 to Ch. 4
0406.90.12	Cheddar cheese, nesoi, not subject to gen. note 15 of the HTS or to additional US note 18 to Ch. 4
0406.90.41	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, subject to add. US note 21 to Ch. 4
0406.90.42	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, not subj to GN 15 or Ch4 additional US note 21
0406.90.48	Swiss or Emmentaler cheese with eye formation, nesoi, not subject to gen. note 15 or to additional US note 25 to Ch. 4
0406.90.90	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from swiss, emmentaler or gruyere, subj. to add. US note 22 to Ch.4, not GN15
0406.90.97	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cow's milk, w/butterfat over 0.5 percent by wt, not subject to Ch4 US note 16, not subject to GN15
1605.53.60	Mussels, prepared or preserved
2007.99.70	Currant and berry fruit jellies
2008.40.00	Pears, otherwise prepared or preserved, nesoi
2009.89.20	Pear juice, concentrated or not concentrated

Part 7 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania,

Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0406.90.46	Swiss or Emmentaler cheese with eye formation, nesoi, subject to add. US note 25 to Ch. 4

Part 8 – Products of Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0406.90.57	Pecorino cheese, from sheep's milk, in original loaves, not suitable for grating

Part 9 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0406.90.95	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cows milk, w/butterfat over 0.5 percent by wt, subject to Ch 4 additional US note 16 (quota)

Part 10 – Products of France, Germany, Spain or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0711.20.18	Olives, n/pitted, green, in saline sol., in contain. > 8 kg, drained wt, for repacking or sale, subject to additional US note 5 to Ch. 7
0711.20.28	Olives, n/pitted, green, in saline sol., in contain. > 8 kg, drained wt, for repacking or sale, not subject to additional US note 5 to Ch. 7
0711.20.38	Olives, n/pitted, nesoi
0711.20.40	Olives, pitted or stuffed, provisionally preserved but unsuitable in that state for immediate consumption

HTS Subheading	Product Description
2005.70.08	Olives, green, not pitted, in saline, not ripe, in containers holding over kg for repkg, not subject to add. US note 4 to Ch. 20
2005.70.16	Olives, green, in saline, place packed, stuffed, in containers holding not over 1 kg, aggregate quantity n/o 2700 m ton/yr
2005.70.23	Olives, green, in saline, place packed, stuffed, not in containers holding 1 kg or less
2204.21.50	Wine other than Tokay (not carbonated), not over 14 percent alcohol, in containers not over 2 liters

Part 11 – Products of Germany described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0901.21.00	Coffee, roasted, not decaffeinated
0901.22.00	Coffee, roasted, decaffeinated
2101.11.21	Instant coffee, not flavored
8201.40.60	Axes, bill hooks and similar hewing tools (o/than machetes), and base metal parts thereof
8203.20.20	Base metal tweezers
8203.20.60	Pliers (including cutting pliers but not slip joint pliers), pincers and similar tools
8203.30.00	Metal cutting shears and similar tools, and base metal parts thereof
8203.40.60	Pipe cutters, bolt cutters, perforating punches and similar tools, nesoi, and base metal parts thereof
8205.40.00	Screwdrivers and base metal parts thereof
8211.93.00	Knives having other than fixed blades
8211.94.50	Base metal blades for knives having other than fixed blades
8467.19.10	Tools for working in the hand, pneumatic, other than rotary type, suitable for metal working
8467.19.50	Tools for working in the hand, pneumatic, other than rotary type, other than suitable for metal working
8468.80.10	Machinery and apparatus, hand-directed or -controlled, used for soldering, brazing or welding, not gas-operated
8468.90.10	Parts of hand-directed or -controlled machinery, apparatus and appliances used for soldering, brazing, welding or tempering
8514.20.40	Industrial or laboratory microwave ovens for making hot drinks or for cooking or heating food
9002.11.90	Objective lenses and parts & access. thereof, for cameras, projectors, or photographic enlargers or reducers, except projection, nesoi

Part 12 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
1602.49.20	Pork other than ham and shoulder and cuts thereof, not containing cereals or vegetables, boned and cooked and packed in airtight containers

Part 13 – Products of Germany or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
1905.31.00	Sweet biscuits
1905.32.00	Waffles and wafers
4901.10.00	Printed books, brochures, leaflets and similar printed matter in single sheets, whether or not folded
4908.10.00	Transfers (decalcomanias), vitrifiable
4911.91.20	Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation
4911.91.30	Lithographs on paper or paperboard, over 0.51 mm in thickness, printed not over 20 years at time of importation
4911.91.40	Pictures, designs and photographs, excluding lithographs on paper or paperboard, printed not over 20 years at time of importation
8429.52.10	Self-propelled backhoes, shovels, clamshells and draglines with a 360 degree revolving superstructure
8429.52.50	Self-propelled machinery with a 360 degree revolving superstructure, other than backhoes, shovels, clamshells and draglines
8467.29.00	Electromechanical tools for working in the hand, other than drills or saws, with self-contained electric motor

Part 14 – Products of Germany, Ireland, Italy, Spain, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
2208.70.00	Liqueurs and cordials

Part 15 – Products of the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

Note: For purposes of 2208.30.30, the product description defines and limits the scope of the proposed action.

HTS Subheading	Product Description
2208.30.30**	Single-malt Irish or Scotch Whiskies
6110.11.00	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of wool
6110.12.10	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of Kashmir goats, wholly of cashmere
6110.20.20	Sweaters, pullovers and similar articles, knitted or crocheted, of cotton, nesoi
6110.30.30	Sweaters, pullovers and similar articles, knitted or crocheted, of manmade fibers, nesoi
6202.99.15	Rec perf outwear, women's/girls' anoraks, wind-breakers & similar articles, not k/c, tex mats (not wool, cotton or mmf), cont < 70 percent by wt of silk
6202.99.80	Women's/girls' anoraks, wind-breakers & similar articles, not k/c, of tex mats (not wool, cotton or mmf), cont < 70% by wt of silk,
6203.11.60	Men's or boys' suits of wool, not knitted or crocheted, nesoi, of wool yarn with average fiber diameter of 18.5 micron or less
6203.11.90	Men's or boys' suits of wool or fine animal hair, not knitted or crocheted, nesoi
6203.19.30	Men's or boys' suits, of artificial fibers, nesoi, not knitted or crocheted
6203.19.90	Men's or boys' suits, of textile mats(except wool, cotton or mmf), containing under 70 percent by weight of silk or silk waste, not knit or crocheted
6208.21.00	Women's or girls' nightdresses and pajamas, not knitted or crocheted, of cotton
6211.12.40	Women's or girls' swimwear, of textile materials(except mmf), containing 70% or more by weight of silk or silk waste, not knit or crocheted
6211.12.80	Women's or girls' swimwear, of textile materials(except mmf), containing under 70% by weight of silk or silk waste, not knit or crocheted
6301.30.00	Blankets (other than electric blankets) and traveling rugs, of cotton
6301.90.00	Blankets and traveling rugs, nesoi
6302.21.50	Bed linen, not knit or crocheted, printed, of cotton, cont any embroidery, lace, braid, edging, trimming, piping or applique work, n/napped

HTS Subheading	Product Description
6302.21.90	Bed linen, not knit or croc, printed, of cotton, not cont any embroidery, lace, braid, edging, trimming, piping or applique work, not napped

**Only a portion of HS8 digit is covered

Part 16 – Products of France or Germany described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
8214.90.60	Butchers' or kitchen chopping or mincing knives (o/than cleavers w/their handles)

ANNEX II

Products Previously Considered But Not Currently Subject to Additional Duties in the Investigation

Note: The product descriptions that are contained in this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the action, except as specified in Sections 1 and 16. Any questions regarding the scope of a particular HTS subheadings should be referred to U.S. Customs and Border Protection. In the product descriptions, the abbreviation "nesoi" means "not elsewhere specified or included".

Section 1 – The products that are described in Section 1 of this Annex are being considered for additional import duties if they are the product of France, Germany, Spain or the United Kingdom.

Note: For purposes of statistical reporting numbers with an asterisks listed below, the informal product descriptions define and limit the scope of the proposed action.

HTS Statistical Reporting Number	Product Description
8802.11.0030	New helicopters, non-military, of an unladen weight not exceeding 998 kg
8802.11.0045	New helicopters, non-military, of an unladen weight exceeding 998 kg but not exceeding 2000 kg
8802.12.0040	New helicopters, non-military, of an unladen weight exceeding 2,000 kg
8802.40.0040*	New aircraft, passenger transports, non-military, of an unladen weight exceeding 15,000 kg **but less than or equal to 30,000 kg**
8802.40.0060*	New aircraft, cargo transports, non-military, of an unladen weight exceeding 15,000 kg **but less than or equal to 30,000 kg**
8802.40.0070*	New aircraft, non-military, nesoi (including passenger/cargo combinations), of an unladen weight exceeding 15,000 kg **but less than or equal to 30,000 kg**
8803.20.0030*	Undercarriages and parts thereof for use in new civil aircraft, not for use by the Department of Defense or the U.S. Coast Guard, of an unladen weight exceeding 15,000 kg provided for in statistical reporting numbers 8802.40.0040, 8802.40.0060 and 8802.40.0070
8803.30.0030*	Fuselages and fuselage sections, predominantly aluminum wings and wing assemblies, and horizontal and vertical stabilizers for use in new civil airplanes, not for use by the Department of Defense or the U.S. Coast Guard, of an unladenweight exceeding 15,000 kg provided for in statistical reporting numbers 8802.40.0040,

HTS Statistical Reporting Number	Product Description
	8802.40.0060 and 8802.40.0070
8803.90.9030*	Other parts, nesoi, for use in new civil aircraft, not for use by the Department of Defense or the U.S. Coast Guard, of an unladen weight exceeding 15,000 kg provided for in statistical reporting numbers 8802.40.0040, 8802.40.0060 and 8802.40.0070

* The products intended to be covered by the proposed action in these statistical reporting numbers are a subsection of the products classified in these statistical reporting numbers.

Section 2 – The products that are described in Section 2 of this Annex are being considered for additional import duties if they are the product of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom.

HTS Subheading	Product Description
0203.22.90	Frozen hams, shoulders and cuts thereof, with bone in, other than retail cuts
0303.57.00	Swordfish steaks,other swordfish , excluding fillets, other meat portions, livers and roes
0304.41.00	Salmon fillets, fresh or chilled
0304.42.00	Trout, fillets, fresh or chilled
0304.84.00	Frozen swordfish fillets
0306.14.20	Crabmeat, frozen
0306.14.40	Crabs, cooked in shell or uncooked (whether in shell or not), dried, salted or in brine, frozen
0306.19.00	Crustateans, nesoi (including flours, meals and pellets of crustaceans fit for human consumption), cooked in shell or uncooked, etc., frozen
0403.90.95	Curdled milk/cream/kephir & other fermentd or acid. milk/cream subj to GN 15 or Ch4 US note 10
0406.10.44	Fresh (unripened/uncured) edam and gouda cheeses, cheese/subs for cheese cont or processed therefrom, subj to Ch4 US note 20, not GN15
0406.10.48	Fresh (unripened/uncured) edam and gouda cheeses, cheese/subs for cheese cont or processed therefrom, not sub to Ch4 US note 20, not GN15

HTS Subheading	Product Description
0406.20.10	Roquefort cheese, grated or powdered
0406.30.48	Edam and gouda cheese, processed, not grated or powdered, not subject to gen note 15 or add. US note 20 to Ch. 4
0406.90.86	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from edam or gouda cheese, subj. to add. US note 20 to Ch.4, not GN15
0406.90.88	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from edam or gouda cheese, not subj. to add. US note 20 to Ch.4, not GN15
0805.29.00	Wilkings and similar citrus hybrids, fresh or dried, other
0805.40.80	Grapefruit, fresh or dried, if entered during the period November 1 through the following July 31, inclusive
0805.50.30	Tahitian lines, Persian limes and other limes of the Citrus latifolia variety, fresh or dried
0805.50.40	Limes of the Citrus aurantifolia variety, fresh or dried
0805.90.01	Citrus fruit, not elsewhere specified or included, fresh or dried, including kumquats, citrons and bergamots
0812.90.10	Mixtures of two or more fruits, provisionally preserved, but unsuitable in that state for consumption
1509.10.40	Virgin olive oil and its fractions, whether or not refined, not chemically modified, weighing with the immediate container 18 kg or over
1509.90.40	Olive oil, other than virgin olive oil, and its fractions, not chemically modified, weighing with the immediate container 18 kg or over
1602.41.20	Pork hams and cuts thereof, not containing cereals or vegetables, boned and cooked and packed in airtight containers
1604.11.40	Prepared or preserved salmon, whole or in pieces, but not minced, other than in oil and in airtight containers
1604.12.60	Herrings prepared or preserved, whole or in pieces, but not minced, nesoi
1605.30.10	Lobster, prepared or preserved, not containing fish meat, nesoi
1605.51.05	Oysters, fish meat or prepared meals
1605.51.40	Smoked oysters
1605.51.50	Oysters, prepared or preserved, but not smoked
1605.52.05	Scallops, including queen scallops as containing fish meat; prepared meals
1605.52.60	Scallops, including queen scallops, prepared or preserved
1605.54.05	Cuttle fish and squid, as containing fish meat; prepared meals
1605.54.60	Cuttle fish and squid, prepared or preserved

HTS Subheading	Product Description
1605.55.05	Octopus, as containing fish meat or prepared meals
1605.55.60	Octopus, prepared or preserved
1605.57.05	Products of abalone containing fish meat; prepared meals of abalone
1605.57.60	Abalone, prepared or preserved
1605.58.05	Products of snails, other than sea snails, containing fish meat; prepared meals of snails other than sea snails
1605.58.55	Prepared or preserved snails, other than sea snails
1902.11.20	Uncooked pasta, not stuffed or otherwise prepared, containing eggs, exclusively pasta
1902.11.40	Uncooked pasta, not stuffed or otherwise prepared, containing eggs, nesoi, including pasta packaged with sauce preparations
1902.19.20	Uncooked pasta, not stuffed or otherwise prepared, not containing eggs, exclusively pasta
1902.19.40	Uncooked pasta, not stuffed or otherwise prepared, not containing eggs, nesoi, including pasta packaged with sauce preparations
1902.20.00	Stuffed pasta, whether or not cooked or otherwise prepared
1902.30.00	Pasta nesoi
2007.99.15	Currant and other berry jams, nesoi
2007.99.20	Apricot jam
2007.99.25	Cherry jam
2007.99.30	Guava jam
2007.99.35	Peach jam
2007.99.40	Pineapple jam
2007.99.45	Jams, nesoi
2007.99.48	Apple, quince and pear pastes and purees, being cooked preparations
2007.99.50	Guava and mango pastes and purees, being cooked preparations
2007.99.55	Papaya pastes and purees, being cooked preparations
2007.99.60	Strawberry pastes and purees, being cooked preparations
2007.99.65	Fruit pastes and purees, nesoi, and nut pastes and purees, being cooked preparations
2009.89.40	Prune juice, concentrated or not concentrated
2103.90.80	Mixed condiments and mixed seasonings, not described in add US note 3 to Ch. 21
2201.90.00	Waters (incl. ice, snow and steam), ot/than mineral waters or aerated waters, not cont. added sugar or other sweetening matter nor flavored

HTS Subheading	Product Description
2202.91.00	Nonalcoholic beer
2202.99.10	Chocolate milk drink
2202.99.36	Juice of any single fruit or vegetable (except orange juice) fortified with vitamins or minerals, in nonconcentrated form
2202.99.37	Fruit or vegetable juices, fortified with vitamins or minerals, mixtures of juices in non-concentrated form
2204.10.00	Sparkling wine, made from grapes
2204.21.20	Effervescent grape wine, in containers holding 2 liters or less
2204.21.30	Tokay wine (not carbonated) not over 14% alcohol, in containers not over 2 liters
2204.21.60	"Marsala" wine, over 14% vol. alcohol, in containers holding 2 liters or less
2204.21.80	Grape wine, other than "Marsala", not sparkling or effervescent, over 14% vol. alcohol, in containers holding 2 liters or less
2204.22.20	Wine of fresh grapes, other than sparkling wine, of an alcoholic strength by volume <=14% in containers holding more than 2 liters but not more than 4 liters
2204.22.40	Wine of fresh grapes, other than sparkling wine, of an alcoholic strength by volume >14%, in containers holding more than 2 liters but not more than 4 liters
2204.22.60	Wine of fresh grapes, other than sparkling wine, of an alcoholic strength by volume <=14% in containers holding over 4 liters but not over 10 liters
2204.22.80	Wine of fresh grapes, other than sparkling wine, of an alcoholic strength by volume >14% in containers holding over 4 liters but not over 10 liters
2204.29.61	Wine of fresh grapes, other than sparkling wine, of an alcoholic strength by volume <=14% in containers holding >10 liters
2204.29.81	Wine of fresh grapes, other than sparkling wine, of an alcoholic strength by volume >14% in containers holding >10 liters
2204.30.00	Grape must, nesoi, in fermentation or with fermentation arrested otherwise than by addition of alcohol
2208.20.20	Grape brandy, excluding pisco and singani, in containers not over 4 liters, not over $2.38/liter
2208.20.30	Grape brandy, excluding pisco and singani, in containers not over 4 liters, valued over $2.38 to $3.43/liter
2208.20.40	Grape brandy, excluding pisco and singani, in containers not over 4 liters, valued over $3.43/liter
2208.20.50	Grape brandy, excluding pisco and singani, in containers over 4 liters, not over $2.38/liter

HTS Subheading	Product Description
2208.20.60	Grape brandy, excluding pisco and singani, in containers over 4 liters, over $2.38/liter
2208.30.60	Whiskies, other than Irish and Scotch whiskies
2814.10.00	Anhydrous ammonia
2814.20.00	Ammonia in aqueous solution
3102.10.00	Urea, whether or not in aqueous solution
3102.21.00	Ammonium sulfate
3102.29.00	Double salts and mixtures of ammonium sulfate and ammonium nitrate
3102.30.00	Ammonium nitrate, whether or not in aqueous solution
3102.40.00	Mixtures of ammonium nitrate with calcium carbonate or other inorganic nonfertilizing substances
3102.50.00	Sodium nitrate
3102.60.00	Double salts and mixtures of calcium nitrate and ammonium nitrate
3102.80.00	Mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution
3102.90.01	Mineral or chemical fertilizers, nitrogenous, nesoi, including mixtures not specified elsewhere in heading 3102
3301.12.00	Essential oils of orange
3301.13.00	Essential oils of lemon
3301.19.10	Essential oils of grapefruit
3301.19.51	Essential oils of citrus fruit, other, nesoi
3301.24.00	Essential oils of peppermint (Mentha piperita)
3301.25.00	Essential oils of mints, other than peppermint
3301.29.10	Essential oils of eucalyptus
3301.29.20	Essential oils of orris
3301.29.51	Essential oils other than those of citrus fruit, other, nesoi
3301.30.00	Resinoids
3301.90.10	Extracted oleoresins consisting essentially of nonvolatile components of the natural raw plant
3301.90.50	Concentrates of essential oils; terpenic by-product of the deterpenation of essential oils; aqueous distillates& solutions of essential oils
4202.21.90	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, nesoi, over $20 ea.
4417.00.80	Wooden tools, tool bodies, tool handles, broom or brush bodies and handles nesoi; wooden boot or shoe lasts and trees

HTS Subheading	Product Description
4807.00.92	Composite cloth-lined or reinforced paper, not surface-coated or impregnated, in rolls or sheets
4809.90.40	Simplex decalcomania paper in rolls over 36 cm wide or in rectangular sheets over 36 cm on side(s)
4810.14.19	Paper and paperboard for graphic use nesoi, coated w/inorganic, n/o 150g/m2, n/o 10% fiber by mechanical/chemi-process, certain size sheets
5205.31.00	Multiple or cabled cotton yarn, 85% or more cotton by weight, of uncombed fibers, n/o 14 nm per single yarn, not put up for retail sale
5206.32.00	Multiple or cabled cotton yarn, < 85% cotton by weight, of uncombed fibers, over 14 but n/o 43 nm/single yarn, not put up for retail sale
5208.13.00	Unbleached 3- or 4-thread twill fabrics of cotton, incl. cross twill, containing 85% or more of cotton by weight, weighing not over 200 g/m2
5402.11.30	Single high tenacity yarn of aramids, not put up for retail sale
5402.11.60	Multiple (folded) or cabled high tenacity yarn (except sewing thread) of aramids, not put up for retail sale
5402.20.30	Single high tenacity yarn of polyesters, not put up for retail sale
5503.20.00	Synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters
5605.00.90	Metalized textile yarn nesoi, of man-made monofilament or strip or the like, other than ungimped or w/twist of < 5 turns per meter
5609.00.10	Articles of yarn, strip, twine, cordage, rope or cables nesoi, of cotton
5609.00.20	Articles of yarn, strip, twine, cordage, rope or cables nesoi, of vegetable fibers except cotton
5609.00.30	Articles of yarn, strip, twine, cordage, rope or cables nesoi, of man-made fibers
5609.00.40	Articles of yarn, strip or the like of man-made monofilaments, twine, cordage, rope or cables, nesoi
5701.10.16	Carpets & other textile floor coverings, hand-knotted or hand-inserted, w/ov 50% by weight of the pile of fine animal hair, nesoi
5701.10.40	Carpets and other textile floor coverings, of wool or fine animal hair, hand-hooked (tufts were inserted and knotted by hand or hand tool)
5701.10.90	Carpets and other textile floor coverings, of wool or fine animal hair, not hand-hooked, not hand knotted during weaving

HTS Subheading	Product Description
5702.10.90	"Kelem", "Schumacks", "Karamanie" and similar hand-woven rugs, other than certified hand-loomed and folklore products
5702.41.20	Carpets and other textile floor coverings of pile construction, woven, not tufted or flocked, made up, of wool or fine animal hair, nesoi
5702.42.10	Wilton, velvet and like floor coverings of pile construction, woven, not tufted or flocked, made up, of man-made textile materials
5702.92.10	Hand-loomed carpet & other textile floor coverings, not of pile construction, woven, made up, of man-made textile materials,nesoi
5703.10.20	Hand-hooked carpets and other textile floor coverings, tufted, whether or not made up, of wool or fine animal hair
5805.00.30	Hand-woven tapestries nesoi and needle-worked tapestries, of cotton
5805.00.40	Hand-woven tapestries nesoi and needle-worked tapestries, other than of cotton, wool or fine animal hair
5806.10.24	Narrow woven pile fastener fabric tapes (other than goods of heading 5807) of man-made fibers
5907.00.05	Laminated fabrics specified in note 9 to sect. XI of HTS, of m-m fiber, for theatrical, ballet, & operatic scenery & properties, incl sets
5911.10.10	Printers' rubberized blankets of textile fabrics
6112.20.20	Ski-suits, knitted or crocheted, of textile materials other than man-made fibers
6802.10.00	Tiles/cubes/similar arts. of natural stone, enclosable in a sq. w/a side less than 7 cm; artificially colored granules, chippings & powder
6802.91.20	Monumental or building stone & arts. thereof, of travertine, dressed or polished but not further worked, nesoi
6802.91.25	Monumental or building stone & arts. thereof, of travertine, further worked than dressed or polished, nesoi
6802.93.00	Monumental or building stone & arts. thereof, of granite, further worked than simply cut/sawn, nesoi
6802.99.00	Monumental or building stone & arts. thereof, nesoi, further worked than simply cut/sawn, nesoi
6803.00.50	Worked slate (other than roofing slate) and articles of slate or agglomerated slate
6810.99.00	Articles of cement (other than tiles, flagstones, bricks and similar arts.), of concrete or artificial stone, nesoi

HTS Subheading	Product Description
6907.21.30	Glazed ceramic tiles having surface area <38.7cm2, surf area in sq w/ side <7cm, of H2O absorp coeff by wt <=0.5%
6912.00.35	Ceramic (o/than porcelain or china) household table and kitchenware, in sets in which aggregate val. of arts./US note 6(b) n/o $38
6912.00.39	Ceramic (o/than porcelain or china) household table and kitchenware, in sets in which aggregate val. of arts./US note 6(b) o/$38
6912.00.41	Ceramic (o/than porcelain or china) hsehld steins w/pewter lids, decanters, punch bowls, spoons & rests, salt/pepper sets, etc.
6912.00.44	Ceramic (o/than porcelain or china) household mugs and steins w/o attached pewter lids
6912.00.45	Ceramic (o/than porcelain or china) household tabl/kitch.ware,n/in specif. sets, cups o/$5.25/dz, saucers o/$3/dz, etc.
6912.00.46	Ceramic (o/than porcelain or china) household serviette rings
6912.00.48	Ceramic (o/than porcelain or china) household tableware and kitchenware, nesoi
6912.00.50	Ceramic (o/than porcelain or china) household articles and toilet articles (o/than table and kitchenware), nesoi
6913.90.30	Earthenware ornamental articles, having a reddish-colored body and a lustrous glaze of differing colors
6913.90.50	Ceramic (o/than porcelain, china or eartherware) ornamental articles, nesoi
7013.28.10	Stemware, o/than of pressed and toughened glass, o/than lead crystal, valued n/over $0.30 each
7013.41.10	Glassware for table or kitchen purposes (o/than drinking glasses), of lead crystal, valued n/over $1 each
7013.91.10	Glassware for toilet/office/indoor decor. & similar purposes, of lead crystal, valued n/over $1 each
7013.91.20	Glassware for toilet/office/indoor decor. & similar purposes, of lead crystal, valued over $1 but n/over $3 each
7016.90.10	Paving blocks, slabs, bricks, squares, tiles & other arts. of pressed or molded glass, for building or construction purposes
7017.10.60	Laboratory, hygienic or pharmaceutical glassware, whether or not calibrated or graduated, of fused quartz or other fused silica, nesoi
7019.19.05	Fiberglass rubber reinforcing yarn,not color,of electrically nonconductive continuous filament 9 to 11 microns diam & impreg for adhesion to

HTS Subheading	Product Description
7019.19.15	Glass fiber yarns, not colored, other than fiberglass rubber reinforcing yarn
7019.19.28	Glass fiber yarns, colored, other than fiberglass rubber reinforcing yarn
7019.19.30	Glass fiber chopped strands of a length more than 50 mm
7110.21.00	Palladium, unwrought or in powder form
7114.11.60	Articles of silver nesoi, for household, table or kitchen use, toilet and sanitary wares, including parts thereof
7115.90.40	Silver (including metal clad with silver) articles (o/than jewellry or silversmiths' wares), nesoi
7115.90.60	Articles of precious metal (o/than gold or silver), including metal clad with precious metal, nesoi
7202.11.10	Ferromanganese containing by weight more than 2 percent but not more than 4 percent of carbon
7202.11.50	Ferromanganese containing by weight more than 4 percent of carbon
7202.30.00	Ferrosilicon manganese
7202.49.10	Ferrochromium containing by weight more than 3 percent but not more than 4 percent of carbon
7202.49.50	Ferrochromium containing by weight 3 percent or less of carbon
7202.92.00	Ferrovanadium
7202.93.80	Ferroniobium, nesoi
7303.00.00	Cast iron, tubes, pipes and hollow profiles
7307.11.00	Cast nonmalleable iron, fittings for tubes or pipes
7311.00.00	Iron/steel, containers for compressed or liquefied gas
7315.19.00	Iron or steel, parts of articulated link chain
7317.00.10	Iron or steel, thumb tacks
7317.00.20	Iron or steel, nails, tacks, corrugated nails, staples & similar arts., not threaded, suitable for use in powder-actuated hand tools
7317.00.55	Iron or steel, nails, tacks, corrugated nails, staples & similar arts., of one piece construction, made of round wire, nesoi
7317.00.65	Iron or steel, nails, tacks, corrugated nails, staples & similar arts., of one piece construction, not made of round wire, nesoi
7317.00.75	Iron or steel, nails, tacks, corrugated nails, staples & similar arts., of two or more pieces, nesoi
7319.90.90	Iron or steel, knitting needles, bodkins, crochet hooks, embroidery stilettos and similar articles for use in the hand
7407.10.50	Refined copper, bars and rods

HTS Subheading	Product Description
7407.21.90	Copper-zinc base alloys (brass), bars & rods nesoi, not having a rectangular cross section
7408.21.00	Copper-zinc base alloys (brass), wire
7408.29.10	Copper alloys (o/than brass, cupro-nickel or nickel-silver), wire, coated or plated with metal
7409.11.50	Refined copper, plates, sheets and strip, in coils, with a thickness over 0.15mm but less than 5 mm
7409.21.00	Copper-zinc base alloys (brass), plates, sheets and strip, in coils
7409.29.00	Copper-zinc base alloys (brass), plates, sheets and strip, not in coils
7409.31.50	Copper-tin base alloys (bronze), plates, sheets and strip, in coils, with a thickness o/0.15mm but less than 5mm & a width of 500mm or more
7409.31.90	Copper-tin base alloys (bronze), plates, sheets and strip, in coils, w/thickness o/0.15mm but less than 5mm & a width of less than 500mm
7409.40.00	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel silver), plates, sheets and strip, w/thickness o/0.15mm
7409.90.90	Copper alloys (o/than brass/bronze/cupro-nickel/nickel silver), plates, sheets & strip, w/thick. o/0.15mm but less th/5mm & width less 500mm
7410.11.00	Refined copper, foil, w/thickness of 0.15 mm or less, not backed
7411.22.00	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel-silver), tubes and pipes
7418.10.00	Copper & copper alloy table, kitchen, household articles & parts; pot scourers, scouring & polishing pads, gloves, etc
7506.20.05	Nickel alloy, foil, w/thickness not over 0.15 mm
7907.00.10	Zinc, household, table or kitchen use articles; zinc toilet and sanitary wares; zinc parts of all the foregoing
7907.00.20	Zinc, tubes or pipes and fittings for tubes or pipes
7907.00.60	Zinc, articles (o/than for household, table or kitchen use), nesoi
8112.92.40	Niobium (columbium), unwrought; niobium powders
8112.92.50	Rhenium, unwrought; rhenium powders
8112.99.20	Vanadium, nesoi, and articles thereof
8203.20.40	Slip joint pliers
8211.10.00	Sets of assorted knives w/cutting blades serrated or not (including pruning knives)
8211.91.25	Table knives w/fixed blades, w/stain. steel handles cont. Ni or ov 10% by wt of Mn, nesoi

HTS Subheading	Product Description
8211.91.30	Table knives w/fixed blades, w/stain. steel handles, nesoi, not ov 25.9 cm in overall length & val less than 25 cents each
8211.91.40	Table knives w/fixed blades, w/stain. steel handles, nesoi
8211.91.80	Table knives w/fixed blades, w/handles other than of silver-plate, stainless steel, rubber or plastics
8211.92.40	Knives w/fixed blades (o/than table or kitchen and butcher knives), with rubber or plastic handles
8211.92.60	Hunting knives w/fixed blades, with wood handles
8211.92.90	Knives w/fixed blades (o/than table knives, other knives w/rubb./plast. handles, or hunting knives w/wood handles)
8214.90.30	Butchers' or kitchen cleavers with their handles, nesoi, and base metal parts thereof
8214.90.90	Articles of cutlery, nesoi, and base metal parts of cutlery, nesoi
8306.30.00	Base metal photograph, picture or similar frames; base metal mirrors; base metal parts thereof
8505.11.00	Permanent magnets and articles intended to become permanent magnets after magnetization, of metal
8539.10.00	Sealed beam lamp units
8711.40.30	Motorcycles (incl. mopeds) and cycles, fitted w/recip. internal-combustion piston engine w/capacity o/500 cc but n/o 700 cc
8714.10.00	Pts. & access. for motorcycles (including mopeds)
8714.93.05	Pts. & access. for bicycles & o/cycles, aluminum alloy hubs, w/hollow axle and lever-operated quick release mechanism
8714.93.15	Pts. & access. for bicycles & o/cycles, 3-speed hubs nesoi
8714.93.35	Pts. & access. for bicycles & o/cycles, non-variable speed hubs, nesoi
8714.93.70	Pts. & access. for bicycles & o/cycles, free-wheel sprocket-wheels
9001.90.50	Prisms, unmounted
9001.90.80	Half-tone screens designed for use in engraving or photographic processes, unmounted
9002.11.40	Projection lenses, mounted, and parts and accessories therefor, for cameras, projectors or photographic enlargers or reducers
9002.11.60	Mounted objective lenses for use in closed circuit television cameras, seperately imported, w/ or w/o attached elec. connectors or motors
9002.90.85	Mounted lenses, n/obj., for use in closed circuit television cameras, seperately imported, w/ or w/o attached elec. connectors or motors
9005.10.00	Binoculars

HTS Subheading	Product Description
9006.61.00	Photographic discharge lamp ("electronic") flashlight apparatus
9013.10.10	Telescopic sights for rifles not designed for use with infrared light
9013.10.50	Other telescopic sights for arms other than rifles; periscopes
9015.30.80	Levels, other than electrical
9016.00.20	Electrical balances of a sensitivity of 5 cg or better, with or without weights, and parts and accessories thereof
9016.00.40	Jewelers' balances (nonelectrical) of a sensitivity of 5 cg or better, with or without weights, and parts and accessories thereof
9030.20.10	Oscilloscopes and oscillographs, NESOI
9105.29.10	Wall clocks nesoi, not electrically operated, mvmt measuring n/o 50 mm, not designed or constr. to operate over 47 hrs without rewinding
9105.29.30	Wall clocks nesoi, not electrically operated, mvmt measuring n/o 50 mm, ov 1 jewel, constructed/designed to operate ov 47 hrs w/o rewinding
9105.29.40	Wall clocks nesoi, not electrically operated, movement measuring over 50 mm in width or diameter, valued not over $5 each
9105.29.50	Wall clocks nesoi, not electrically operated, movement measuring over 50 mm in width or diameter, valued over $5 each
9106.10.00	Time registers; time recorders
9109.90.20	Clock movements, complete and assembled, not electrically operated, measuring not over 50 mm in width or diameter
9110.90.40	Incomplete clock movements consisting of 2 or more pieces or parts fastened or joined together
9603.30.40	Artists' brushes, writing brushes and similar brushes for the application of cosmetics, valued o/5 cents but n/o 10 cents each
9603.30.60	Artists' brushes, writing brushes and similar brushes for the application of cosmetics, valued o/10 cents each

Section 3 – The products that are enumerated and described in Section 3 of this Annex are being considered for additional import duties if they are the product of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, or Sweden.

HTS Subheading	Product Description

HTS Subheading	Product Description
2208.30.30	Irish and Scotch whiskies
6110.11.00	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of wool
6110.12.10	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of Kashmir goats, wholly of cashmere
6110.20.20	Sweaters, pullovers and similar articles, knitted or crocheted, of cotton, nesoi
6110.30.30	Sweaters, pullovers and similar articles, knitted or crocheted, of manmade fibers, nesoi
6202.99.15	Rec perf outwear, women's/girls' anoraks, wind-breakers & similar articles, not k/c, tex mats (not wool, cotton or mmf), cont < 70% by wt of silk
6202.99.80	Women's/girls' anoraks, wind-breakers & similar articles, not k/c, of tex mats (not wool, cotton or mmf), cont < 70% by wt of silk,
6203.11.60	Men's or boys' suits of wool, not knitted or crocheted, nesoi, of wool yarn with average fiber diameter of 18.5 micron or less
6203.11.90	Men's or boys' suits of wool or fine animal hair, not knitted or crocheted, nesoi
6203.19.30	Men's or boys' suits, of artificial fibers, nesoi, not knitted or crocheted
6203.19.90	Men's or boys' suits, of textile mats(except wool, cotton or mmf), containing under 70% by weight of silk or silk waste, not knit or croch
6208.21.00	Women's or girls' nightdresses and pajamas, not knitted or crocheted, of cotton
6211.12.40	Women's or girls' swimwear, of textile materials(except mmf), containing 70% or more by weight of silk or silk waste, not knit or crocheted
6211.12.80	Women's or girls' swimwear, of textile materials(except mmf), containing under 70% by weight of silk or silk waste, not knit or crocheted
6301.30.00	Blankets (other than electric blankets) and traveling rugs, of cotton
6301.90.00	Blankets and traveling rugs, nesoi
6302.21.50	Bed linen, not knit or crocheted, printed, of cotton, cont any embroidery, lace, braid, edging, trimming, piping or applique work, n/napped
6302.21.90	Bed linen, not knit or croc, printed, of cotton, not cont any embroidery, lace, braid, edging, trimming, piping or applique work, not napped

Section 4 – The products that are enumerated and described in Section 4 of this Annex are being considered for additional import duties if they are the product of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom.

HTS Subheading	Product Description
0901.21.00	Coffee, roasted, not decaffeinated
0901.22.00	Coffee, roasted, decaffeinated
2101.11.21	Instant coffee, not flavored
8201.40.60	Axes, bill hooks and similar hewing tools (o/than machetes), and base metal parts thereof
8203.20.20	Base metal tweezers
8203.20.60	Pliers (including cutting pliers but not slip joint pliers), pincers and similar tools
8203.30.00	Metal cutting shears and similar tools, and base metal parts thereof
8203.40.60	Pipe cutters, bolt cutters, perforating punches and similar tools, nesoi, and base metal parts thereof
8205.40.00	Screwdrivers and base metal parts thereof
8211.93.00	Knives having other than fixed blades
8211.94.50	Base metal blades for knives having other than fixed blades
8467.19.10	Tools for working in the hand, pneumatic, other than rotary type, suitable for metal working
8467.19.50	Tools for working in the hand, pneumatic, other than rotary type, other than suitable for metal working
8468.80.10	Machinery and apparatus, hand-directed or -controlled, used for soldering, brazing or welding, not gas-operated
8468.90.10	Parts of hand-directed or -controlled machinery, apparatus and appliances used for soldering, brazing, welding or tempering
8514.20.40	Industrial or laboratory microwave ovens for making hot drinks or for cooking or heating food
9002.11.90	Objective lenses and parts & access. thereof, for cameras, projectors, or photographic enlargers or reducers, except projection, nesoi

Section 5 – The products that are enumerated and described in Section 5 of this Annex are being considered for additional import duties if they are the product of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, or Sweden.

HTS Subheading	Product Description
1905.31.00	Sweet biscuits
1905.32.00	Waffles and wafers
4901.10.00	Printed books, brochures, leaflets and similar printed matter in single sheets, whether or not folded
4908.10.00	Transfers (decalcomanias), vitrifiable
4911.91.20	Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation
4911.91.30	Lithographs on paper or paperboard, over 0.51 mm in thickness, printed not over 20 years at time of importation
4911.91.40	Pictures, designs and photographs, excluding lithographs on paper or paperboard, printed not over 20 years at time of importation
8429.52.10	Self-propelled backhoes, shovels, clamshells and draglines with a 360 degree revolving superstructure
8429.52.50	Self-propelled machinery with a 360 degree revolving superstructure, other than backhoes, shovels, clamshells and draglines
8467.29.00	Electromechanical tools for working in the hand, other than drills or saws, with self-contained electric motor

Section 6 – The products that are enumerated and described in Section 6 of this Annex are being considered for additional import duties if they are the product of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, or Sweden.

HTS Subheading	Product Description
0203.29.40	Frozen meat of swine, other than retail cuts, nesoi
0404.10.05	Whey protein concentrates
0406.10.84	Fresh cheese, and substitutes for cheese, cont. cows milk, neosi, o/0.5% by wt. of butterfat, descr in add US note 16 to Ch 4, not GN15
0406.10.88	Fresh cheese, and substitutes for cheese, cont. cows milk, neosi, o/0.5% by wt. of butterfat, not descr in add US note 16 to Ch 4, not GN 15
0406.10.95	Fresh cheese, and substitutes for cheese, not cont. cows milk, neosi, o/0.5% by wt. of butterfat
0406.90.16	Edam and gouda cheese, nesoi, subject to add. US note 20 to Ch. 4
0406.90.56	Cheeses, nesoi, from sheep's milk in original loaves and suitable for grating

HTS Subheading	Product Description
1509.10.20	Virgin olive oil and its fractions, whether or not refined, not chemically modified, weighing with the immediate container under 18 kg
1509.90.20	Olive oil, other than virgin olive oil, and its fractions, not chemically modified, weighing with the immediate container under 18 kg
2005.70.12	Olives, green, not pitted, in saline, not ripe
2005.70.25	Olives, green, in a saline solution, pitted or stuffed, not place packed

Section 7 – The products that are enumerated and described in Section 7 of this Annex are being considered for additional import duties if they are the product of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, or Sweden.

HTS Subheading	Product Description
2208.70.00	Liqueurs and cordials

Section 8 – The products that are enumerated and described in Section 8 of this Annex are being considered for additional import duties if they are the product of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, or Sweden.

HTS Subheading	Product Description
0711.20.18	Olives, n/pitted, green, in saline sol., in contain. > 8 kg, drained wt, for repacking or sale, subject to add. US note 5 to Ch. 7
0711.20.28	Olives, n/pitted, green, in saline sol., in contain. > 8 kg, drained wt, for repacking or sale, not subject to add. US note 5 to Ch. 7
0711.20.38	Olives, n/pitted, nesoi
0711.20.40	Olives, pitted or stuffed, provisionally preserved but unsuitable in that state for immediate consumption
2005.70.08	Olives, green, not pitted, in saline, not ripe, in containers holding o/8 kg for repkg, not subject to add. US note 4 to Ch. 20
2005.70.16	Olives, green, in saline, place packed, stuffed, in containers holding n/o 1 kg, aggregate quantity n/o 2700 m ton/yr
2005.70.23	Olives, green, in saline, place packed, stuffed, not in containers holding 1 kg or less

HTS Subheading	Product Description
2204.21.50	Wine other than Tokay (not carbonated), not over 14% alcohol, in containers not over 2 liters

Section 9 – The products that are enumerated and described in Section 9 of this Annex are being considered for additional import duties if they are the product of France, Lithuania, or Poland.

HTS Subheading	Product Description
0406.90.95	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cows milk, w/butterfat o/0.5% by wt, subject to Ch 4 US note 16 (quota)

Section 10 – The products that are enumerated and described in Section 10 of this Annex are being considered for additional import duties if they are the product of Finland, France, or Poland.

HTS Subheading	Product Description
0406.90.46	Swiss or Emmentaler cheese with eye formation, nesoi, subject to add. US note 25 to Ch. 4

Section 11 – The products that are enumerated and described in Section 11 of this Annex are being considered for additional import duties if they are the product of Denmark, France, or Poland.

HTS Subheading	Product Description
1602.49.20	Pork other than ham and shoulder and cuts thereof, not containing cereals or vegetables, boned and cooked and packed in airtight containers

Section 12 – The products that are enumerated and described in Section 12 of this Annex are being considered for additional import duties if they are the product of France or Poland.

HTS Subheading	Product Description
0403.10.90	Yogurt, not in dry form, whether or not flavored or containing add fruit or cocoa
0405.10.10	Butter subject to quota pursuant to chapter 4 additional US note 6
0405.10.20	Butter not subject to general note 15 and in excess of quota in

HTS Subheading	Product Description
	chapter 4 additional U.S. note 6
0406.30.89	Processed cheese (incl. mixtures), nesoi, w/cow's milk, not grated or powdered, subject to add US note 16 to Ch. 4, not GN15
0406.90.99	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/o cows milk, w/butterfat o/0.5% by wt, not GN15
0811.90.80	Fruit, nesoi, frozen, whether or not previously steamed or boiled
1601.00.20	Pork sausages and similar products of pork, pork offal or blood; food preparations based on these products
2008.60.00	Cherries, otherwise prepared or preserved, nesoi
2008.70.20	Peaches (excluding nectarines), otherwise prepared or preserved, not elsewhere specified or included
2008.97.90	Mixtures of fruit or other edible parts of plants, otherwise prepared or preserved, nesoi (excluding tropical fruit salad)
2009.89.65	Cherry juice, concentrated or not concentrated
2009.89.80	Juice of any single vegetable, other than tomato, concentrated or not concentrated

Section 13 – The products that are enumerated and described in Section 13 of this Annex are being considered for additional import duties if they are the product of Bulgaria or France.

HTS Subheading	Product Description
0406.90.57	Pecorino cheese, from sheep's milk, in original loaves, not suitable for grating

Section 14 – The products that are enumerated and described in Section 14 of this Annex are being considered for additional import duties if they are the product of France.

HTS Subheading	Product Description
0405.90.10	Fats and oils derived from milk, other than butter or dairy spreads, subject to quota pursuant to chapter 4 additional US note 14
0406.30.51	Gruyere-process cheese, processed, not grated or powdered, subject to add. US note 22 to Ch. 4
0406.30.53	Gruyere-process cheese, processed, not grated or powdered, not subject to gen note 15 or add. US note 22 to Ch. 4
0406.40.54	Blue-veined cheese, nesoi, in original loaves, subject to add. US note 17 to Ch. 4

HTS Subheading	Product Description
0406.90.08	Cheddar cheese, neosi, subject to add. US note 18 to Ch. 4
0406.90.12	Cheddar cheese, nesoi, not subject to gen. note 15 of the HTS or to add. US note 18 to Ch. 4
0406.90.41	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, subject to add. US note 21 to Ch. 4
0406.90.42	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, not subj to to GN 15 or Ch4 US note 21
0406.90.48	Swiss or Emmentaler cheese with eye formation, nesoi, not subject to gen. note 15 or to add. US note 25 to Ch. 4
0406.90.90	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from swiss, emmentaler or gruyere, subj. to add. US note 22 to Ch.4, not GN15
0406.90.97	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cows milk, w/butterfat o/0.5% by wt, not subject to Ch4 US note 16, not GN15
1605.53.60	Mussels, prepared or preserved
2007.99.70	Currant and berry fruit jellies
2008.40.00	Pears, otherwise prepared or preserved, nesoi
2009.89.20	Pear juice, concentrated or not concentrated

Section 15 – The products that are enumerated and described in Section 15 of this Ar are being considered for additional import duties if they are the product of Poland.

HTS Subheading	Product Description
0405.20.30	Butter substitute dairy spreads, over 45% butterfat weight, not subj to gen note 15 and in excess of quota in ch. 4 additional US note 14
0405.20.80	Other dairy spreads, not butter substitutes or of a type provided for in chapter 4 additional US note 1
0406.30.85	Processed cheese (incl. mixtures), nesoi, n/o 0.5% by wt. butterfat, not grated or powdered, subject to Ch4 US note 23, not GN15
0406.90.78	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from cheddar cheese, not subj. to add. US note 18 to Ch.4, not GN15
1602.41.90	Prepared or preserved pork hams and cuts thereof, not containing cereals or vegetables, nesoi
1602.42.20	Pork shoulders and cuts thereof, boned and cooked and packed in airtight containers
1602.42.40	Prepared or preserved pork shoulders and cuts thereof, other

HTS Subheading	Product Description
	than boned and cooked and packed in airtight containers
1602.49.40	Prepared or preserved pork, not containing cereals or vegetables, nesoi
1602.49.90	Prepared or preserved pork, nesoi

Section 16 – The products that are enumerated and described in Section 16 of this Annex are being considered for additional import duties if they are the product of the United Kingdom.

Note: For purposes of the subheading listed below, the informal product description defines and limits the scope of the proposed action and is intended to cover only a subsection of the subheading.

HTS Subheading	Product Description
2208.30.30	Irish and Scotch whiskies, other than Single-malt

Section 17 – The products that are described in Section 17 of this Annex are being considered for additional import duties if they are the product of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom.

HTS Subheading	Product Description
8214.90.60	Butchers' or kitchen chopping or mincing knives (o/than cleavers w/their handles)

ANNEX III

Additional Products Under Consideration for Increased Duties

The products that are enumerated and described in this Annex are being considered for additional import duties if they are the product of any of the following: France, Germany, Spain, or the United Kingdom.

The product descriptions that are contained in this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the proposed action. Any questions regarding the scope of a particular HTS subheading should be referred to U.S. Customs and Border Protection. In the product descriptions, the abbreviation ''nesoi'' means ''not elsewhere specified or included''.

HTS Subheading	Product Description
0709.92.00	Olives
0901.12.00	Coffee, decaffeinated
1107.10.00	Malt, not roasted
1704.90.35	Sugar confectionary not cont. cocoa, other
1806.31.00	Chocolate and other preps, filled
1806.90.90	Chocolate and other food preps, cont. cocoa, other
1905.90.10	Bread, pastry, cakes, biscuits and similar baked products, and puddings, whether or not containing chocolate, fruit, nuts or confectionery
2004.10.80	Other Potatoes prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006
2005.70.02	Olives, green, not pitted, in an aggregate quantity not to exceed 730 metric tons entered in any calendar year
2005.70.04	Olives, green, not pitted, other
2005.70.06	Olives, described in additional U.S. note 4 to this chapter and entered pursuant to its provisions
2005.70.50	Olives, not green, not pitted
2005.70.60	Olives, not green, other
2005.70.70	Olives, not green, in airtight containers of glass or metal
2005.70.75	Olives, not green, other
2005.70.97	Olives, other
2106.90.98	Food Preparations NESI, Other
2203.00.00	Beer made from malt
2208.50.00	Gin and Geneve
2208.60.10	Vodka, in containers each holding not over 4 liters, valued not over $2.05/liter
2208.60.20	Vodka, in containers each holding not over 4 liters, valued over

HTS Subheading	Product Description
	$2.05/liter
2208.60.50	Vodka, in containers each holding over 4 liters
2303.10.00	Residues of starch manufacture and similar residues
8207.30.30	Interchangeable tools for pressing, stamping or punching, suitable for cutting metal, and base metal parts thereof
8207.30.60	Interchangeable tools for pressing, stamping or punching, not suitable for cutting metal, and base metal parts thereof
8427.10.80	Self-propelled works trucks powered by an electric motor, fitted with lifting and handling equipment, nesoi
8427.90.00	Trucks, fitted with lifting or handling equipment, nesoi
8428.90.02	Machinery for lifting, handling, loading or unloading, nesoi
8467.99.01	Parts of tools for working in the hand, hydraulic or with self-contained nonelectric or electric motor, other than chain saws
8516.10.00	Electric instantaneous or storage water heaters and immersion heaters

ANNEX IV

Comments Concerning the Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute
OMB Control Number: 0350-0016
Expiration Date: December 31, 2020
Potential persons interested in responding to the collection of information are not required to do so unless the collection of information displays a currently valid OMB control number.
Fields marked with a red asterisk (*) are required. Fields with a gray (BCI) notation may contain Business Confidential Information and will not be shared with the public. Fields with a green (Public) notation will be viewable to the Public on the Public Docket.

Submitter Information > General Comments > Product Details > Questionnaire > Attachments > Review Public Information & Submit

Submitter Information

Organization Name (OPTIONAL) (Public)

Commenter First Name (REQUIRED)* (Public)

Commenter Last Name (REQUIRED)* (Public)

Commenter Email Address (REQUIRED)* (BCI)

Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry? (OPTIONAL) (Public)

☐

Third Party Firm, Association Name (OPTIONAL) (Public)

Third Party Representative (REQUIRED)* (BCI)

Third Party Email (REQUIRED)* (BCI)

Third Party Organizational Type (OPTIONAL) (BCI)

Next

Comments Concerning the Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute

OMB Control Number: 0350-0016
Expiration Date: December 31, 2020
Potential persons interested in responding to the collection of information are not required to do so unless the collection of information displays a currently valid OMB control number.

Submitter Information > **General Comments** > Product Details > Questionnaire > Attachments > Review Public Information & Submit

General Comments

ENTER INFORMATION BELOW OR CLICK NEXT TO PROCEED.

[1] Enter general comments regarding the Section 301 investigation to enforce U.S. WTO rights in the Large Civil Aircraft dispute, or click "next" to proceed to questions specified in the Federal Register Notice. (OPTIONAL) (Public)

Previous Next

Comments Concerning the Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute
OMB Control Number: 0350-0016
Expiration Date: December 31, 2020
Potential persons interested in responding to the collection of information are not required to do so unless the collection of information displays a currently valid OMB control number.

Submitter Information > General Comments > **Product Details** > Questionnaire > Attachments > Review Public Information & Submit

Product Details

ENTER INFORMATION BELOW OR CLICK NEXT TO PROCEED.

[2a] Select one or more product categories applicable to or covered by your comment, or enter specific product(s) or HTS code(s) below. (OPTIONAL) (Public)

Select a Value or Begin Typing ▼

[2b] What specific product(s) are applicable to or covered by your comment? Use a comma to separate multiple products. (OPTIONAL) (Public)

Select a Value or Begin Typing

[2c] Type or select the HTS subheading(s) or the statistical reporting number(s) applicable to the specific product(s) covered by your comment. (OPTIONAL) (Public)

HTS Codes cannot exceed 10 characters.

Select a Value or Begin Typing ▼

[2d] What are the current or former EU Member state(s) applicable to or covered by your comment? (i.e., the origin of product.) (OPTIONAL) (Public)

Select a Value or Begin Typing ▼

Previous Next

Comments Concerning the Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute
OMB Control Number: 0350-0016
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Submitter Information > General Comments > Product Details > **Questionnaire** > Attachments > Review Public Information & Submit

Questionnaire

ENTER INFORMATION BELOW OR CLICK NEXT TO PROCEED.

[3] Respond to the questions below if the product(s) you identified in Question [2] is currently subject to additional duties. (Annex I to the Federal Register notice lists products currently subject to additional duties.) If the product(s) you identified in Question [2] is not currently subject to additional duties, move to Question [4].

[3a] With respect to product(s) identified in your response to Question [2], what is your recommendation as to whether additional duties should be maintained? (OPTIONAL) (Public)

[3b] If you recommend the rate of additional duty be modified, you may provide a recommendation as to the revised rate of additional duty (as high as 100 percent). (OPTIONAL) (Public)

Questionnaire (Cont.)

[4] Respond to the questions below if the product(s) you identified in Question [2] is NOT currently subject to additional duties. (Annex II to the Federal Register notice lists products for which additional duties of up to 100 percent previously had been proposed, but for which no additional duties are currently imposed under the action. Annex III to the Federal Register notice lists additional products under consideration for additional duties of up to 100 percent.)

[4a] With respect to products listed in Annex II or III to the Federal Register notice, what is your recommendation as it relates to the inclusion of the specific product(s) on a revised list of products subject to additional duties? (OPTIONAL) (Public)

[4b] You may provide a recommendation as to the rate of additional duty to be imposed (as high as 100 percent). (OPTIONAL) (Public)

[5] Please comment on whether maintaining or imposing additional duties on a specific product of one or more specific EU Member state (or former Member state) would be appropriate to enforce U.S. WTO rights or to obtain the elimination of the WTO-inconsistent measures, and/or would be likely to result in the implementation of the DSB recommendations in the Large Civil Aircraft dispute or in achieving a mutually satisfactory solution. (OPTIONAL) (Public)

[6] Please comment on whether maintaining or imposing additional duties on specific products of one or more specific EU Member state (or former Member state) would cause disproportionate economic harm to U.S. interests, including small or medium size businesses and consumers. (OPTIONAL) (Public)

[7] Use the field below to provide any additional information in support of your comment, taking account of the instructions provided in Section C of the Federal Register notice. (OPTIONAL) (Public)

Previous Next

Comments Concerning the Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute
OMB Control Number: 0350-0016
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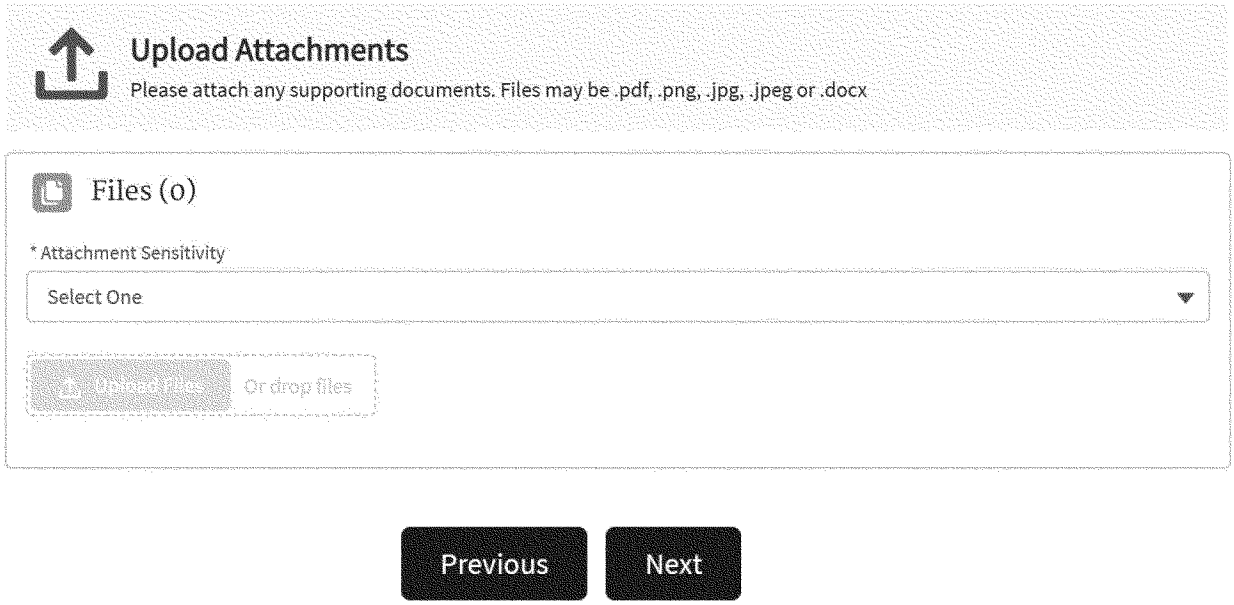
Submitter Information > General Comments > Product Details > Questionnaire > **Attachments** > Review Public Information & Submit

UPLOAD OPTIONAL ATTACHMENTS OR CLICK NEXT TO PROCEED.

Include any additional attachments that should be considered along with this comment. Business Confidential attachments will not display on the public docket or be available for download.

NOTE: ONCE YOU SELECT AN ATTACHMENT, YOU WILL BE UNABLE TO REMOVE THE FILE.
You will not be able to delete an attachment or cancel the upload.

If you upload an attachment in error, please refile your comment or call the Section 301 Hotline at (202) 395-5725, available Monday through Friday from 9:00 AM to 5:00 PM.



[FR Doc. 2020–13824 Filed 6–25–20; 8:45 am]
BILLING CODE 3290–F8–C

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, San Diego Freeway (I–405) Improvement Project from State Route (SR) 73 to Interstate 605 (I–605) in Orange County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before November 23, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Smita Deshpande, Branch Chief, California Department of Transportation District 12, Division of Environmental Analysis, 1750 East 4th Street, Santa Ana, California 92705, during normal business hours from 8:00 a.m. to 5:00 p.m., Telephone number (657) 328–6151, email: *smita.deshpande@dot.ca.gov.* For FHWA, contact David Tedrick at (916) 498–5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, FHWA assigned, and the Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency action subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals or by reviewing previously-issued approvals for the following highway project in the State of California: Interstate 405 Improvements Project (''project''). The project will improve 16 miles of I–405 between the SR–73 freeway and I–605 by adding one general purpose lane in each direction between Euclid Street and I–605 and one tolled Express Lane in each direction between SR–73 and SR–22, to be managed jointly with the existing HOV Lane as tolled Express Facility with two lanes in each direction. A re-evaluation (23 CFR 771.129, and also known as a revalidation) was performed and approved on April 9, 2020. The conclusion of the re-evaluation was the Final Environmental Impact Statement and the Record of Decision for the project, issued on March 26, 2015 and May 15, 2020, respectively, remain valid and no Supplemental Environmental Impact Statement was warranted. The re-evaluation reviewed minor changes to the planned drainage system and associated features proximate to the Northbound I–405 off-ramp to Eastbound SR–22/Valley View in the City of Westminster, California. The pre-existing drainage system, which is a Caltrans facility entirely within the Caltrans right of way, was a road-side ditch or trapezoidal drainage channel adjacent to the right of way that ran parallel to the freeway and eventually drained into the Bolsa Chica Channel. The project design changes involve modifications to increase the capacity of water flowing from the adjacent watershed into Drainage System 828. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the re-evaluation approved on April 9, 2020. The re-evaluation is available at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4351)
2. Air: Clean Air Act (42 U.S.C. 7401–7671(q))
3. Wildlife: Migratory Bird Treaty Act (16 U.S.C. 703–712); Federal Endangered Species Act of 1973 (16 U.S.C. 1531–1543)
4. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470(f) *et seq.*);
5. Wetland and Water Resources: Clean Water Act (33 U.S.C. 1251–1377) (Section 404, Section 401, Section 319);
6. Land: Department of Transportation Act of 1966, (49 U.S.C. 303) (Section 4(f))
7. Executive Orders: E.O. 11990—Protection of Wetlands; E.O. 11988—Floodplain Management; E.O. 12898—Federal Actions to Address Environmental Justice in Minority and Low Income Populations; E.O. 11593—Protection and Enhancement of Cultural Resources; E.O. 13112—Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: June 18, 2020.

Rodney Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

[FR Doc. 2020–13851 Filed 6–25–20; 8:45 am]
BILLING CODE 4910–RY–P

FEDERAL REGISTER

Vol. 85 Friday,
No. 124 June 26, 2020

Part II

Department of Homeland Security

8 CFR Parts 208 and 274a
Asylum Application, Interview, and Employment Authorization for Applicants; Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 208 and 274a

[CIS No. 2648–19; DHS Docket No. USCIS–2019–0011]

RIN 1615–AC27

Asylum Application, Interview, and Employment Authorization for Applicants

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: On November 14, 2019, the Department of Homeland Security (DHS) published a notice of proposed rulemaking (NPRM) that would modify DHS's regulations governing asylum applications, interviews, and eligibility for employment authorization based on a pending asylum application. This final rule implements the proposed rule, with some amendments based on public comments received.

DATES: This final rule is effective August 25, 2020.

FOR FURTHER INFORMATION CONTACT: Maureen Dunn, Chief, Division of Humanitarian Affairs, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Suite 1100, Washington, DC 20529–2140; Telephone (202) 272–8377.

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Table of Abbreviations

APA—Administrative Procedure Act
ASC—Application Support Center
BCR—Biometrics Collection Rate
BFR—Biometrics Fee Ratio
BIA—Board of Immigration Appeals
BLS—Bureau of Labor Statistics
CAM—Central American Minors Program
CAT—Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBP—U.S. Customs and Border Protection
CFR—Code of Federal Regulations
CPMS—Customer Profile Management System
DHS—U.S. Department of Homeland Security
DOJ—Department of Justice
DOS—Department of State
E.O.—Executive Order
EAD—Employment Authorization Document
EOIR—Executive Office for Immigration Review
FBI—Federal Bureau of Investigation
FDNS—Fraud Detection and National Security Directorate
FIFO—First in/First Out
Form I–589—Application for Asylum and for Withholding of Removal
Form I–765—Application for Employment Authorization
Form I–863—Notice of Referral to Immigration Judge
FY—Fiscal Year
GSA—General Services Administration
HSA—Homeland Security Act of 2002
ICE—U.S. Immigration and Customs Enforcement
IIRIRA—Illegal Immigration Reform and Immigrant Responsibility Act of 1996
IJ—Immigration Judge
INA—Immigration and Nationality Act
INS—Immigration and Naturalization Services
IRCA—Immigration Reform and Control Act of 1986
ISO—Immigration Services Officer
LCA—Labor Condition Application
LIFO—Last In, First Out
NEPA—National Environmental Policy Act
NOID—Notice of Intent to Deny
NPRM—Notice of Proposed Rulemaking
NTA—Notice to Appear
OMB—Office of Management and Budget
PM—Presidential Memorandum
PRA—Paperwork Reduction Act
RFA—Regulatory Flexibility Act
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
TVPRA—The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UAC—Unaccompanied Alien Children
UMRA—Unfunded Mandates Act of 1995
UNHCR—United Nations High Commissioner for Refugees

U.S.C.—United States Code
USCIS—U.S. Citizenship and Immigration Services
VAWA— Violence Against Women Act

I. Executive Summary

A. Proposed Rule

On November 14, 2019, DHS published a notice of proposed rulemaking (''NPRM'') entitled Asylum Application, Interview, and Employment Authorization for Applicants.[1] In the NPRM, DHS proposed amendments in order to (1) reduce incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications to obtain employment authorization pursuant to 8 CFR 274a.12(c)(8) (hereinafter ''(c)(8) EAD'' or ''EAD'') or other non-asylum-based forms of relief such as cancellation of removal, and (2) discourage illegal entry into the United States. DHS also proposed changes to reduce incentives for aliens to intentionally delay asylum proceedings in order to extend the period of employment authorization based on the pending asylum application, and to simplify the adjudication process. DHS proposed further changes to prevent asylum applicants who have committed certain crimes from obtaining a (c)(8) EAD, and to make the decision to grant (c)(8) employment authorization to asylum applicants discretionary, in line with DHS' statutory authority. DHS proposed to modify its regulations in the following areas:

1. *Extend the waiting period to apply for employment authorization:* DHS proposed that asylum applicants wait 365 calendar days from the date their asylum applications are received by USCIS or the Department of Justice, Executive Office for Immigration Review (DOJ–EOIR) before they may apply for an EAD. DHS also proposed that USCIS will deny requests for (c)(8) EAD applications if there are any unresolved applicant-caused delays on the date of the EAD adjudication.

2. *Eliminate the issuance of recommended approvals for a grant of affirmative asylum:* DHS proposed that USCIS will no longer issue recommended approvals for asylum. These are typically cases where an asylum officer has made a preliminary determination to grant asylum but has not yet received the results of the mandatory, confidential investigation of the alien's identity and required background and security checks.

3. *Revise eligibility for employment authorization:* DHS proposed to exclude aliens who, absent good cause, entered or attempted to enter the United States at a place and time other than lawfully through a U.S. port of entry from eligibility for (c)(8) employment authorization. DHS also proposed to exclude from eligibility for employment authorization aliens who have failed to file for asylum within one year of their last entry, unless and until an asylum officer or immigration judge (IJ) determines that an exception to the statutory requirement to file for asylum within one year applies. DHS proposed to exclude from eligibility aliens whose asylum applications have been denied by an asylum officer or an IJ during the 365-day waiting period or before the request for initial employment authorization has been adjudicated. DHS further proposed to exclude from eligibility for employment authorization aliens who have: (1) Been convicted of any aggravated felony as defined under section 101(a)(43) of the INA, 8 U.S.C. 1101(a)(43); (2) been convicted of any felony in the United States or serious non-political crime outside the United States; or (3) been convicted in the United States of certain public safety offenses involving domestic violence or assault; child abuse or neglect; possession or distribution of controlled substances; [2] or driving or operating a motor vehicle under the influence of alcohol or drugs, regardless of how the offense is classified by the state or local jurisdiction. DHS proposed that it would consider, on a case-by-case basis, whether aliens who have been convicted of any non-political foreign criminal offense, or have unresolved arrests or pending charges for any non-political foreign criminal offenses, warrant a favorable exercise of discretion.[3] DHS requested public comment on whether these and additional crimes should be included as bars to employment authorization. Because the one-year filing deadline does not apply to unaccompanied alien children (UACs), DHS proposed that the bar to eligibility for failing to meet the one-year filing deadline would not bar UACs who apply for asylum from eligibility for an EAD after the 365-day waiting period has expired. DHS also proposed to clarify that only applicants for asylum who are in the United States may apply for employment authorization. Finally, DHS proposed a severability clause to ensure that in the event any of provision of the final rule is found by a court to be invalid, DHS could still implement the remaining provisions of the rule.

4. *Revise the provisions for EAD termination:* DHS proposed revising when (c)(8) employment authorization terminates. DHS proposed that when a USCIS asylum officer denies an alien's request for asylum, any employment authorization associated with a pending asylum application would be terminated effective on the date of asylum application denial. If a USCIS asylum officer determines that the alien is not eligible for asylum, the asylum officer will typically refer the case to DOJ–EOIR. DHS proposed that if USCIS refers a case to DOJ–EOIR, employment authorization would continue, and the alien would be eligible to continue applying for EAD renewals, if needed, until the IJ renders a decision on the asylum application. If the IJ denies the asylum application, the alien's employment authorization would terminate 30 days after denial, unless the alien filed a timely appeal with the Board of Immigration Appeals (BIA). Renewal of employment authorization would be available to the alien during the pendency of the appeal to the BIA. DHS, however, would prohibit employment authorization during the Federal court appeal process, unless the Federal court remanded the asylum case to the BIA. In such cases, the alien could reapply for a (c)(8) EAD once the case was pending before the BIA again.

5. *Change provisions for filing an asylum application:* DHS proposed to remove the requirement that USCIS return an incomplete application within 30 days or have it deemed complete for adjudication purposes. DHS also proposed that amending an asylum application, requesting an extension to submit additional evidence beyond a time that allows for its meaningful consideration prior to the interview, or failing to appear at a USCIS Asylum office to receive a decision as designated, would constitute an applicant-caused delay, which, if not resolved by the date the application for employment authorization is adjudicated, would result in the denial of that employment authorization application. DHS also proposed to clarify the effect of an applicant's failure to appear for either an asylum interview or a scheduled biometric services appointment on a pending asylum application.

6. *Limit EAD validity periods:* DHS proposed to clarify that the validity period of (c)(8) employment

[1] *Asylum Application, Interview, and Employment Authorization for Applicants,* 84 FR 62374 (proposed Nov. 14, 2019). DHS incorporates by reference the NPRM in its entirety here.

[2] *See* section 102 of the Controlled Substances Act (21 U.S.C. 802).

[3] *See, e.g.,* INA sec. 101(a)(43)(F), 8 U.S.C. 1101(a)(43)(F); INA sec. 212(a)(2)(A)(i)(I), 8 U.S.C. 1182(a)(2)(A)(i)(I); INA sec. 212(a)(2)(B), 8 U.S.C. 1182(a)(2)(B).

authorization is discretionary and further proposed that any (c)(8) EAD validity period, whether initial or renewal, would not exceed increments of 2 years. DHS proposed to allow USCIS to set shorter validity periods for initial and renewal (c)(8) EADs.

7. *Incorporate biometrics collection requirements into the employment authorization process for asylum seekers:* DHS proposed to incorporate biometrics collection into the employment authorization process for asylum applicants, which would require applicants to appear at an Application Support Center (ASC) for biometrics collection and, if required, pay a separate biometric services fee. At present, USCIS biometrics collection generally refers to the collection of fingerprints, photographs, and signatures.[4] Such biometrics collection would allow DHS to submit a (c)(8) applicant's fingerprints to the Federal Bureau of Investigation (FBI) for a criminal history check, facilitate identity verification, and facilitate (c)(8) EAD card production. DHS proposed to require applicants with a pending application for an initial or renewal (c)(8) EAD on the effective date of this rule to appear at an ASC for biometrics collection but DHS indicated it would not collect a biometric services fee from these aliens. DHS proposed to contact applicants with pending asylum-based EAD applications and provide notice of the place, date and time of the biometrics appointment.

8. *Clarify employment authorization eligibility for aliens who have been paroled after being found to have a credible or reasonable fear of persecution or torture:* DHS proposed to clarify that aliens who have been paroled into the United States pursuant to section 212(d)(5) of the INA, 8 U.S.C. 1182(d)(5), after establishing a credible fear or reasonable fear of persecution or torture under 8 CFR 208.30, may not request a discretionary grant of employment authorization under 8 CFR 274a.12(c)(11), but may still apply for a (c)(8) EAD, if otherwise eligible. DHS sought public comment on this proposal and whether the (c)(11) category (parole-based EADs) should be further limited, such as to provide employment authorization only to those aliens DHS determines are needed for foreign policy, law enforcement, or national security reasons, especially since parole is meant only as a temporary measure to allow an alien's physical presence in the United States until the need for parole is accomplished or the alien can be removed.

9. *Specify the effective date:* DHS proposed to apply changes made by this rule only to initial and renewal applications for employment authorization under 8 CFR 274a.12(c)(8) and (c)(11) filed on or after the effective date of the final rule, with limited exceptions. DHS proposed that it would apply two of the ineligibility provisions—those relating to criminal offenses and failure to file the asylum application within one year of the alien's last entry to the United States—to initial and renewal applications for employment authorization applications pending on the effective date of the final rule. In order to implement the criminal ineligibility provision, DHS proposed to require applicants with an initial or renewal (c)(8) EAD application pending on the effective date of this rule to appear at an ASC for biometrics collection but DHS would not collect a biometric services fee from these aliens. DHS indicated it would contact applicants with pending applications and provide notice of the place, date and time of the biometrics appointment. It also noted that, if applicable, initial applications filed before the effective date of this Final Rule by members of the *Rosario* class would not be subject to any of the provisions of this proposed rule.[5] DHS also sought public comment on whether other aliens, such as those affected by the Settlement Agreement in *American Baptist Churches* v. *Thornburgh,* 760 F. Supp. 796 (N.D.Cal.1991), or those whose asylum applications predate the 1995 asylum reforms, should be subject to all, some or none of the provisions in this rule.

DHS also proposed revisions to existing USCIS information collections (forms) to accompany the proposed regulatory changes.

B. Major Provisions of the Proposed Rule

DHS proposed the following regulatory changes:

1. *Amending 8 CFR 208.3, Form of application.* DHS proposed removing the language providing that an application for asylum will automatically be deemed ''complete'' if USCIS fails to return the incomplete application to the alien within a 30-day period. The 30-day provision is inconsistent with how all other applications and petitions for immigration benefits are treated, creates an arbitrary circumstance for treating a potentially incomplete asylum application as complete, and imposes an unnecessary administrative burden on USCIS. DHS proposed to conform its current process for determining when an asylum application is received and complete to the general rules governing all other immigration benefits under 8 CFR 103.2, in addition to the specific asylum rules under 8 CFR 208.3 and 208.4. The regulations at 8 CFR 103.2(a)(7) state that USCIS will record the receipt date as of the actual date the immigration benefit request is received at the designated filing location, whether electronically or in paper, provided that it is signed with a valid signature, executed, and filed in compliance with the regulations governing that specific benefit request. If a fee is required, the immigration benefit request must also include the proper fee. Immigration benefit requests not meeting these acceptance criteria are rejected at intake. Rejected immigration benefit requests do not retain a filing date.

2. *Amending 8 CFR 208.4, Filing the application.* The proposed amendments to this section provided that a request to amend a pending application for asylum or to supplement such an application may be treated as an applicant-caused delay, and if unresolved on the date the employment authorization application is adjudicated, will result in the denial of the application for employment authorization.

3. *Amending 8 CFR 208.7, Employment authorization.*[6]

a. *Jurisdiction.* The proposed amendments to this section clarified that USCIS has jurisdiction over all applications for employment

[4] *See https://www.uscis.gov/forms/forms-information/preparing-your-biometric-services-appointment* (describing biometrics as including fingerprints, photographs, and digital signature) (last visited July 11, 2019).

[5] On May 22, 2015, plaintiffs in *Rosario* v. *USCIS,* No. C15–0813JLR (W.D. Wash.), brought a class action in the U.S. District Court for the Western District of Washington to compel USCIS to comply with the 30-day provision of 8 CFR 208.7(a)(1). On July 26, 2018, the court enjoined USCIS from further failing to adhere to the 30-day deadline for adjudicating EAD applications. DHS published a proposed rule to remove this timeframe on September 9, 2019, where it proposed to grandfather into the 30-day adjudication timeframe those class members who filed their initial EAD applications prior to the effective date of any final rule that changes the 30-day DHS timeline. To ensure compliance with the court order and consistency with the 30-day proposed rule, USCIS will not apply this rule to any initial EAD application filed by a *Rosario* class member that is pending as of the effective date of this rule, so long as the *Rosario* injunction remains in effect. USCIS has not included proposed regulatory text to this effect, but would include such text in the event that members of the *Rosario* class remain as of the date of publication of a final rule.

[6] DHS has published a notice of proposed rulemaking (NPRM) entitled ''*Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I–765 Employment Authorization Applications,*'' DHS Docket No. USCIS–2018–0001, separate from this NPRM, which addresses application processing times. Comments on the NPRM addressing removal of the 30-day processing provision are not addressed here.

authorization based on pending or approved applications for asylum.

b. *365-day Waiting Period.* The proposed amendments to this section also replaced the 150-day waiting period and the 180-day asylum EAD clock. The proposed amendments would make asylum applicants eligible to apply for employment authorization 365 calendar days from the date their asylum application is received. The 365-day period was based on an average of the current processing times for asylum applications which can range anywhere from 6 months to over 2 years, before there is an initial decision, especially in cases that are referred to DOJ–EOIR from an asylum office. DHS also proposed that if any unresolved applicant-caused delays in the asylum adjudication exist on the date the (c)(8) EAD application is adjudicated, the EAD application would be denied. Consistent with the prior regulation, DHS also proposed to exclude from eligibility aliens whose asylum applications have been denied by an asylum officer or an IJ during the 365-day waiting period or before the adjudication of the initial request for employment authorization.

c. *One-Year Filing Deadline.* The proposed amendments to this section excluded from eligibility for employment authorization aliens who have failed to file for asylum within 1 year unless and until an asylum officer or IJ determines that an exception to the statutory requirement to file for asylum within 1 year applies.

d. *Illegal Entry.* The proposed amendments to this section also made any alien who entered or attempted to enter the United States at a place and time other than lawfully through a U.S. port of entry ineligible to receive a (c)(8) EAD, with limited exceptions.

e. *Criminal convictions.* The proposed amendments to this section excluded from (c)(8) EAD eligibility any alien who has: (1) Been convicted of an aggravated felony as described in section 101(a)(43) of the INA, 8 U.S.C. 1101(a)(43); (2) been convicted of any felony [7] in the United States; (3) been convicted of a serious non-political crime outside the United States; (4) been convicted in the United States of domestic violence or assault (except aliens who have been battered or subjected to extreme cruelty and who were not the primary perpetrators of violence in their relationships), child abuse or neglect; possession or distribution of controlled substances; or driving or operating a motor vehicle under the influence of alcohol or drugs, regardless of how the offense is classified by the state, local, or tribal jurisdiction. DHS proposed to consider, on a case-by-case basis, whether an alien who has unresolved domestic charges or arrests that involve domestic violence, child abuse, possession or distribution of controlled substances, or driving under the influence of drugs or alcohol, warrants a favorable exercise of discretion for a grant of employment authorization.

f. *Recommended Approvals.* The proposed amendments to this section removed the language referring to ''recommended approvals.'' Under this proposal, USCIS would no longer issue recommended approvals as a preliminary decision for affirmative asylum adjudications.

g. *EAD Renewals.* The proposed amendments to this section permitted renewals during the pendency of the asylum application, including while the asylum application is still pending before the immigration court or at the BIA (if a timely appeal was filed), for such periods as determined by USCIS in its discretion, but not to exceed increments of 2 years.

h. *Submission of biometrics.* The proposed amendments to this section required applicants to submit biometrics at a scheduled biometric services appointment for all initial and renewal applications for employment authorization. DHS proposed to require applicants with an initial or renewal (c)(8) EAD pending on the effective date of the final rule to appear at an ASC for biometrics collection, but indicated it would not collect a biometric services fee from these aliens. DHS also proposed to contact applicants with pending applications and provide notice of the place, date and time of the biometrics appointment.

i. *Termination After Denial by USCIS Asylum Officer.* The proposed amendments to this section provided that when a USCIS asylum officer denies an alien's request for asylum, any employment authorization associated with a pending asylum application, including any automatic extension of employment authorization, would be automatically terminated effective on the date the asylum application is denied. As is current practice, if a USCIS asylum officer determines that the alien has no lawful immigration status and is not eligible for asylum, the asylum officer will refer the case to DOJ–EOIR and place the alien in removal proceedings. Employment authorization would be available to the alien while the alien is in removal proceedings and the alien's application for asylum is under review before an IJ.

j. *Termination After Denial by an IJ or the BIA.* The proposed amendments to this section also provided that where USCIS refers a case to DOJ–EOIR, employment authorization would continue for 30 days following the date that the IJ denies the asylum application to account for a possible appeal of the denial to the BIA. If the alien filed a timely appeal, employment authorization would continue, and the alien would be able to file a renewal EAD application, if otherwise eligible and if the asylum application was still pending on review with the BIA prior to expiration of the alien's EAD. Employment authorization would be prohibited during the Federal court appeal process. However, if the Federal court remanded the case to the BIA for a new decision, the alien could request a (c)(8) EAD once the asylum application was again pending with the BIA.

k. *Eligibility.* The proposed amendments to the section also clarified and codified that only an applicant who is in the United States may apply for employment authorization.

l. *Severability.* The proposed amendments to this section included a severability clause. This section was drafted with provisions separated into distinct parts. In the event that any provision is found by a court to be invalid, DHS intended that the remaining provisions be implemented as an independent rule in accordance with the stated purposes of this rule.

4. *Amending 8 CFR 208.9, Procedure for interview before an asylum officer.* The proposed amendments to this section clarified that an applicant's failure to appear at a USCIS Asylum Office to receive and acknowledge receipt of the asylum decision following an interview, and an applicant's request for an extension to submit additional evidence would be considered applicant-caused delays for purposes of eligibility for employment authorization. The proposed amendments also removed references to the ''Asylum EAD clock'' and required that documentary evidence to support a pending asylum application be submitted no later than 14 calendar days before the asylum interview. DHS proposed this change to allow USCIS asylum officers time to conduct a meaningful examination of the evidence prior to, and in preparation for, the asylum applicant's interview. As a matter of discretion, the asylum officer can consider evidence submitted within the 14 calendar days in advance of the interview date, or may grant the

[7] *See* 18 U.S.C. 3156(a)(3) (the term ''felony'' means an offense punishable by a maximum term of imprisonment of more than 1 year).

applicant a brief extension of time during which the applicant may submit additional evidence.

5. *Amending 8 CFR 208.10, Failure to appear for an interview before an asylum officer or for a biometric services appointment for the asylum application.* The proposed amendments to this section clarified that an asylum applicant's failure to appear for an asylum interview or biometric services appointment may lead to referral or dismissal of the asylum application, and may be treated as an applicant-caused delay affecting eligibility for employment authorization. In addition, DHS proposed to clarify that USCIS is not obligated to send any notice to the applicant about his or her failure to appear at a scheduled biometrics appointment or an asylum interview as a prerequisite to making a decision on the asylum application, which may include dismissing the asylum application or referring it to an IJ. DHS proposed these amendments to facilitate more timely and efficient case processing when applicants fail to appear for essential appointments. Finally, the amendments replaced references to fingerprint processing and fingerprint appointments with the term presently used by USCIS—''biometric services appointment.''

6. *Amending 8 CFR 274a.12, Classes of aliens authorized to accept employment.* The proposed amendments to this section removed the language in 8 CFR 274a.12(c)(8) referring to ''recommended approvals.'' The amendments also deleted an obsolete reference to the Commissioner of the former Immigration and Naturalization Service (INS) and replaced it with a reference to USCIS. DHS further proposed to clarify that aliens who have been paroled into the United States after being found to have a credible fear or reasonable fear of persecution or torture may not apply under 8 CFR 274a.12(c)(11) (parole-related EADs), but may apply for employment authorization under 8 CFR 274a.12(c)(8) if they apply for asylum in accordance with the rules for (c)(8) EADs and if they are otherwise eligible. The proposed amendments also provided that employment authorization would not be granted if a denial of an asylum application is under judicial review, in conformity with amendments proposed at 8 CFR 208.7. DHS requested public comment on these proposals and whether the (c)(11) category (parole-based EADs) should be further limited, such as to provide employment authorization only to those DHS determines are needed for foreign policy, law enforcement, or national security reasons, especially since parole is meant only as a temporary measure to allow an alien's physical presence in the United States until the need for parole is accomplished or the alien can be removed.

7. *Amending 8 CFR 274a.13, Application for employment authorization.* The proposed amendments to this section removed unnecessary references to the supporting documents required for submission with applications for employment authorization based on a pending asylum application and clarified that such employment authorization applications, like all other applications, petitions, or requests for immigration benefits, must be filed on the form designated by USCIS, in accordance with the form instructions, and along with any applicable fees. DHS also proposed to amend 8 CFR 274a.13(a)(1) so that USCIS has discretion to grant applications for employment authorization filed by asylum applicants pursuant to 8 CFR 274a.12(c)(8), in keeping with its discretionary statutory authority under INA 208(d)(2), 8 U.S.C. 1158(d)(2). To conform the current automatic extension and termination provisions to the changes proposed under 8 CFR 208.7(b), the proposed amendments to this section also provided that any employment authorization granted under 8 CFR 274a.12(c)(8) that was automatically extended pursuant 8 CFR 274a.13(d)(1) would automatically terminate on the date the asylum officer, IJ, or the BIA denies the asylum application.

8. *Amending 8 CFR 274a.14, Termination of employment authorization.* For purposes of clarity, the proposed amendment to this section added a new paragraph at 8 CFR 274a.14(a)(1) that cross-references any automatic EAD termination provision elsewhere in DHS regulations, including the automatic termination provisions being proposed by this rule in 8 CFR 208.7(b).

9. *Effective date:* DHS proposed that, with limited exceptions, the rules in effect on the date of filing Form I–765, Application for Employment Authorization, would govern all initial and renewal applications for a (c)(8) EAD based on a pending asylum application and a (c)(11) EAD based on a grant of parole after establishing a credible fear or reasonable fear of persecution or torture. DHS proposed that the criminal provisions and the failure to file the asylum application within 1 year of last entry would apply to initial and renewal EAD applications pending on the date the final rule is published. In order to implement the criminal ineligibility provision, DHS proposed to require applicants with a pending initial or renewal (c)(8) EAD on the effective date of this rule to appear at an ASC for biometrics collection but DHS would not collect the biometrics services fee from these aliens. DHS indicated it would provide notice of the place, date and time of the biometrics appointment to applicants with pending (c)(8) EAD application. DHS also proposed that, if applicable, initial (c)(8) EAD applications filed before the effective date of the final rule by members of the *Rosario* class would not be affected by this proposed rule. DHS proposed to allow aliens with pending asylum applications that have not yet been adjudicated and who already have received employment authorization before the final rule's effective date to retain their (c)(8) employment authorization until the expiration date on their EAD, unless the employment authorization is terminated or revoked on the grounds noted in the regulations that existed before the effective date of the proposed rule. DHS proposed to allow aliens who have already received employment authorization before the final rule's effective date under the (c)(11) eligibility category based on parole/credible fear to retain that employment authorization until their EAD expired, unless the employment authorization was terminated or revoked on the grounds noted in the regulations that existed before the effective date of the proposed rule. DHS also noted that the proposed rule would not impact the adjudication of applications to replace lost, stolen, or damaged (c)(8) or (c)(11) EADs.

C. Summary of Changes in the Final Rule

Following careful consideration of public comments, DHS has made some changes to the regulatory text proposed in the NPRM.[8] As discussed in detail elsewhere in this preamble, the changes in this final rule include the following:

1. Effective Date

In the NPRM, DHS proposed to apply the one-year filing deadline and criminal provisions to (c)(8) EAD applications pending on the effective date of the final rule. In light of the comments and concerns about the retroactive application of these provisions to applications pending prior to the effective date of this final rule, DHS has determined that it will not

[8] *Asylum Application, Interview, and Employment Authorization for Applicants,* 84 FR 62374 (proposed Nov. 14, 2019).

apply any provisions of this rule to applications for employment authorization under 8 CFR 274a.12(c)(8) and (c)(11) that are pending on the final rule's effective date. Except as noted below, the provisions of this rule will apply only to applications for employment authorization based on pending asylum applications ((c)(8) initial and renewal applications) and applications for employment applications based on parole ((c)(11) initial and renewal applications) that are postmarked (or if applicable, electronically submitted) on or after the effective date; EAD applications that were postmarked before the effective date of this final rule, accepted as properly filed by USCIS pursuant to 8 CFR 103.2(a)(1) and (a)(2), and are deemed pending on the effective date of this final rule, will be adjudicated under the respective prior regulations. As the criminal provisions will not be applied to aliens with initial and renewal EAD applications under (c)(8) or (11) that are pending on the effective date of this final rule as initially proposed, DHS will not require these aliens to appear for biometrics collection associated with their pending EAD applications. This amendment is reflected by the deletion of proposed 208.7(a)(1)(iv).

DHS will only apply the termination provisions to aliens who filed their applications for employment authorization (initial and renewal) on or after the effective date of this final rule, regardless of whether their asylum application was filed before or after the effective date of the final rule. DHS will only apply the illegal entry bar to eligibility for employment authorization to aliens who entered or attempted to enter the United States at a place and time other than lawfully through a U.S. port of entry on or after the effective date of this final rule. This change is reflected in 208.7(a)(1)(iii)(G).

DHS will only apply the one-year filing deadline provision to aliens who filed their asylum application on or after the effective date of this rule. This change is reflected in 208.7(a)(1)(iii)(F). DHS will only apply the criminal bars for particularly serious crimes and serious non-political crimes where the conviction or offense triggering the bar occurred on or after the effective date of the rule. DHS will apply the aggravated felony bar to any conviction regardless of the conviction date. These changes are reflected in 208.7(a)(1)(iii)(A)–(C).

2. Illegal Entry

DHS proposed to exclude from (c)(8) EAD eligibility any alien who entered or attempted to enter the United States at a place and time other than lawfully through a U.S. port of entry, with the limited exception of when an alien demonstrates that he or she: (1) Presented himself or herself without delay to the Secretary of Homeland Security (or his or her delegate); (2) indicated to a DHS agent or officer an intent to apply for asylum or expressed a fear of persecution or torture; and (3) otherwise had good cause for the illegal entry or attempted entry. In the final rule, DHS is clarifying that to meet the first prong of this three-part exception, the alien must present himself or herself without delay, but no later than 48 hours after the entry or attempted entry, to the Secretary or his or her delegate.

3. One-Year Filing Deadline

DHS is emphasizing the importance of the statutory one-year filing in this final rule by providing that aliens who fail to file their asylum applications within 1 year of their arrival into the United States will be ineligible for a (c)(8) EAD while their asylum application is pending until an asylum officer or an IJ has determined that the alien meets an exception under INA section 208(a)(2)(D), 8 U.S.C. 1158(a)(2)(D). However, DHS is making a clarifying amendment to 8 CFR 208.7(a)(1)(iii)(F) to replace the word ''beyond'' with ''after'' to more clearly indicate that aliens are not eligible for a (c)(8) EAD if the alien filed his or her asylum application *after* the statutory one-year filing deadline. DHS is also amending 8 CFR 208.7(a)(1)(iii)(F) to clarify that the one-year filing requirement does not apply if the alien was a UAC on the date their asylum application was filed. For additional discussion, see section IV. Discussion of the Final Rule, ¶ B. One-Year Filing Deadline.

4. Criminal Bars to Eligibility

In the NPRM, DHS proposed to exclude from eligibility for employment authorization aliens who have: (1) Been convicted of any aggravated felony as defined under section 101(a)(43) of the INA, 8 U.S.C. 1101(a)(43); (2) been convicted of any felony in the United States or serious non-political crime outside the United States; or (3) been convicted in the United States of certain public safety offenses involving domestic violence or assault; child abuse or neglect; possession or distribution of controlled substances; or driving or operating a motor vehicle under the influence of alcohol or drugs, regardless of how the offense is classified by the state or local jurisdiction. DHS proposed that it would consider, on a case-by-case basis, whether aliens who have been convicted of any non-political foreign criminal offense, or have unresolved arrests or pending charges for any non-political foreign criminal offenses, warrant a favorable exercise of discretion. DHS requested public comment on whether these and additional crimes should be included as bars to employment authorization.

DHS carefully considered the public comments received, including those suggesting that bars to (c)(8) EAD eligibility should align with bars to asylum. DHS disagrees that (c)(8) EAD bars *must* align with asylum bars. DHS recognizes that DOJ and DHS have proposed a separate joint rule enumerating similar criminal bars to asylum, and has chosen to adopt the bars in that rule, if finalized, based on the similarity to offenses initially proposed in this rulemaking and the similar impact of protecting public safety by preventing aliens with significant criminal histories from obtaining a discretionary benefit.[9] The bars proposed in the DOJ–DHS joint NPRM will replace the public safety offenses and arrests DHS initially proposed in this rulemaking. DHS also revised the bar relating to serious non-political crimes committed outside the United States to align with the statutory bar to asylum and to reflect that a serious non-political crime does not require a conviction.[10] These changes are reflected at 208.7(a)(1)(iii)(B)-(D). For additional discussion, see section IV. Discussion of the Final Rule, ¶ C. Criminal Bars to Eligibility.

5. Applicant-Caused Delays

In the NPRM, DHS proposed that any delay in the asylum adjudication requested or caused by the applicant that was outstanding or had not been remedied by the time USCIS adjudicates the alien's (c)(8) EAD application would result in denial of the EAD application. DHS has considered whether the alien would have sufficient notice of the EAD adjudication date, which USCIS proposed to use to determine EAD eligibility, and determined that the alien would have little control over the date of adjudication. Therefore, in this final rule, DHS has amended the provision to provide that any delay requested or caused by the applicant that is

[9] *See* Proposed rule: *Procedures for Asylum and Bars to Asylum Eligibility,* 84 FR 69640 (Dec. 19, 2019). By reference to 8 CFR 208.13(c), DHS does not intend that these criminal bars incorporate INA 208(b)(2)(A)(1)(i), (iv), or (v) (as referenced via 8 CFR 208.13(c)(1)), or 8 CFR 208.13(c)(2)(C), (E), or (F).

[10] An alien is barred from asylum if there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside of the United States. *See* INA section 208(b)(2)(A)(iii) of the INA, 8 U.S.C. 1158(b)(2)(A)(iii).

outstanding or has not been remedied at the time the initial (c)(8) EAD application is *filed* will result in the denial of the EAD application. Unlike the date of adjudication, the alien has control over the date of filing. DHS is making this change in response to public comments proposing that DHS consider alternative ways to protect due process and gain efficiencies in the adjudication of the asylum application DHS believes this modification will provide the applicant with certainty of their eligibility requirements under the applicant-caused delay provision of the rule, while disincentivizing applicants from prolonging the adjudication of their asylum application.

Further, DHS provided examples of what may constitute an applicant-caused delay in the NPRM but did not clearly indicate whether applicant-caused delays would affect applications for initial (c)(8) EADs or renewal EADs or both. DHS is clarifying that applicant-caused delays only apply to initial applications for (c)(8) EADs by adding the word ''initial'' to 8 CFR 208.7(a)(1)(iv).

D. Summary of Costs, Benefits, and Transfer Payments

This rule amends the (c)(8) EAD process by extending the period that an asylum applicant must wait in order to be employment authorized, and by disincentivizing asylum applicants from causing delays in the adjudication of their asylum applications. DHS has considered that some asylum applicants may seek unauthorized employment without possessing a valid employment authorization document, but does not believe this should preclude the Department from making procedural adjustments to how aliens gain access to employment authorization based on a pending asylum application. The provisions herein seek to reduce the incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications primarily to obtain employment authorization and remain for years in the United States for economic purposes, and to disincentivize criminal behavior and illegal entry into the United States.

The quantified maximum population this rule will apply to is about 290,000 annually. DHS assessed the potential impacts from this rule overall, as well as the individual provisions, and provided quantitative estimates of such impacts where possible and relevant. For the provisions involving biometrics and the removal of recommended approvals, the quantified analysis covers the entire population. For the change to a 365-day waiting period to file an EAD, the quantified analysis also covers the entire population; however, DHS relies on historical data to estimate the costs for affirmative cases and certain assumptions to provide a maximum potential estimate for the remaining affected population. For the provisions that will potentially end some EADs early, DHS estimated only the portion of the costs attributable to affirmative cases because DHS has no information available to estimate the number of defensively-filed cases.

DHS provides a qualitative analysis of the provisions to terminate EADs earlier for asylum cases denied/dismissed by an IJ, to remove employment eligibility for asylum applicants under the (c)(11) category, and to bar employment authorization for asylum applicants with certain criminal history, who did not enter at a U.S. port of entry, or who, with certain exceptions, did not file for asylum within one year of their last arrival to the United States. As described in more detail in the unquantified impacts section, DHS does not have the data necessary to quantify and monetize the impacts of these provisions.

To take into consideration uncertainty and variation in the wages that EAD holders earn, all of the monetized costs rely on a lower and upper bound, benchmarked to a ''prevailing'' minimum wage and a national average wage, which generates a range. Specific costs related to the provisions are summarized in Table 1. For the provisions in which impacts could be monetized, the single midpoint figure for the range capturing a low and high wage rate is presented.[11]

TABLE 1—SUMMARY OF COSTS AND TRANSFERS

Provision summary	Annual costs and transfers (mid-point)
I. Quantified:	
365-day EAD filing wait period (for DHS affirmative asylum cases and partial estimates for DHS referrals to DOJ).	1. Population: 39,000. 2. Cost: $542.7 million (quantified impacts for 39,000 of the 153,381 total population). 3. Reduction in employment tax transfers: $83.2 million (quantified impacts for 39,000 of the 153,381). 4. Cost basis: Annualized equivalence cost. 5. Summary: Lost compensation for a portion of DHS affirmative asylum cases who will have to wait longer to earn wages under the rule; nets out cost-savings for aliens who will no longer file under the rule; includes partial estimate of DHS referral cases to DOJ–EOIR. It does not include impacts for defensively-filed cases. DHS emphasizes that the costs of the rule in terms of lost or deferred labor readings will potentially depend on the extent of surplus labor in the labor market. In the current environment with COVID–19-related layoffs and unemployment, there is the potential that the impacts will be mainly transfers and less in terms of costs.
365-day EAD filing wait period (for the residual population).	1. Population: 114,381. 2. Cost: $2.39 billion (quantified impacts for the remaining 114,381 of the 153,381 total population). 3. Reduction in employment tax transfers: $366.2 million (quantified impacts for the remaining 114,381 of the 153,381). 4. Cost basis: Annualized equivalence cost.

[11] The populations reported in Table 1 reflect the maximum population that could be covered by each provision. Some of the populations that would incur monetized impacts are slightly different due to technical adjustments. DHS notes that the maximum population is smaller than that in the NPRM baseline because, in this final rule, DHS will not apply any provisions of this rule to applications for employment authorization based on pending asylum applications ((c)(8)) or pending EAD applications based on parole ((c)(11)) that are pending before or on the effective date of this final rule. In the NPRM, the pending pool was 14,451 at the time the data was obtained. The pending population at any point in time can vary due to many factors. In the NPRM, the pending population was not slated to pay the biometric services fee, hence the difference in cost in this final rule only accrues to the time and travel-related costs of submitting biometrics. Based on an estimated 12,805 persons in the pending pool who would submit biometrics under the original proposal, the difference in cost for the rule in the first year the rule will take effect at the low and upper wage bounds are $921,389 and $2,078,200, respectively. DHS also removed qualitative cost discussion for pending EAD applicants who would not be subject to the criteria proposed in the NPRM.

TABLE 1—SUMMARY OF COSTS AND TRANSFERS—Continued

Provision summary	Annual costs and transfers (mid-point)
	5. Summary: Lost compensation for the population of approved annual EADs for which DHS does not have data to make a precise cost estimate. The costs reported are a maximum because the potential impact is based on the maximum impact of 151 days; in reality there will be lower-cost segments to this population and filing-cost savings as well.
Biometrics requirement	1. Population for initial and renewal EADs: 290,094. 2. Cost: $36.3 million. 3. Reduction in employment tax transfers: None. 4. Cost basis: Annualized equivalence cost. 5. Summary: For initial and renewal EADs, there will be time-related opportunity costs plus travel costs of submitting biometrics, as well as $85 fee for (c)(8) I–765 initial and renewal populations subject to the biometrics and fee requirements. A small filing time burden to answer additional questions and read associated form instructions in the I–765 is consolidated in this provision's costs.
Eliminate recommended approvals	1. Population: 1,930 annual. 2. Cost: $13.9 million. 3. Reduction in employment tax transfers: $2.13 million. 4. Cost basis: Annualized equivalence cost. 5. Summary: Delayed earnings and tax transfers that would have been earned for an average of 52 calendar days earlier with a recommended approval.
Terminate EADs if asylum application denied/dismissed (DHS).	1. Population: 575 (current and future). 2. Cost: $31.8 million. 3. Reduction in employment tax transfers: $4.9 million. 4. Cost basis: Maximum costs of the provision, which would apply to the first year the rule takes effect. 5. Summary: Forgone earnings and tax transfers from ending EADs early for denied/dismissed DHS affirmative asylum applications. This change will affect EADs that are currently valid and EADs for affirmative asylum applications in the future that will not be approved. DHS acknowledges that as a result of this change, businesses that have hired such workers will incur labor turnover costs earlier than without this rule.
II. Unquantified:	
Clarify employment eligibility under (c)(11) category for I–765.	a. Population: 13,000. b. Cost: Delayed/forgone earnings. c. Cost basis: N/A. d. Summary: DHS does not know how many of the actual population will apply for an EAD via the (c)(8) I–765, but the population would be zero at a minimum and 13,000 at a maximum, with a mid-point of 6,500. The population would possibly incur delayed earnings and tax transfers by being subject to the 365-day EAD waiting period (it is noted that this population would also incur costs under the biometrics provision, above), or lost earnings if they do not apply for a (c)(8) EAD.
Criminal activity/illegal entry bar	DHS is unable to estimate the number of aliens impacted that will no longer be eligible to receive an EAD while their asylum applications are being adjudicated. Impacts would involve forgone earnings and potentially lost taxes.
One-year filing deadline	Some portion of the 8,326 annual filing bar referrals will no longer be eligible to receive an EAD while their asylum applicants are being adjudicated. Impacts would comprise deferred/delayed or forgone earning and potentially lost taxes. DHS does not have data on filing bar cases referred to DOJ–EOIR.
Terminate EADs if asylum application denied/dismissed (DOJ–EOIR).	DOJ–EOIR has denied an average of almost 15,000 asylum cases annually; however, DHS does not have data on the number of such cases that have an EAD and are employed. Costs would involve forgone earnings and tax transfers for any such EADs that would be terminated earlier than they otherwise would, as well as forgone future earnings and tax transfers. DHS acknowledges that as a result of this change businesses that have hired such workers will incur labor turnover costs earlier than without this rule. Businesses unable to replace these workers will also incur productivity losses.

For those provisions that affect the time an asylum applicant is employed, the impacts of this rule would include both distributional effects (which are transfers) and costs.[12] The transfers would fall on the asylum applicants who would be delayed in entering the U.S. labor force or who would leave the labor force earlier than under current regulations. The transfers would be in the form of lost compensation (wages and benefits). A portion of this lost compensation might be transferred from asylum applicants to others who are currently in the U.S. labor force or eligible to work lawfully, possibly in the form of additional work hours or the direct and indirect added costs associated with overtime pay. A portion of the effects of this rule would also be borne by companies that would have hired the asylum applicants had they been in the labor market earlier or who would have continued to employ asylum applicants had they been in the labor market longer, but were unable to find available replacement labor. These companies will incur a cost, as they will be losing the productivity and potential profits the asylum applicant would have provided. Companies may also incur opportunity costs by having to choose the next best alternative to the immediate labor the asylum applicant would have provided and by having to

[12] Transfer payments are monetary payments from one group to another that do not affect total resources available to society. *See* OMB Circular A–4 pages 14 and 38 for further discussion of transfer payments and distributional effects. Circular A–4 is available at: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

pay workers to work overtime hours. DHS does not know what this next best alternative may be for those companies. As a result, DHS does not know the portion of overall effects of this rule that are transfers or costs, but estimates the maximum monetized impact of this rule in terms of delayed/lost labor compensation. If all companies are able to easily find reasonable labor substitutes for the positions the asylum applicant would have filled, they will bear little or no costs, so $4.459 billion (annualized at 7 percent) will be transferred from asylum applicants to workers currently in the labor force or induced back into the labor force (we assume no tax losses as a labor substitute was found). Conversely, if companies are unable to find reasonable labor substitutes for the position the asylum applicant would have filled then $4.459 billion is the estimated maximum monetized cost of the rule, and $0 is the estimated minimum in monetized transfers from asylum applicants to other workers. In addition, under this scenario, because the jobs would go unfilled there would be a loss of taxes. DHS estimates $682.5 million as the maximum decrease in employment tax transfers from companies and employees to the Federal Government.

Because the biometrics requirement implemented in this rule is a cost to applicants and not a transfer, its minimum annual value of $27.08 million is the minimum cost of the rule. The range of impacts described by these two scenarios, plus the consideration of the biometrics costs, are summarized in Table 2 below (Table 2A and 2B capture the impacts a 3 and 7 percent rates of discount, respectively).

The two scenarios described above represent the estimated endpoints for the range of monetized impacts resulting from the provisions that affect the amount of time an asylum applicant is employed. However, DHS is aware that the outbreak of COVID–19 will likely impact these estimates in the short run.[13] As discussed above, the analysis presents a range of impacts, depending on if companies are able to find replacement labor for the jobs asylum applicants would have filled. In April 2020, the unemployment rate increased by 10.3 percentage points to 14.7 percent.[14] This marks the highest rate and the largest over-the-month increase in the history of the series (seasonally adjusted data are available back to January 1948). By comparison, the unemployment rate for the same month in 2019 was 3.6%.[15] DHS assumes that during the COVID–19 pandemic, with additional available labor nationally, companies are more likely to find replacement labor for the job the asylum applicant would have filled.[16] Thus, in the short-run during the pandemic and the ensuing economic recovery, the lost compensation to asylum applicants as a result of this rule is more likely to take the form of transfer payments from asylum applicants to other available labor, than it is to be costs to companies for lost productivity because they were unable to find replacement labor. DHS notes that although the pandemic is widespread, the severity of its impacts varies by locality, and there may be structural impediments to the national and local labor market. Consequently, it is not clear to what extent the distribution of asylum applicants overlaps with areas of the country that will be more or less impacted by the COVID–19 pandemic. Accordingly, DHS cannot estimate with confidence to what extent the impacts will be transfers instead of costs.

DHS's assumption that all asylum applicants with an EAD are able to obtain employment (discussed in further detail later in the analysis), also does not reflect impacts from the COVID–19 pandemic. It is not clear what level of reductions the pandemic will have on the ability of EAD holders to find jobs (as jobs are less available), or how DHS would estimate such an impact with any precision given available data. Consequently, the ranges projected in this analysis regarding lost compensation are expected to be an overestimate, especially in the short-run.

TABLE 2A—SUMMARY OF RANGE OF MONETIZED ANNUALIZED IMPACTS AT 3%

[$ millions]

Category	Description	Scenario: No replacement labor found for asylum applicants		Scenario: All asylum applicants replaced with other workers		Primary (average of the highest high and the lowest low, for each row)
		Low wage	High wage	Low wage	High wage	
Transfers:						
Transfers—Compensation.	Compensation transferred from asylum applicants to other workers (provisions: 365-day wait + end EADs early + end recommended approvals).	$0.0	$0.0	$1,473.2	$4,459.0	$2,229.5
Transfers—Taxes	Lost employment taxes paid to the Federal Government (provisions: 365-day wait + end EADs early + end recommended approvals).	225.5	682.4	0.0	0.0	341.2
Costs:						
Cost Subtotal—Biometrics.	Biometrics Requirements	27.1	45.5	27.1	45.5	36.35
Cost Subtotal—Lost Productivity.	Lost compensation used as proxy for lost productivity to companies (provisions: 365-day wait + end EADs early + end recommended approvals).	1,473.2	4,459.0	0.0	0.0	2,229.5

[13] On March 13, 2020, the President declared that the COVID–19 outbreak in the United States constitutes a national emergency. See 'Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak,'' available at *https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.*

[14] Department of Labor, Bureau of Labor Statistics, The Employment Situation—April 2020. Available at: *https://www.bls.gov/news.release/archives/empsit_05082020.pdf.*

[15] Department of Labor, Bureau of Labor Statistics, The Employment Situation—April 2020, Employment Situation Summary Table A. Household data, seasonally adjusted. Available at: *https://www.bls.gov/news.release/archives/empsit_05082020.pdf.*

[16] The Congressional Budget Office estimates the unemployment rate is expected to average close to 14 percent during the second quarter, See: CBO's Current Projections of Output, Employment, and Interest Rates and a Preliminary Look at Federal Deficits for 2020 and 2021, *https://www.cbo.gov/publication/56335,* April 24, 2020.

TABLE 2A—SUMMARY OF RANGE OF MONETIZED ANNUALIZED IMPACTS AT 3%—Continued
[$ millions]

Category	Description	Scenario: No replacement labor found for asylum applicants		Scenario: All asylum applicants replaced with other workers		Primary (average of the highest high and the lowest low, for each row)
		Low wage	High wage	Low wage	High wage	
Total Costs	.....	1,500.2	4,504.5	27.1	45.5	2,265.8

TABLE 2B—SUMMARY OF RANGE OF MONETIZED ANNUALIZED IMPACTS AT 7%
[$ millions]

Category	Description	Scenario: No replacement labor found for asylum applicants		Scenario: All asylum applicants replaced with other workers		Primary (average of the highest high and the lowest low, for each row)
		Low wage	High wage	Low wage	High wage	
Transfers:						
Transfers—Compensation.	Compensation transferred from asylum applicants to other workers (provisions: 365-day wait + end EADs early + end recommended approvals).	$0.00	$0.00	$1,473.3	$4,459.5	$2,229.7
Transfers—Taxes	Lost employment taxes paid to the Federal Government (provisions: 365-day wait + end EADs early + end recommended approvals).	225.5	682.5	0	0	341.2
Costs:						
Cost Subtotal—Biometrics.	Biometrics Requirements	27.1	45.5	27.1	45.5	36.3
Cost Subtotal—Lost Productivity.	Lost compensation used as proxy for lost productivity to companies (provisions: 365-day wait + end EADs early + end recommended approvals).	1,473.3	4,459.5	0.0	0.0	2,229.7
Total Costs	.....	1,500.4	4,505.0	27.1	45.5	2,266.1

As required by Office of Management and Budget (OMB) Circular A–4, Table 3 presents the prepared A–4 accounting statement showing the impacts associated with this regulation:

TABLE 3—OMB A–4 ACCOUNTING STATEMENT
[$ millions, 2019]
[Period of analysis: 2020–2029]

Category	Primary estimate		Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
Benefits:					
Monetized Benefits	(7%) (3%)	N/A N/A	N/A N/A	N/A N/A	RIA.
Annualized quantified, but un-monetized, benefits	N/A		N/A	N/A	RIA.
Unquantified Benefits	The benefits potentially realized by the rule are qualitative and accrue to a streamlined system for employment authorization for asylum seekers that will reduce fraud, improve overall integrity and operational efficiency, and prioritize aliens with bona fide asylum claims. These impacts stand to provide qualitative benefits to asylum seekers, the communities in which they reside and work, the U.S. Government, and society at large. The rule aligns with the Administration's goals of strengthening protections for U.S. workers in the labor market. The biometrics requirement will enhance identity verification and management.				RIA.
Costs:					
Annualized monetized costs (discount rate in parenthesis)	(7%) (3%)	$2,266.1 2,265.8	$27.08 27.08	$4,505.0 4,504.5	RIA. RIA.
Annualized quantified, but un-monetized, costs	N/A		N/A	N/A	RIA.

TABLE 3—OMB A–4 ACCOUNTING STATEMENT—Continued

[$ millions, 2019]

[Period of analysis: 2020–2029]

Category					
Qualitative (unquantified) costs	In cases where companies cannot find reasonable substitutes for the labor the asylum applicants would have provided, affected companies would also lose profits from the lost productivity. In all cases, companies would incur opportunity costs by having to choose the next best alternative to immediately filling the job the pending asylum applicant would have filled. There may be additional opportunity costs to employers such as search costs. Estimates of costs that will involve DOJ–EOIR defensively-filed asylum applications and DHS-referrals could not be made due to lack of data. Potential costs would involve delayed/deferred or forgone earnings.				RIA.
	There would also be delayed or forgone labor income for EAD applicants impacted by the criminal and 1-year filing provisions, renewal applicants, transfers from the (c)(11) group, and filing bar cases, all of whom would be subject to some of the criteria being implemented in this rule. In addition, such impacts could also affect those who would be eligible currently for an EAD, or have such eligibility terminated earlier, but would be ineligible for an EAD under the rule.				
	Delaying and/or eliminating employment authorization eligibility would have a negative impact on asylum seekers' welfare. The removal or delay of some workers regarding employment could have an adverse effect in terms of their health insurance.				
Transfers:					
Annualized monetized transfers: ''on budget''	(7%) (3%)	0 0	0 0	0 0	RIA.
From whom to whom?	N/A				N/A.
Annualized monetized transfers: Compensation	(7%) (3%)	2,229.7 2,229.5	0.00 0.00	4,459.5 4,459.0	RIA.
From whom to whom?	Compensation transferred from asylum applicants to other workers (provisions: 365-day wait + end EADs early + end recommended approvals). Some of the deferred or forgone earnings could be transferred from asylum applicants to workers in the U.S. labor force or induced into the U.S. labor force. Additional distributional impacts from asylum applicant to the asylum applicant's support network that provides for the asylum applicant while awaiting an EAD; these could involve burdens to asylum applicants' personal private or familial support system, but could also involve public, private, or charitable benefits-granting agencies and non-governmental organizations (NGOs).				RIA.
Annualized monetized transfers: Taxes	(7%) (3%)	341.2 341.2	0.00 0.00	682.5 682.4	RIA.
From whom to whom?	A reduction in employment taxes from companies and employees to the Federal Government. There could also be a transfer of Federal, state, and local income tax revenue (provisions: 365-day wait + end EADs early + end recommended approvals) that are not quantified.				

Category	Effects	Source citation (RIA, preamble, etc.)
Effects on state, local, and/or tribal governments	DHS does not know how many workers will be removed from the labor force due to this rule. There may also be a reduction in state and local tax revenue, including state, and local income tax revenue. Budgets and assistance networks that provide benefits to asylum seekers could be impacted negatively if asylum applicants request additional support.	RIA.
Effects on small businesses	This rule does not directly regulate small entities, but has indirect costs on small entities. DHS acknowledges that ending EADs linked to denied DHS affirmative asylum claims and EADs linked to denied asylum cases under DOJ–EOIR purview will result in businesses that have hired such workers incurring labor turnover costs earlier than without this rule. Such small businesses may also incur costs related to a difficulty in finding workers that may not have occurred without this rule.	RFA.
Effects on wages	None	RIA.

Category	Effects	Source citation (RIA, preamble, etc.)
Effects on growth	None	RIA.

As will be explained in greater detail later, the benefits potentially realized by the rule are qualitative. This rule will reduce the incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications intended primarily to obtain employment authorization or other forms of non-asylum-based relief from removal, thereby allowing aliens with bona fide asylum claims to be prioritized. A streamlined system for employment authorization for asylum seekers will reduce fraud and improve overall integrity and operational efficiency. DHS also believes these administrative reforms will encourage aliens to follow lawful processes to immigrate to the United States.[17] These effects stand to provide qualitative benefits to asylum seekers, communities where they live and work, the U.S. government, and society at large.

The rule also aligns with the Administration's goals of strengthening protections for U.S. workers in the labor market. Several employment-based visa programs require U.S. employers to test the labor market, comply with recruiting standards, agree to pay a certain wage level, and agree to comply with standards for working conditions before they can hire an alien to fill the position. These protections do not exist in the (c)(8) EAD process. While this rule will not implement labor market tests for the (c)(8) EAD process, it will put in place mechanisms to reduce fraud and deter those without bona fide claims for asylum from filing applications for asylum primarily to obtain employment authorization or other, non-asylum-based forms of relief from removal. DHS believes these mechanisms will protect U.S. workers.

The biometrics requirement will provide a benefit to the U.S. government by enabling DHS to know with greater certainty the identity of aliens requesting EADs in connection with an asylum application. The biometrics requirement also will allow DHS to conduct criminal history background checks to confirm the absence of a disqualifying criminal offense, to vet the applicant's biometrics against government databases (for example, FBI databases) to determine if he or she matched any criminal activity on file, to verify the applicant's identity, and to facilitate card production.

Along with the changes summarized above and discussed in detail in the preamble and regulatory impact sections of this rule, DHS will modify and clarify existing regulations dealing with technical and procedural aspects of the asylum interview process, USCIS authority regarding asylum, applicant-caused delays in the process, and the validity period for EADs. DHS discusses these provisions in the unquantified impacts section of the analysis.

II. Purpose of This Rule

On April 29, 2019, the White House issued a Presidential Memorandum (PM) entitled, ''Presidential Memorandum on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System.'' [18] The White House, referencing the President's earlier Proclamations, noted that ''our immigration and asylum system is in crisis as a consequence of the mass migration of aliens across our southern border'' and that the ''emergency continues to grow increasingly severe. In March, more than 100,000 inadmissible aliens were encountered seeking entry into the United States. Many aliens travel in large caravans or other large organized groups, and many travel with children. The extensive resources required to process and care for these individuals pulls U.S. Customs and Border Protection (CBP) personnel away from securing our Nation's borders. Additionally, illicit organizations benefit financially by smuggling aliens into the United States and encouraging abuse of our asylum procedures. This strategic exploitation of our Nation's humanitarian programs undermines our Nation's security and sovereignty. The purpose of this memorandum is to strengthen asylum procedures to safeguard our system against rampant abuse of our asylum process.'' [19]

The PM directs the Secretary of Homeland Security to propose regulations to bar aliens who have entered or attempted to enter the United States unlawfully from receiving employment authorization prior to being approved for relief and to immediately revoke the employment authorization of aliens who are denied asylum or become subject to a final order of removal.

Through this rule, DHS is addressing, in part, the national emergency and humanitarian crisis at the border [20] by (1) reducing incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications intended primarily to obtain employment authorization, or other forms of non-asylum based relief, and remain for years in the United States due to the backlog of asylum cases, and (2) disincentivizing illegal entry into the United States by providing that, on or after August 25, 2020, any alien who enters or attempts to enter the United States at a place and time other than lawfully through a U.S. port of entry will be ineligible to receive a (c)(8) EAD, with limited exceptions. DHS is also making administrative reforms that will ease some of the administrative burdens USCIS faces in accepting and adjudicating applications for asylum and related employment authorization.

As explained more fully below, DHS believes these reforms will help mitigate the crisis that our immigration and asylum systems are facing as a consequence of the mass migration of inadmissible aliens across our southern border,[21] and improve the current asylum backlog, helping to clear the way for meritorious asylum applications to be received, processed, and adjudicated more quickly. This will give bona fide asylum seekers the certainty they deserve but are currently deprived of because of the flood of frivolous, fraudulent, or otherwise non-meritorious asylum claims clogging the system. The extensive resources required to process and care for these aliens pulls personnel away from processing bona fide asylum claims and securing our Nation's borders. Additionally, illicit organizations benefit financially by smuggling aliens into the United States and encouraging abuse of our asylum procedures. This strategic exploitation of our Nation's

[17] The rule may also provide less incentive for those pursuing unauthorized employment in the United States to use the asylum application process to move into authorized employment status.

[18] Presidential Memorandum on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System, 2019 Daily Comp. Pres. Doc. 251 (Apr. 29, 2019).

[19] *Id.*

[20] Proclamation 9844, Declaring a National Emergency Concerning the Southern Border of the United States, 2019 2019 Daily Comp. Pres. Doc. 80 (Feb. 15, 2019).

[21] *https://www.whitehouse.gov/presidential-actions/presidential-memorandum-additional-measures-enhance-border-security-restore-integrity-immigration-system/.*

humanitarian programs undermines our Nation's security and sovereignty.[22] These interests, when weighed against any reliance interest on behalf of impacted aliens, are greater, particularly because of the large increase in number of those seeking asylum at the border, which is operationally unsustainable for DHS long term.

It is the policy of the Executive Branch to manage humanitarian immigration programs in a safe, orderly manner that provides access to relief or protection from removal from the United States for aliens who qualify for such relief or protection, and that promptly denies benefits to and facilitates the removal of those who do not.[23] This rulemaking is part of a series of reforms DHS is undertaking, in coordination with DOJ–EOIR, to improve and streamline the asylum system, so that those with bona fide asylum claims can have their claims decided quickly and, if granted, extended the protections that the United States has offered for over a century, including employment authorization, to aliens legitimately seeking refuge from persecution.

A. Efforts to Reform the Asylum System

The Refugee Act of 1980, Public Law 96–212, 94 Stat. 102, was the first comprehensive legislation to establish the modern refugee and asylum system.[24] Congress passed the Refugee Act mainly to replace the ad hoc process that existed at the time for admitting refugees and to provide a more uniform refugee and asylum process.[25] The focus of the Refugee Act was reforming the overseas refugee program. The Refugee Act did not explicitly address how the United States should reform the asylum process or handle sudden influxes of asylum seekers, such as subsequently occurred with the Mariel boatlift—a mass influx of Cuban citizens and nationals, many of whom had criminal histories, to the United States in 1980.[26] Congress also provided that any alien who had applied for asylum before November 1, 1979, had not been granted asylum, and did not have a final order of deportation or exclusion, could obtain employment authorization.[27]

In 1980, the then-INS issued an interim regulation implementing the asylum provisions of the Refugee Act.[28] This regulation provided that an INS district director could authorize an applicant for asylum to work, in 6 month increments, if the alien had filed a non-frivolous application for asylum.[29] The regulation did not define what constituted a ''frivolous'' filing. The regulation also excluded, without explanation, the limitation on the size of the class of aliens who could qualify for employment authorization (in other words, only aliens who had applied for asylum before November 1, 1979, but had not been granted asylum, and did not have a final order of deportation or exclusion). As a result of the regulation, the class of aliens who could seek employment authorization based on an asylum application was interpreted to include past and future asylum seekers.

Congress, however, did not provide adequate resources or enact legislation that would address the ''pull'' factors that led to significant increases in illegal immigration and in asylum filings following enactment of the Refugee Act.[30] In addition, the publication of two INS regulations—the 1986 implementing regulations for the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603 (Nov. 6, 1986)[31] and the 1990 asylum regulations—further incentivized illegal immigration and the filing of non-meritorious asylum claims or other forms of relief because of the ease with which aliens could obtain employment authorization, regardless of the basis for the application for employment authorization.[32] In the implementing regulations for IRCA, INS provided that aliens could receive an interim EAD if INS did not adjudicate the application for employment authorization within 60 days (former 8 CFR 274a.12(c) and (d)).[33] The IRCA regulations also required asylum officers to give employment authorization, in 1-year increments, to any alien who had filed a non-frivolous[34] asylum application. In the 1990 asylum regulation, INS also mandated that asylum officers give interim EADs to any alien who had filed a non-frivolous asylum application, and that asylum officers continue to renew employment authorization for the time needed to adjudicate the asylum application (former 8 CFR 208.7(a)).[35]

While IRCA's creation of the employer verification system and employer sanctions was designed to reduce the ''pull'' factor created by the availability of higher paying jobs in the United States, the ability to get interim employment authorization within 90 days, regardless of the basis for requesting employment authorization in the first instance, had the exact opposite effect.[36] In addition, because the agency already had a backlog for adjudicating asylum applications, it was unlikely any asylum application would be adjudicated within a 90-day timeframe, which virtually guaranteed that most asylum applicants would be eligible for interim employment authorization.[37]

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[22] *Id.*

[23] *Id.*

[24] Congress added the definition of refugee under section 101(a)(42) of the Act, 8 U.S.C. 1101(a)(42), based on the 1967 United Nations (U.N.) Protocol relating to the Status of Refugees, 19 U.S.T. 6223, TIAS No. 6577, 606 U.N.T.S. 267 (1967), which the United States ratified in November of 1968. The Refugee Act also made withholding of removal mandatory, authorized adjustment of status for asylees and refugees, expanded the funding available for domestic refugee assistance services, and barred eligibility for asylum for aliens who were convicted of a serious crime, firmly resettled, persecutors, or a danger to the security of the United States.

[25] *See* Public Law 96–212, 94 Stat. 102, § 101(b) and S. Rep. 96–256 (July 23, 1979), at pp. 141–143. Earlier treatment of refugees came from the Displaced Persons Act of 1948, 62 Stat. 1009 (as amended), the Refugee Relief Act of 1953, 67 Stat. 400, and the Refugee-Escapee Act of 1957, 71 Stat. 643.

[26] *See, e.g., Immigration Reform and Control Act of 1982: Joint Hearing on H.R. 5872 and S. 2222 Before the Subcommittee on Immigration, Refugees, and International Law, Committee on the Judiciary, House of Representatives, and Subcommittee on Immigration and Refugee Policy, Committee on the Judiciary,* 97th Cong. 2nd Sess, 326–328 (Apr. 1 and 20, 1982) (statement of Attorney General William French).

[27] 94 Stat. 102 at sec. 401(b) and (c).

[28] *See Aliens and Nationality; Refugee and Asylum Procedures,* 45 FR 37392 (June 2, 1980). This interim rule was not finalized until 1983. *See also Aliens and Nationality; Asylum Procedures,* 48 FR 5885–01 (Feb. 9, 1983).

[29] 45 FR at 37394 (former 8 CFR 208.4).

[30] *See, e.g.,* David A. Martin, *Making Asylum Policy: The 1994 Reforms,* 70 Wash. L. Rev. 725 (July 1995) and David A. Martin, *The 1995 Asylum Reforms*, Ctr. for Immigration Studies (May 1, 2000) for a discussion of the history and consequences of the asylum reforms in 1990s.

[31] IRCA legalized many aliens present in the United States prior to 1986, created new temporary agricultural worker programs, and mandated employment verification and employer sanctions to address the problem of U.S. employers hiring illegal aliens. One of the main reasons Congress passed IRCA was its growing concern over the large influx of aliens crossing our borders illegally, particularly on the Southwest border, to find jobs. The employer verification system and employer sanctions were designed to address this concern by reducing the ''pull'' factor created by the availability of higher paying jobs in the United States. *See, e.g.,* H.R. Rep. No. 99–682(I) at pp. 5649–5654 (July 16, 1986) (Committee explanation for the need for IRCA to control illegal immigration).

[32] *See Martin, supra* note 27, at p. 734; *see also David A. Martin, Reforming Asylum Adjudication: On Navigating the Coast of Bohemia,* 138 U. Pa. L. Rev. 1247 (May 1990) at pp. 1267–69, 1288–89, and 1373.

[33] DOJ final rule, *Control of Employment of Aliens,* 52 FR 16216–01 (May 1, 1987). The 60-day period was subsequently extended to 90-days with the publication of the final rule, *Powers and Duties of Service Officers; Availability of Service Records, Control of Employment of Aliens,* 56 FR 41767–01 (Aug. 23, 1991).

[34] DOJ INS also for the first time defined ''frivolous'' to mean ''manifestly unfounded or abusive.'' *See* former 8 CFR 208.7(a) (1991).

[35] DOJ INS final rule, *Aliens and Nationality; Asylum and Withholding of Deportation Procedures,* 55 FR 30674–01 (July 27, 1990).

[36] *See Martin, supra* note 27, at p. 733–36.

[37] In 1994, Congress passed the Violent Crime Control and Law Enforcement Act of 1994

The combined effect of the statutory employment authorization for asylum applicants, the regulations, and insufficient agency resources resulted in a greater influx of aliens, many of whom were not legitimate asylum seekers, but instead merely sought to work in the United States.[38]

In 1994, Congress passed the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA), Public Law 103–322, 108 Stat. 1796 (Sept. 13, 1994), which provided for expedited exclusion proceedings and summary deportation of aliens with failed asylum claims and provided that no applicant for asylum would be entitled to employment authorization unless the Attorney General (now Secretary of Homeland Security) determined, as a matter of discretion, that employment authorization was appropriate.[39] Congress passed these amendments mainly because the asylum system was being overwhelmed with asylum claims, including frivolous and fraudulent claims filed merely to obtain employment authorization.[40] The hope was that the expedited exclusion proceedings would reduce such claims. During consideration of the VCCLEA, DOJ also conducted a review of the asylum process and published regulations designed to reduce the asylum backlogs, eliminate procedural hurdles that lengthened the process, and deter abuses in the system.[41] For the first time, DOJ implemented a waiting period for asylum seekers—150 days—before they could apply for employment authorization, with an additional 30 days for adjudication. DOJ based the timeframe on the 180-day processing goals it had set for asylum officers and IJs to complete asylum cases at a time when the volume of cases was substantially lower than the present day level.

In 1996, Congress again amended section 208 when it passed IIRIRA.[42] Congress retained the expedited exclusion (now removal) procedures to address the influx of thousands of aliens seeking entry into the United States.[43] Congress also reformed the asylum provisions and codified some of the administrative reforms INS made when it published the 1994 asylum regulation. IIRIRA incorporated language that barred an alien not only from eligibility for asylum, but also from any other immigration benefits (such as when an alien filed a frivolous application),[44] added a 1 year deadline to file for asylum, and codified INS's regulatory prohibition on asylum seekers being granted discretionary employment authorization before a minimum of 180 days has passed from the date of filing of the asylum application.[45]

B. Need for Reform

Since IIRIRA, there have been no major statutory changes to the asylum provisions to address the immigration realities faced by the United States today. However, since 2016, the United States has experienced an unprecedented surge[46] in the number of aliens who enter the country unlawfully across the southern border. In Fiscal Year 2019, CBP apprehended over 800,000 aliens attempting to enter the United States illegally.[47] These apprehensions are more than double of those in Fiscal Year 2018.[48] If apprehended, many of these aliens claim asylum and remain in the United States for years while their claims are adjudicated. There is consistent historical evidence that approximately 20 percent or less of such claims will be successful.[49] This surge in border crossings and asylum claims has placed a significant strain on the nation's immigration system. The large influx has consumed an inordinate amount of DHS's resources, which includes surveilling, apprehending, screening, and processing the aliens who enter the country, detaining many aliens pending further proceedings, and representing the United States in immigration court proceedings. The surge has also consumed substantial resources at DOJ–EOIR, whose IJs adjudicate asylum claims. The strain also extends to the judicial system, which must handle petitions to review denials of asylum claims, many of which can take years to reach final disposition, even when the claims for asylum lack merit.

In order to maintain the very integrity of the asylum system, it is imperative that DHS take all necessary measures to create disincentives to come to the United States for aliens who do not fear persecution based on the five protected grounds of race, religion, nationality, political opinion, or membership in a particular social group, or fear torture.[50] Fleeing poverty and generalized crime in one's home country does not qualify an alien for asylum in the United States.[51]

Statistics support DHS's assertion that the vast majority of protection claims are not motivated by persecution under the five protected grounds or by torture. The historic high in affirmative asylum applications and credible fear receipts in FY 2018[52] is matched by a historic low rate of approval of affirmative asylum applications and credible fear claims in FY 2018.[53]

As noted above, it is the policy of the Executive Branch to manage our humanitarian immigration programs in

(VCCLEA), Public Law 103–322, 108 Stat. 1796 (Sept. 13, 1994). As part of its findings, Congress stated ''. . . in the last decade applications for asylum have greatly exceeded the original 5,000 annual limit provided in the Refugee Act of 1980, with more than 150,000 asylum applications filed in fiscal year 1993, and the backlog of cases growing to 340,000.'' VCCLEA, at sec. 130010(1).

[38] *See Martin, supra* note 27, at p. 733–37.

[39] *See* Public Law 103–322, 108 Stat. 1796, at sec. 130005.

[40] *See id.* at sec. 130010(1) (findings of the Senate on the need for reforms to the asylum process, including finding of a backlog of cases up to 340,000); *see also* H.R. Conf. Rep. 103–711 (Aug. 21, 1994), at pp. 241–245 and 393–394.

[41] DOJ INS final rule, *Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization,* 59 FR 62284–01 (Dec. 5. 1994).

[42] Public Law 104–208, 110 Stat. 3009.

[43] *See, e.g.,* H.R. Conf. Rep. 104–828, title III, subtitle A (1996).

[44] 8 U.S.C. 1158(d)(6) provides:

If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

[45] DHS published an interim final rule implementing IIRIRA in 1997. *See* DOJ INS, *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,* 62 FR 10312–01 (Mar. 6, 1997). DOJ published a separate final rule December 6, 2000 which finalized the provisions related to the asylum process proposed in the DOJ INS and EOIR joint rule, *New Rules Regarding Proceedings for Asylum and Withholding of Removal,* 63 FR 31945 (June 11, 1998), and in response to comments to the asylum procedures made in response to the IIRIRA interim final rule.

[46] *See* CBP Southwest Border Total Apprehensions/Inadmissibles at *https://www.cbp.gov/newsroom/stats/sw-border-migration* (last modified Mar. 12, 2020).

[47] *Id.*

[48] See CBP Enforcement Statistics at *https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics.*

[49] *See* Executive Office for Immigration Review Adjudication Statistics ''Asylum Decision Rates'' (July 2019), *https://www.justice.gov/eoir/page/file/1104861/download.*

[50] *See, e.g., https://www.wbur.org/cognoscenti/2018/08/08/why-do-migrants-flee-central-america-susan-akram, https://www.washingtonpost.com/world/national-security/hunger-not-violence-fuels-guatemalan-migration-surge-us-says/2018/09/21/65c6a546-bdb3-11e8-be70-52bd11fe18af_story.html?noredirect=on; https://time.com/longform/asylum-seekers-border/.*

[51] *See, e.g., Hui Zhuang* v. *Gonzales,* 471 F.3d 884, 890 (8th Cir. 2006) (''Fears of economic hardship or lack of opportunity do not establish a well-founded fear of persecution.''); *Delgado-Ortiz* v. *Holder,* 600 F.3d 1148, 1151 (9th Cir. 2010) (''Asylum is not available to victims of indiscriminate violence, unless they are singled out on account of a protected ground,'' and ''young men in El Salvador resisting gang violence are not a particular social group.'').

[52] See *https://www.uscis.gov/sites/default/files/Affirmative_Asylum_Decisions_FY09-FY18_Q2.pdf, https://www.justice.gov/eoir/page/file/1061526/download.*

[53] *Id.*

a safe, orderly manner that provides access to relief or protection from removal from the United States for aliens who qualify, and that promptly denies benefits to and facilitates the removal of those who do not.[54] Many protection applications appear to be coming from applicants escaping poor economic situations and generalized violence rather than persecution based on one or more of the five protected grounds for asylum or a fear of torture if the alien were returned to his or her country of origin. DHS is implementing more stringent requirements for eligibility for employment authorization, in order to disincentivize aliens who are not bona fide asylum seekers from exploiting a humanitarian program to seek economic opportunity in the United States.

DHS believes that this rule stands as an important disincentive for aliens to use asylum as a path to seek employment in the United States. DHS further believes that this rule complements broader interagency efforts to mitigate large-scale migration to the U.S. southern border that preclude some asylum seekers from entering the United States.[55] These programs are strengthened by DHS making important procedural adjustments to how those aliens who enter the United States may gain access to such a significant immigration benefit as employment authorization. Further, while some of these aliens may disregard the law and work unlawfully in contravention to these reforms, the Department does not avoid the establishment of regulatory policies because certain aliens might violate the law.[56]

Congress gave the Executive Branch the discretion to make employment authorization available by regulation.[57] The current practice of granting employment authorization with a very low eligibility threshold and nearly limitless renewals to aliens before they have been determined to be eligible for asylum is a ''pull'' factor for the illegal immigration of aliens who are ineligible for any immigration status or benefit in the United States, and there is an urgent need for reform.[58] Employment authorization for aliens seeking asylum is not a right. It is an ancillary benefit which must be carefully implemented in order to benefit those it is meant to assist.

III. Background

A. Legal Authority

The Secretary of Homeland Security's authority to make the regulatory amendments being implemented by this rule can be found in various provisions of the immigration laws. Section 102 of the Homeland Security Act of 2002 (HSA) (Pub. L. 107–296, 116 Stat. 2135), 6 U.S.C. 112, and sections 103(a)(1) and (3) of the INA, 8 U.S.C. 1103(a)(1), (3), charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. Section 402(4) of the HSA, 6 U.S.C. 202(4), expressly authorizes the Secretary, consistent with section 428 of the HSA (6 U.S.C. 236) (concerning visa issuance and refusal), to establish and administer rules governing the granting of visas or other forms of permission, including parole, to enter the United States to aliens who are not U.S. citizens or lawful permanent residents. *See also* 6 U.S.C. 271(a)(3), (b) (describing certain USCIS functions and authorities). Section 208 of the INA, 8 U.S.C. 1158, gives the Secretary the discretionary authority to grant asylum to an alien who meets the definition of refugee under section 101(a)(42), 8 U.S.C. 1101(a)(42).[59] Sections 235, 236, and 241 of the INA, 8 U.S.C. 1225, 1226, and 1231, govern the apprehension, inspection and admission, detention and removal, withholding of removal, and release of aliens encountered in the interior of the United States or at or between the U.S. ports of entry. Section 274A of the INA, 8 U.S.C. 1324a, governs employment of aliens who are authorized to be employed in the United States by statute or in the discretion of the Secretary. The Secretary implements the changes in this rule under these authorities.

B. Eligibility for Asylum

Asylum is a discretionary benefit that can be granted by the Secretary or Attorney General if the alien establishes, among other things, that he or she has experienced past persecution or has a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.[60] Under the INA, certain aliens are barred from obtaining asylum, including aliens who are persecutors, have been convicted of a particularly serious crime (which includes aggravated felonies as defined under section 101(a)(43) of the INA, 8 U.S.C. 1101(a)(43)), have committed serious non-political crimes outside of the United States, who are a danger to the security of the United States, have engaged in certain terrorism-related activities or are members of terrorist organizations, or who are firmly resettled in a third country.[61]

Aliens seeking asylum generally must apply for asylum within one year from the date of their last arrival in the United States. An alien who files for

[54] *https://www.whitehouse.gov/presidential-actions/presidential-memorandum-additional-measures-enhance-border-security-restore-integrity-immigration-system/.*

[55] On January 25, 2019, DHS announced certain aliens attempting to enter the United States illegally or without documentation, including those who claim asylum, will no longer be released into the United States, where they often fail to file an asylum application and/or disappear before an IJ can determine the merits of any claim. Instead, these aliens are being returned to Mexico until their hearing dates. *See* ''Policy Guidance for Implementation of the Migrant Protection Protocols'' (Jan. 2019), *https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf.* On July 15, 2019, DHS and DOJ announced a bar to eligibility for asylum to any alien who enters or attempts to enter the United States across the southern border, but who did not apply for protection from persecution or torture where it was available in at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to the United States. *See* ''DHS and DOJ Issue Third-Country Asylum Rule'' (July 2019), *https://www.dhs.gov/news/2019/07/15/dhs-and-doj-issue-third-country-asylum-rule.*

[56] Notably, the former INS remarked on the need for reform, notwithstanding the possibility that aliens may simply disregard the law and work illegally:

''The Department also considered the claim that asylum applicants will disregard the law and work without authorization. While this is possible, it also is true that unlawful employment is a phenomenon not limited to asylum applicants, but is found among many categories of persons who have illegally entered or remained in the United States. The Department does not believe that the solution to this problem is to loosen eligibility standards for employment authorization. This is particularly so because of the evidence that many persons apply for asylum primarily as a means of being authorized to work. These rules will discourage applications filed for such reasons and thus enable the INS to more promptly grant asylum—and provide work authorization—to those who merit relief . . .''.

59 FR 62284–01, 62291.

[57] INA sec. 208(d)(2).

[58] *See Martin, supra* note 27.

[59] A refugee is defined under INA section 101(a)(42), 8 U.S.C. 1101(a)(42), as:

1. Any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or

2. in such special circumstances as the President after appropriate consultation (as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. . . . .

[60] INA sec. 208(b), 8 U.S.C. 1158(b).

[61] INA sec. 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A).

asylum after the 1 year deadline is generally not eligible to apply for asylum unless the Secretary of Homeland Security or Attorney General, in his or her discretion, excuses the late filing.[62] For a late filing to be excused, the alien must demonstrate that changed circumstances materially affected the alien's eligibility for asylum, or extraordinary circumstances delayed filing during the 1 year period.[63] Even if an alien meets all the criteria for asylum, including establishing past persecution or a well-founded fear of future persecution based on the five protected grounds and any exceptions to late filing, the Secretary or Attorney General can still deny asylum as a matter of discretion.[64]

Aliens who are granted asylum cannot be deported or removed, are employment authorized incident to their status, and may be permitted to travel outside of the United States with prior consent from the Secretary.[65] Asylum can be terminated if the alien was not eligible for asylum status at the time of the asylum grant or is otherwise no longer eligible for asylum under the law.[66]

C. Affirmative vs. Defensive Asylum Filings

To request asylum, an alien must file an application with either USCIS or with the immigration court, using Form I–589, Application for Asylum and for Withholding of Removal. If the IJ or the BIA determines that an alien knowingly filed a frivolous application for asylum, the alien is permanently ineligible for asylum and any other immigration benefits or relief under the INA. Withholding and deferral of removal are not considered relief in this regard. INA section 208(d)(6), 8 U.S.C. 1158(d)(6); 8 CFR 208.20, 1208.20.

Asylum applications are characterized by which agency has jurisdiction over the alien's case. If an alien is physically present in the United States, is not detained, and has not been placed in removal proceedings, the alien files the asylum application with USCIS. These applications are known as ''affirmative'' filings. If DHS places an alien in removal proceedings, the alien files an application for asylum with an IJ.[67] These applications are known as ''defensive'' filings and include aliens referred to the IJ by a USCIS asylum officer for de novo review of their asylum claims.

Aliens who present themselves at a U.S. port of entry (air, sea, or land) are generally deemed applicants for admission.[68] If an immigration officer determines that an alien is inadmissible under section 212(a)(6)(C) or 212(a)(7) of the INA, 8 U.S.C. 1182(a)(6)(C) or (a)(7), for being in possession of false documents, making false statements, or lacking the required travel documentation, the alien may be placed in expedited removal proceedings under section 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1). Such aliens may indicate an intention to apply for asylum, express a fear of persecution or torture, or a fear of return to their home country and are then interviewed by an asylum officer to determine whether the alien has a credible fear of persecution or torture. INA section 235(b)(1), 8 U.S.C. 1225(b)(1); 8 CFR 235.3(b)(4). If an alien is determined to have a credible fear, ''the alien shall be detained for further consideration of application for asylum.'' INA 235(b)(1)(B)(ii), 8 U.S.C. 1225(b)(1)(B)(ii). Asylum applications based initially on a positive credible fear determination are under the jurisdiction of the immigration courts once a Notice to Appear (NTA) is filed with the court and as such are considered ''defensively-filed.'' Similarly, even if an alien in expedited removal proceedings is released from detention by ICE after a positive credible fear determination is made, the alien is still considered to be under the jurisdiction of the immigration court once the NTA is filed and must file the application for asylum with the court.

D. Employment Authorization for Asylees and Asylum Applicants

Whether an alien is authorized to work in the United States depends on the alien's status in the United States and if employment is specifically authorized by statute or only authorized pursuant to the Secretary's discretion. Employment authorization for aliens granted asylum and for asylum applicants is authorized under INA sections 208(c)(1)(B) and (d)(2), respectively, 8 U.S.C. 1158(c)(1)(B), (d)(2). Employment authorization for aliens granted asylum is statutorily mandated and incident to their status. Aliens granted asylum (asylees) are not required to apply for an EAD in order to be employment authorized. USCIS issues the EAD under 8 CFR 274a.12(a)(5). Employment authorization for aliens granted withholding of removal or deferral of removal are governed by 8 CFR 274a.12(a)(10) and (c)(18) respectively. This final rule does not change anything regarding the employment eligibility for an alien granted asylum.

An asylum applicant, however, is not entitled to employment authorization by statute. INA section 208(d)(2), 8 U.S.C. 1158(d)(2). The Secretary, through regulations, may authorize employment for asylum seekers while the asylum application is pending adjudication. Even if the Secretary chooses to grant employment authorization to an asylum applicant, under the current statute and regulations, the Secretary cannot grant such authorization until 180 days after the filing of the application for asylum. *Id.* In practice, this 180-day period is commonly called the ''180-day Asylum EAD Clock.'' [69] The goal of the Asylum EAD clock is to deter applicants from delaying their asylum application solely to obtain employment authorization. Therefore, USCIS does not count, for purposes of the time an alien must wait before the alien can apply for a (c)(8) EAD, the days that actions by the applicant have resulted in delays to the adjudication of his or her asylum application. However, applicants, practitioners, and USCIS itself have all cited difficulty with accurate clock calculations.[70] In light of these issues, DHS is eliminating the clock altogether and, instead, extending the mandatory waiting period to file an asylum-based EAD application. USCIS will deny an EAD application if the asylum application is still subject to an unresolved applicant-caused delay at the time the initial (c)(8) EAD application is filed.

While the INA bars certain aliens from being granted asylum, such as persecutors and applicants who engaged

[62] The one-year filing deadline does not apply to an alien who is an unaccompanied alien child, as defined in 6 U.S.C. 279(g). INA sec. 208(a)(2)(E), 8 U.S.C. 1158(a)(2)(E).

[63] INA sec. 208(a)(2)(D), 8 U.S.C. 1158(a)(2)(D).

[64] *See* INA sec. 208(b)(1), 240(c)(4)(ii); 8 U.S.C. 1158(b)(1), 1229a(c)(4)(ii).

[65] INA sec. 208(c)(1), 8 U.S.C. 1158(c)(1).

[66] INA sec. 208(c)(2), 8 U.S.C. 1158(c)(2).

[67] Where an asylum application is filed by an unaccompanied alien child, USCIS has initial jurisdiction over that application, even if the applicant is in removal proceedings. INA sec. 208(b)(3)(C), 8 U.S.C. 1158(b)(3)(C); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110–457 (Dec. 23, 2008).

[68] INA sec. 101(a)(13)(C), 8 U.S.C. 1101(a)(13)(C) provides separate exceptions for when a lawful permanent resident will be considered an applicant for admission (*for example,* abandoned residence, continuous absence of 180 days, illegal activity after departure from the United States).

[69] EOIR–USCIS joint notice, *The 180-day Asylum EAD Clock Notice, https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum_Clock_Joint_Notice_-_revised_05-10-2017.pdf* (last updated May 9, 2017).

[70] *See* Dep't of Homeland Security, Citizenship & Immigration Services Ombudsman Report, *Employment Authorization for Asylum Applicants: Recommendations to Improve Coordination and Communication* (Aug. 26, 2011), at p.6.

in terrorist activity,[71] such aliens may still apply for asylum, and subsequently also apply for an EAD once their application has been pending for 150 days. INA sec. 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A). Aliens seeking employment authorization generally must apply for an EAD by filing Form I–765 with USCIS in accordance with the form instructions, along with any prescribed fee. 8 CFR 274a.13. The regulations at 8 CFR 208.7 and 274a.12(c)(8) govern employment authorization for asylum applicants.

E. Asylum and EAD Adjudications

Under existing regulations, there are several important stages and timeframes that can affect the adjudication of asylum applications and (c)(8) EADs: (1) The initial filing of an asylum application; (2) the one-year filing deadline; (3) the 150-day period asylum applicants must wait before they are eligible to file an application for employment authorization; and (4) the additional 30-day period (180-days total) before USCIS may grant (c)(8) employment authorization.

Under current 8 CFR 208.3, if USCIS fails to return the incomplete application for asylum to the applicant within 30 days, the application is automatically deemed complete. Once the asylum application has been accepted for processing, USCIS asylum officers review it to determine if all the documents required to make a decision have been submitted. This review also includes a determination of whether the asylum application was filed within the required 1-year period. If the alien failed to file within the 1-year period, USCIS asylum officers and/or IJs then determine whether the alien meets any of the exceptions to the late filing bar. In the case of affirmative asylum filings, if the alien does not meet an exception, the USCIS asylum officer has the authority to deny, dismiss, or refer the case to the immigration court. 8 CFR 208.14. USCIS asylum officers refer cases to the immigration court by issuing a NTA, which places the alien into removal proceedings. If the USCIS asylum officer refers the complete asylum application to the immigration court, the immigration court conducts a de novo review and determines if the alien met the required one-year filing deadline or qualifies for any of the late filing exceptions.

Once the asylum application is accepted, the 150-day waiting period for filing a (c)(8) EAD application begins. The regulations at 8 CFR 208.7(a) further provide that USCIS will have 30 days from the filing date of the EAD application to grant or deny that application. The 180-day Asylum EAD Clock therefore includes the 150-day waiting period for filing the (c)(8) EAD application, which is the time while the asylum application is pending with USCIS, or an IJ, and the additional 30-day period that USCIS has to grant or deny the EAD application. The 180-day Asylum EAD Clock excludes delays requested or caused by the applicant and does not run again until the applicant cures the delay or until the next scheduled event in a case, such as a postponed interview, or a continued hearing.

USCIS is not permitted to issue an EAD until 180-days after the filing of a complete asylum application (in other words, the date an alien can be *issued* an EAD). If a USCIS asylum officer recommends that an asylum application be approved before the required waiting period ends, the alien may apply for employment authorization based on the recommended approval.

As noted, there are a number of actions that can delay or toll the running of the 180-day Asylum EAD Clock. For example, if an applicant fails to appear for a required biometrics appointment, the 180-day Asylum EAD clock will stop and not recommence until the alien appears for his or her biometrics appointment. Similarly, if an alien asks to amend or supplement his or her asylum application, fails to appear at an asylum office to receive and acknowledge receipt of the decision, requests an extension after the asylum interview, or reschedules an asylum interview, all of these actions will stop the 180-day Asylum EAD Clock, and the EAD clock will not recommence until the required action is completed.[72] As a result, some aliens may wait longer than 180 calendar days before they can be granted employment authorization.

Once an asylum applicant receives an EAD based on a pending asylum application, his or her employment authorization will terminate either on the date the EAD expires or 60 days after the denial of asylum, whichever is longer (affirmatively-filed cases). If the asylum application is denied by an IJ, the BIA, or a denial of asylum is upheld by a Federal court, the employment authorization terminates upon the expiration of the EAD, unless the applicant seeks renewal of employment authorization during the pendency of any administrative or judicial review.

IV. Discussion of the Final Rule

A. 365-Day Waiting Period To Apply for EADs Based on Pending Asylum Applications

DHS is extending the time period an asylum applicant must wait before he or she is eligible to be granted employment authorization based on a pending asylum application from 180 days to 365 calendar days. *See* 8 CFR 208.7. DHS is changing the time period to a 365-day waiting period to remove the incentives for aliens who are not legitimate asylum seekers to exploit the system and file frivolous, fraudulent, or non-meritorious claims to obtain employment authorization or other immigration benefits such as cancellation of removal. Currently, if an alien files an application for asylum, the alien can obtain an EAD after 180 days, excluding any days not counted due to an applicant-caused delay. Backlogs at USCIS and the years-long wait for hearings in the immigration courts allow aliens to remain in the United States for many years, be authorized for employment, and ultimately gain equities for an immigration benefit, even if their asylum applications ultimately will be denied on the merits.[73] DHS believes that extending the waiting period for filing a (c)(8) EAD application will be a strong deterrent to those who may seek to file frivolous, fraudulent, and non-meritorious asylum applications. Further, in light of DHS's assessment[74] that many asylum seekers are escaping general criminal violence and poor economic situations in their home countries, it is logical that more stringent requirements for EAD eligibility will disincentivize some of these aliens from coming to the United States in search of economic opportunity. DHS also believes that this deterrent, coupled with the last-in, first out (LIFO) asylum-adjudication scheduling discussed below, will lead to

[71] *See, e.g.,* INA sec. 101(a)(43)(F), 8 U.S.C. 1101(a)(43)(F); INA sec. 212(a)(2)(A)(i)(I), 8 U.S.C. 1182(a)(2)(A)(i)(I); INA sec. 212(a)(2)(B), 8 U.S.C. 1182(a)(2)(B).

[72] *See id.* EOIR–USCIS joint notice, *The 180-day Asylum EAD Clock Notice,* for additional examples of actions that can affect the 180-day Asylum EAD Clock.

[73] *See, e.g.,* Doris Meissner, Faye Hipsman, and T. Alexander Aleinikoff, *The U.S. Asylum System in Crisis; Charting a Way Forward,* Migration Policy Institute (Sept. 2018) at pp. 4 and 9–12, for additional discussion on the impact of backlogs and delays in immigration proceedings.

[74] See ''Statement from the Department of Homeland Security following the Acting Secretary's appearance at Georgetown University'' (Oct. 2019), *https://www.dhs.gov/news/2019/10/07/statement-department-homeland-security-following-acting-secretary-s-appearance.* DHS has made this assessment based on internal reporting from regional asylum offices, internal country information assessments, and corroborating journalist sources cited prior in this final rule.

meritorious applications being granted sooner and non-meritorious applications being denied sooner. DHS acknowledges that these reforms will also apply to aliens with meritorious asylum claims, and that these applicants may experience some degree of economic hardship as a result of heightened requirements for an EAD. However, DHS's ultimate goal is to maintain integrity in the asylum process. DHS has determined that sustaining an under-regulated administrative regime is no longer feasible and that it is not unreasonable to impose additional time and security requirements on asylum seekers before they may apply for an EAD.

DHS is implementing this change to complement its LIFO scheduling priority, re-implemented on January 29, 2018.[75] This priority approach, first established during the asylum reforms of 1995 and used for 20 years until 2014, is a deterrent to those who might try to use the existing backlog as a means to obtain employment authorization. Returning to a LIFO interview schedule will allow USCIS to identify frivolous, fraudulent, or otherwise non-meritorious asylum claims earlier and place those aliens into removal proceedings. Under the previous Administration, DHS discontinued LIFO processing, which was followed by a significant increase in asylum applications.

In the last decade, USCIS has seen its backlog of asylum applications skyrocket, with the number of new affirmative asylum filings increasing by a factor of 2.5 between FY 2014 and FY 2017.[76] The skyrocketing number of affirmative asylum applications has not corresponded with an increased asylum grant rate compared to historical averages. As of March 31, 2019, USCIS faced an affirmative asylum backlog of 327,984 cases. By the end of FY 2019 (September 30, 2019), USCIS faced an affirmative asylum backlog of 339,836 cases.[77] The high volume of cases stems in part from the recent surges in illegal immigration and organized caravans of thousands of aliens, primarily from the Northern Triangle countries (El Salvador, Honduras, and Guatemala), creating a humanitarian and national security crisis at the southern border. USCIS also has had to divert resources and asylum officers from processing affirmative-asylum backlog cases to address the continuing high volume of credible fear and reasonable fear cases that require nearly immediate interviews. This diversion of resources to credible fear screenings has prevented USCIS from making progress to reduce or eliminate the affirmative asylum backlog.

DHS is eliminating the 180-day Asylum EAD Clock and instead will deny EAD applications where there are unresolved, applicant-caused delays in the adjudication of the Form I–589 existing on the date the initial EAD application is filed. The elimination of the 180-day EAD clock will resolve some of the difficulties adjudicators face in processing asylum EAD applications. Calculating the current 180-day EAD Clock is one of the most complex and time-consuming aspects of EAD adjudications.[78] It requires multipart calculations and the tracking of the start and stop dates for each individual applicant's case. It also requires coordination with DOJ–EOIR for defensively-filed cases that are not under USCIS' jurisdiction.[79] In light of these issues, DHS is eliminating the Asylum EAD Clock altogether and instead extending the mandatory waiting period to file for an EAD. DHS also is notifying applicants that their EAD application will be denied if their asylum case is subject to an applicant-caused delay at the time the applicant files the Form I–765 (c)(8) application. DHS believes eliminating the 180-day Asylum EAD Clock will significantly streamline the determination of the date of the applicant's employment authorization eligibility, while continuing to disincentivize applicants from prolonging the adjudication of their asylum applications. USCIS EAD adjudicators will no longer have to calculate the number of days that must be excluded to account for applicant-caused delays or coordinate with DOJ–EOIR to do so, and will instead simply rely on 365 calendar days from the asylum application receipt date to determine when an alien can request employment authorization. DHS has promulgated a separate rulemaking eliminating the requirement to adjudicate the EAD application within 30 days. *See Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I–765 Employment Authorization Applications*'' DHS Docket No. USCIS–2018–0001, 84 FR 47148 (Sept. 9, 2019).

DHS recognizes that a number of aliens who are legitimate asylum seekers may experience potential economic hardship because of the extended waiting period. However, the asylum system in the United States is completely overwhelmed and has been for years.[80] DHS is committed to enforcing our immigration laws so that we can secure our borders and keep the American people safe. DHS and its inter-agency partners are taking action to disrupt drug trafficking organizations, cartels, human smuggling rings, and other nefarious actors operating on the United States' southern border.[81] These actions include referring and prosecuting illegal border crossers and those who smuggle them into the United States, building the first new sections of border wall in a decade, and deploying the National Guard to the border. But DHS must also take steps to address the pull factors bringing economic migrants to the United States.[82] The urgency to maintain the efficacy and integrity of the U.S. asylum and immigration system outweighs the hardship that may be imposed by the additional 6-month waiting period. The integrity and preservation of the U.S. asylum system takes precedence over any potential economic hardship faced by aliens who arrive in the United States without a legal status, whether or not those aliens may later be found to have meritorious claims.

B. One-Year Filing Deadline

As part of the reforms to the asylum process, DHS also is emphasizing the

[75] USCIS News Release, *USCIS To Take Action to Address Asylum Backlog* (Jan. 31, 2018).

[76] *See infra* Table 8.

[77] *See* Asylum Office Workload September 2019, available at *https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PEDAffirmativeAsylumStatisticsFY2019.pdf.*

[78] DHS acknowledges that many processes have been automated by the Person Centric Query System (PCQS) Asylum EAD Clock Calculator. However, the Asylum EAD Clock Calculator is not fully automated and there are still calculations that are not captured in the Clock Calculator. Additionally, USCIS did not create business rules to address all possible scenarios and, as a result, USCIS officers have had to do manual calculations in many scenarios. The elimination of the 180-day Asylum EAD Clock will create overall efficiencies for USCIS given these limitations with the Clock Calculator.

[79] *See, e.g.,* Citizenship & Immigration Services Ombudsman, *Employment Authorization For Asylum Applicants,* at p.6.

[80] *See, e.g.,* Joel Rose and John Burnett, *Migrant Families Arrive in Busloads as Border Crossings Hit 10-Year High,* Nat'l Pub. Radio (March 5, 2019) for observations about the recent surges in illegal immigration on the southern border.

[81] *See, e.g.,* Zapotosky, Matt, U.S. Arrests Hundreds in Show of Force Against Mexico's Jalisco New Generation Cartel, The Washington Post (March 11, 2020), available at *https://www.washingtonpost.com/national-security/jalisco-new-generation-mexico-cartel-dea-arrests/2020/03/11/ffd8ce0a-639a-11ea-acca-80c22bbee96f_story.html;* Rendon-Alvarez, Karla. 15 Arrested in Mission Bay Human Smuggling Attempt, NBC San Diego (Feb. 19, 2020), available at *https://www.nbcsandiego.com/news/local/15-arrested-in-mission-bay-human-smuggling-attempt/2266932/.*

[82] *See, e.g.,* de Córdoba, Jose. *The Guatemalan City Fueling the Migrant Exodus to America,* The Wall Street Journal (July 21, 2019), available at *www.wsj.com/articles/the-guatemalan-city-fueling-the-migrant-exodus-to-america-11563738141.*

importance of the statutory one-year filing deadline for asylum applications. Both DHS and DOJ–EOIR adjudicate asylum applications filed by aliens who reside in the United States for years before applying for asylum. Many aliens filing for asylum now are aliens who were inspected and admitted or paroled but failed to depart at the end of their authorized period of stay (visa overstays), or who entered without inspection and admission or parole and remained, not because of a fear of persecution in their home country, but for economic reasons.[83] In addition, the Asylum Division reports that a contributing factor to the asylum backlog is an increase in the number of applicants who file skeletal or fraudulent asylum applications affirmatively to trigger removal proceedings before the immigration court where they can apply for cancellation of removal—a statutory defense against removal and pathway to lawful permanent resident status available to those who have at least 10 years of physical presence in the United States and meet additional eligibility criteria.[84] DHS seeks to address this practice, to incentivize bona fide asylum applicants to file sooner, and to reduce the asylum backlog by making aliens ineligible for (c)(8) employment authorization if they fail to file their asylum application within 1 year of their last arrival in the United States as required by statute. Based on statute and relevant case law, DHS is also implementing exceptions to the one year-filing deadline as it relates to eligibility for a (c)(8) EAD, namely for those who have met, as determined by an asylum officer or IJ, an exception under INA section 208(a)(2)(D), 8 U.S.C. 1158(a)(2)(D). The statutory one-year filing deadline does not apply if the applicant was an unaccompanied alien child on the date the asylum application was first filed, and therefore neither does the one-year filing bar under this provision. DHS believes that, absent changed or extraordinary circumstances, the statutory 1-year filing period is a sufficient period of time for bona fide asylum applicants to submit their application to USCIS or an IJ. DHS is applying this provision to any alien who filed his or her asylum application on or after the effective date of this final rule, and filed the application after the one-year filing deadline.

C. Criminal Bars to Eligibility

DHS is aligning the bars to eligibility for a (c)(8) EAD to the criminal bars for asylum under section 208(b)(2)(A)(ii) and (iii), 8 U.S.C. 1158(b)(2)(A)(ii), (iii). Any alien who at any time has been convicted of an aggravated felony under section 101(a)(43) of the INA, 8 U.S.C. 1101(a)(43), or has been convicted on or after the effective date of this final rule of a particularly serious crime or committed a serious non-political crime outside of the United States, will be ineligible for a (c)(8) EAD. In addition, any alien who fails to establish that he or she is not subject to a mandatory denial of asylum due to any regulatory criminal grounds under 8 CFR 208.13(c) will be ineligible for a (c)(8) EAD.[85]

DHS will require (c)(8) EAD applicants who file their Form I–765 on or after the effective date of this final rule to appear at an ASC to provide their biometrics for their initial and renewal applications. The biometrics collection will allow DHS to: (1) Conduct criminal history background checks to confirm the absence of a disqualifying criminal offense, (2) vet the applicant's biometrics against government databases (for example, FBI databases) to determine if he or she matched any criminal activity on file, (3) verify the applicant's identity and compare it to that of the asylum applicant, and (4) facilitate card production with updated, digital photographs.

D. Procedural Reforms

DHS is clarifying that USCIS has jurisdiction over all applications for employment authorization based on a pending or approved asylum application, regardless of whether USCIS or DOJ–EOIR has jurisdiction over the asylum case. DHS is also implementing several procedural changes to streamline the asylum adjudication process. Currently, most applications, petitions, and requests for immigration benefits have specific minimum requirements that must be met before the forms can be accepted for filing. DHS is amending the regulations at 8 CFR 208.3 to remove the language providing that a Form I–589, Application for Asylum and for Withholding of Removal, will be deemed a complete, properly filed application if USCIS fails to return the incomplete Form I–589 to the alien within a 30-day period. *See* 8 CFR 208.3. This procedural change will require asylum applicants to file the asylum application in accordance with the requirements outlined in the regulations at 8 CFR 103.2 and form instructions and is consistent with the general principle that applicants and petitioners bear the burden of filing complete applications and petitions. Applications not properly filed will be rejected and returned to the applicant with the reason(s) for the rejection, consistent with other form types. DHS also is removing the language referring to ''recommended approvals'' of asylum applications and the effect such notices have on the ability of some asylum applicants to seek employment authorization earlier than others. *See* 8 CFR 208.3 and 274a.12(c)(8). Recipients of recommended approvals have not fully completed the asylum adjudication process. Previously, USCIS issued recommended approvals even when all required background and security check results had not been received, and recipients of such notices were eligible for employment authorization. However, because Congress has mandated that DHS not approve any applications until DHS has received and reviewed all the results of the required background and security checks, DHS has determined that continuing to issue recommended approval notices is contrary to this mandate.[86] In addition, DHS believes it is an inefficient use of resources for USCIS to manage a separate processing regime which requires USCIS to review the asylum application twice: First to determine if it is initially approvable as a

[83] Congress found that the asylum system was being overwhelmed with asylum claims, including frivolous and fraudulent claims filed merely to obtain employment authorization. *See, e.g.,* Public Law 103–322, 108 Stat. 1796, at sec. 130010(3) (findings of the Senate on the need for reforms to the asylum process, including finding that the asylum system was being abused ''by fraudulent applicants whose primary interest is obtaining work authority in the United States while their claim languishes in the backlogged asylum processing system.''). *See also* H.R. Rep. No. 99–682(I) at pp. 5649–5654 (discussion of the impact of economic migrants on the U.S. economy during consideration of IRCA in 1986). *See also* More Than 44 Percent of Americans Pay No Federal Income Tax (September 16, 2018), available at: *https://www.marketwatch.com/story/81-million-americans-wont-pay-any-federal-income-taxes-this-year-heres-why-2018-04-16.*

[84] *See* CIS Ombudsman, *Annual Report,* at p.44.

[85] *See Procedures for Asylum and Bars to Asylum Eligibility,* 84 FR 69640 (Dec. 19, 2019). By reference to 8 CFR 208.13(c), DHS does not intend that these criminal bars incorporate INA 208(b)(2)(A)(1)(i), (iv), or (v) (as referenced via 8 CFR 208.13(c)(1)), or 8 CFR 208.13(c)(2)(C), (E), or (F).

[86] *See, e.g., Consolidated Appropriations Act,* 2019, Public Law 116–6, 113 Stat. 33, Div. A, tit. IV, sec. 402 (2019) (''None of the funds made available in this Act may be used by U.S. Citizenship and Immigration Services to grant an immigration benefit unless the results of background checks required by law to be completed prior to the granting of the benefit have been received by U.S. Citizenship and Immigration Services, and the results do not preclude the granting of the benefit.''); *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998,* Public Law 105–119, 111 Stat. 2440, 2447–48 (1997)(directing the former INS to collect fingerprints and not accept fingerprint cards from outside entities and permitted INS to charge a fee).

''recommended approval,'' and then again (after a recommended approval notice has been issued to the applicant) to ensure that the applicant remains eligible for asylum based on the results of the background and security checks. This change will enhance efficiency by removing duplicative case processing tasks. It will also enhance the integrity of the overall asylum process because all information, including the results of background and security checks, will be considered before issuance of the asylum decision.

Further, any documentary evidence submitted fewer than 14 calendar days before the asylum interview (with allowance for a brief extension to submit additional evidence as a matter of discretion) may be considered an applicant-caused delay for purposes of EAD eligibility if it delays the adjudication of the asylum application. The purpose of this provision is to improve administrative efficiency and aid in the meaningful examination and exploration of evidence in preparation for and during the asylum interview. Additionally, DHS is including this provision to address the common practice of aliens or their representatives submitting hundreds of pages of documentary evidence shortly before or on the day of the interview, preventing meaningful examination of that evidence and delaying the adjudication. Submission of smaller quantities of evidence, such as photographs or a short police or medical report, within the 14 calendar day period would not be counted as an applicant-caused delay if it does not prevent the meaningful examination of the evidence or delay the adjudication.

E. Termination of Employment Authorization

DHS is revising the rule governing when employment authorization terminates to provide that when USCIS or DOJ–EOIR denies an asylum application, the alien's employment authorization associated with the asylum application will terminate automatically, effective on the date of denial of the asylum application. The current practice of allowing an alien to work on a (c)(8) EAD after he or she has been determined ineligible for asylum is inconsistent with the Department's enforcement priorities and mission.

1. Denial of Asylum Application by USCIS Asylum Officer

Previously, the regulations at 8 CFR 208.7(b)(1) provided that an asylum applicant's employment authorization terminates 60 days after a USCIS asylum officer denies the application or on the date the EAD expires, whichever is longer. DHS does not believe it was Congress' intent to allow aliens with denied asylum applications to continue to be employment authorized once their asylum claims are denied. Therefore, when a USCIS asylum officer denies an alien's request for asylum, any employment authorization associated with the pending asylum application will be automatically terminated effective on the date the asylum application is denied. Further, consistent with the previous regulations, DHS will deny employment authorization to any alien whose asylum application is denied by an asylum officer either during the 365-day waiting period or before USCIS adjudicates the initial request for employment authorization.

When a USCIS asylum officer refers an affirmative asylum application to DOJ–EOIR, the asylum application remains pending, and the associated employment authorization remains valid while the IJ adjudicates the application, unless terminated or revoked pursuant to 8 CFR 274a.14. Once an alien is granted asylum by USCIS or an IJ, the alien is immediately employment authorized. USCIS issues the EAD under 8 CFR 274a.12(a)(5).

2. Termination After Denial By IJ

Previously, the regulations at 8 CFR 208.7(b)(2) provided that when an IJ denies an asylum application, the employment authorization terminates on the date the EAD expires, unless the asylum applicant seeks administrative or judicial review. After this Final Rule takes effect, if an IJ denies the alien's asylum application, employment authorization will terminate 30 days after denial to allow time for appeal to the BIA. If a timely appeal is filed, employment authorization will be available to the alien during the BIA appeal process, but prohibited during the Federal court appeal process unless the case is remanded to DOJ–EOIR for a new decision. DHS believes that restricting access to (c)(8) employment authorization during the judicial review process is necessary to ensure that aliens who have failed to establish eligibility for asylum during two or three levels of administrative review do not abuse the appeals processes in order to remain employment authorized. For the same reason and consistent with the previous regulations, DHS will deny employment authorization to aliens whose asylum applications have been denied by an IJ either during the 365-day waiting period or before USCIS adjudicates the initial application for employment authorization.

3. Automatic Extensions of Employment Authorization and Terminations

To conform the automatic extension and termination provisions under 8 CFR 208.7(b) to the amendments made in this Final Rule, DHS is amending the current regulations at 8 CFR 274a.13(d), which govern automatic extensions of employment authorization and termination of such extensions. If an asylum applicant's employment authorization will expire before the asylum officer, IJ, or the BIA renders a decision on the asylum application, under current regulations, the alien may file an application to renew the employment authorization. If the renewal employment authorization application is filed timely, the alien's employment authorization is extended automatically for up to 180 days or to the date of the decision on the application for employment authorization, whichever comes first. As previously discussed, under this Final Rule, when a USCIS asylum officer, IJ, or the BIA denies the asylum application, DHS will terminate any employment authorization on the date of the denial, except for the 30-day appeal window for an alien to file an appeal with the BIA following the IJ's denial of an asylum application. The rule at 8 CFR 208.7(b)(2) makes clear that employment authorization automatically terminates regardless of whether it is in a period of automatic extension. Therefore, this final rule makes conforming amendments at 8 CFR 274a.13(d)(3), to specify that automatic extensions will automatically terminate upon a denial of the asylum application, or on the date the automatic extension expires (which is up to 180 days), whichever is earlier. *See* 8 CFR 274a.13(d)(3).

DHS also is implementing a technical change that adds a new paragraph at 8 CFR 274a.14(a)(1) to generally reference any automatic termination provision elsewhere in DHS regulations, including the automatic EAD termination provision being implemented by this rule.[87] As 8 CFR 274a.14(a)(1) is a general termination provision, DHS feels that incorporation of a general reference to other termination provisions will help avoid possible confusion regarding the applicability of such other provisions in relation to 8 CFR 274a.14(a)(1).

[87] *See* 8 CFR 208.7(b)(2); *see also* 8 CFR 214.2(f)(9)(ii)(F)(2) (automatic termination of F–1 student-based employment authorization based on economic necessary where the student fails to maintain status).

4. Adjudication and Termination of EADs Filed by UACs

Based on comments received, DHS is clarifying how I–765 applications filed by UACs are adjudicated. A UAC who has a pending asylum application before USCIS may apply for, and be granted, an EAD provided that the eligibility criteria in this rule are met, excluding the one-year filing deadline. *See* 8 CFR 208.7(a)(1)(iii)(F) of this rule. UACs are generally placed in removal proceedings shortly after they are encountered on arrival and determined to be UACs. By the time they file asylum applications, therefore, most UACs are in removal proceedings. Regulations that govern jurisdiction over asylum applications generally prohibit USCIS from accepting asylum filings from aliens who are in removal proceedings before DOJ–EOIR and provide that, once an alien is in such removal proceedings, the IJ has exclusive jurisdiction over any asylum application that an alien may file. 8 CFR 1003.14(b), 1208.2(b). Generally, USCIS asylum officers only have jurisdiction over asylum applications of aliens who are not in removal proceedings before an IJ. 8 CFR 208.2(a), 1208.2(a) and 1240.1 (a)(l)(ii). The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (''TVPRA'') however, provides a statutory exception to this general rule. *See* Public Law 110–457, 122 Stat. 5044 (2008). Under section 235(d)(7)(B) of the TVPRA, codified at 8 U.S.C. 1158(b)(3)(C), and section 208(b)(3)(C) of the INA, 8 U.S.C.1158(b)(3)(C), ''[a]n asylum officer . . . shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child.'' 8 U.S.C. 1158(b)(3)(C) (emphasis added). Thus, USCIS takes initial jurisdiction over asylum applications filed by UACs, even as they remain in ongoing removal proceedings. Where USCIS exercises this initial jurisdiction and does not grant an asylum application of a UAC, USCIS returns the case to the immigration court with jurisdiction over the removal proceedings. This is not a referral, because the applicant is already in proceedings and already has an NTA. However, for purposes of adjudicating employment authorization, USCIS will treat the return of a UAC's asylum application to an IJ where removal proceedings were initiated either prior to or during the time in which USCIS adjudicated the asylum application in the same way as a referral under 8 CFR 208.7(b)(1)(i) of this rule. As such, a UAC's EAD will not automatically terminate upon the asylum officer's decision not to grant asylum; rather, it will terminate after a denial of the UAC's asylum application by an IJ unless timely appealed, or after the BIA affirms or upholds a denial, as described by 8 CFR 208.7(b)(2) of this rule.

The HSA, 6 U.S.C. 279(g), defines UAC as ''a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.'' In some cases, however, an asylum application may have been filed by a UAC who later obtains lawful status. In such cases, USCIS would generally issue a denial of the asylum application if the applicant fails to establish eligibility for asylum but is in lawful status at the time of the adjudication of the asylum application, in accordance with 8 CFR 208.14(c)(2). Accordingly, the EAD of a UAC who is denied asylum by an asylum officer but who is in lawful status will automatically terminate as described under 8 CFR 208.7(b)(2) of this rule.

In cases where removal proceedings have not been initiated and the UAC is not in lawful status at the time of the asylum adjudication, USCIS will refer the UAC to an IJ if the UAC is not eligible for asylum, in accordance with 8 CFR 208.14(c)(1). In these cases, the UAC's EAD will not terminate upon referral and the UAC may be granted renewals of the EAD, as provided by 8 CFR 208.7(b)(1)(i) of this rule.

F. Aliens Who Have Established a Credible Fear or a Reasonable Fear of Persecution or Torture and Who Have Been Paroled Into the United States

DHS is clarifying the rule governing employment eligibility for certain aliens who have been paroled into the United States after establishing a credible fear or reasonable fear of persecution or torture. *See* 8 CFR 208.30.

In 2017, DHS issued a memo, ''Implementing the President's Border Security and Immigration Enforcement Improvement Policies,'' which stated that CBP or ICE will only consider the release of aliens from detention based on the parole authority under INA section 212(d)(5), 8 U.S.C. 1182(d)(5), on a case-by-case basis.[88] One such case is when an arriving alien, who is subject to expedited removal, establishes a credible fear of persecution or torture or eligibility for withholding of removal, adequately establishes his or her identity, does not pose a flight risk or danger to the community, and otherwise warrants parole as a matter of discretion. Currently, when DHS exercises its discretion to parole such aliens, CBP or ICE officers are instructed to endorse the Form I–94 parole authorization with an express condition that employment authorization not be provided under 8 CFR 274a.12(c)(11) on the basis of the parole. This final rule conforms the regulations to this important policy. DHS continues to believe that it is an inconsistent policy to allow supposed asylum seekers who are released from custody on parole to obtain employment authorization almost immediately, without being subject to the same statutory requirements and waiting period as non-paroled asylum seekers, or even a requirement to file an asylum application. Therefore, this rule clarifies, consistent with section 208(d)(2) of the INA, 8 U.S.C. 1158(d)(2), and existing DHS policy, that employment authorization for this category of parolee is not immediately available under the (c)(11) parole-based EAD category. Such aliens may still be eligible to apply for a (c)(8) employment authorization if they file an application for asylum and seek employment authorization, subject to eligibility requirements under this rule.

G. Illegal Entry

DHS is excluding aliens from receiving a (c)(8) EAD if they, on or after the effective date of this rule, enter or attempt to enter the United States illegally without good cause. Good cause is defined as a reasonable justification for entering the United States illegally as determined by the adjudicator on a case-by-case basis. Since what may be a reasonable justification for one applicant may not be reasonable when looking at the circumstances of another applicant, DHS believes a case-by-case determination of good cause in a (c)(8) adjudication will incentivize aliens to comply with the law to the extent possible and avoid injury and death associated with illegal entries. DHS believes these provisions also will reduce government expenditures related to detecting, apprehending, processing, housing, and transporting escalating numbers of illegal entrants. To the extent that this change is alleged to be a ''penalty'' within the meaning of Article 31(1) of the 1951 Convention relating to the Status of Refugees, which is binding on the United States by

[88] *See* Secretary of Homeland Security John Kelly, ''Implementing the President's Border Security and Immigration Enforcement Improvements Policies,'' Section K (Feb. 20, 2017), *https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf.*

incorporation in the 1967 Protocol relating to the Status of Refugees, DHS believes that the good cause exception is consistent with U.S. obligations under the 1967 Protocol because it exempts aliens from the bar to eligibility for employment authorization if they establish good cause for entering or attempting to enter the United States at a place and time other than lawfully through a U.S. port of entry.

The amendments to this section make any alien who enter or attempt to enter the United States at a place and time other than lawfully through a U.S. port of entry ineligible to receive a (c)(8) EAD, with the limited exception of when an alien demonstrates that he or she: (1) Presented himself or herself without delay but no later than 48 hours after the entry or attempted entry to the Secretary of Homeland Security (or his or her delegate); (2) indicated to the Secretary of Homeland Security or his or her delegate an intention to apply for asylum or expressed a fear of persecution or torture; and (3) otherwise had good cause for the illegal entry or attempted entry. The Secretary's delegates include Border Patrol Agents, CBP Officers, ICE Enforcement and Removal Officers, ICE Homeland Security Investigations Special Agents, or members of the U.S. Coast Guard. Examples of reasonable justifications for the illegal entry or attempted entry include, but are not limited to, requiring immediate medical attention or fleeing imminent serious harm, but do not include the evasion of U.S. immigration officers, or entering solely to circumvent the orderly processing of asylum seekers at a U.S. port of entry, or for convenience. Asylum is a discretionary benefit reserved for those who establish that they are genuinely in need of the protection of the United States. It follows that employment authorization associated with a pending asylum application should be similarly reserved. DHS believes that illegally entering the United States without good cause should be strongly deterred, and is therefore grounds to deny this discretionary benefit. In order to deter future illegal entries, DHS will apply this provision to any alien who enters or attempts to enter the United States unlawfully on or after the effective date of this final rule.

H. Effective Date of the Final Rule

The rules in effect on the date of filing Form I–765 will govern all initial and renewal applications for (c)(8) and (c)(11) employment authorization. To ensure consistency with a separate rulemaking entitled ''*Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I–765 Employment Authorization Applications,*'' DHS Docket No. USCIS–2018–0001, 84 FR 47148 (Sept. 9, 2019), this Final Rule will not apply to initial (c)(8) EAD applications filed before the effective date of this rule by members of the *Rosario* class if the *Rosario* injunction remains in effect as of the effective date of this Final Rule.

Under this rule, DHS will allow aliens with pending asylum applications that have not yet been adjudicated and who already have employment authorization before the final rule's effective date to remain employment authorized until the expiration date on their EAD, unless the card is terminated or revoked on the grounds specified in prior regulations. This rule will not have any impact on applications to replace lost, stolen, or damaged (c)(8) EADs. All (c)(11) EAD applications filed on or after the effective date of this Final Rule by aliens who have established credible fear and are paroled into the United States on that basis will be denied.

DOJ–EOIR has similar but separate asylum-related rules under 8 CFR part 1208 as a result of transferring the functions of the former INS and dividing them between DHS and DOJ–EOIR.[89] This rulemaking did not propose to and does not amend any of the regulations at 8 CFR part 1208. DOJ–EOIR may amend its regulations at a later date, but it is not doing so in conjunction with this rulemaking. USCIS maintains sole jurisdiction over aliens' requests for employment authorization.

V. Public Comments on the Proposed Rule

A. Summary of Public Comments

On November 14, 2019, DHS published a proposed rule in docket USCIS–2019–0011. The comment period for the proposed rule closed on January 13, 2020. DHS received a total of 1,074 comment submissions in response to the proposed rule. The majority of the comment submissions were from individual commenters. Other commenters included anonymous commenters; advocacy groups; religious organizations; organizations providing direct legal, social, and medical services to aliens; attorneys; state and local governments; law firms; federal, state, and local elected officials; professional associations; research institutions and organizations; unions; and professional associations. While some commenters expressed general support for the rule, the majority opposed the rule.

B. Requests To Extend Comment Period

Comment: One commenter requested a 30-day extension of the comment period for this rule in light of the holidays and the fact that another USCIS NPRM had a comment period during the same timeframe. Another commenter argued that DHS had deprived the public of an adequate opportunity to comment on this rule and several other NPRMs—namely, the proposed rule addressing bars to asylum eligibility, the USCIS fee rule, and the rule to eliminate the 30-day processing timeframe for asylum-based EADs [90]—by publishing them separately. The commenter argued that the public should have been given sufficient time to review and consider all of the rules together so that the public could comment on the combined impact of the rules on overall asylum policy and procedure. One commenter stated that the proposal presented a ''moving target'' for public participation, as it was at the time the third of four recent DHS notices that affect asylum. The commenter argued that treating the four proposals separately has made it impossible for commenters and DHS to evaluate the rules' cumulative impacts. The commenter stated that the elimination of the 30-day processing requirement for EADs would be impacted by the proposals in this rule, but that neither rule accounted for the other.

Response: DHS believes that the 60-day comment period for this rule and the 60-day comment periods provided for the other rules referenced by the commenter provided more than an adequate opportunity for public input, and declines to extend the comment period. The Administrative Procedure Act (APA) is silent regarding the duration of the public comment period, and does not establish a minimum duration.[91] However, the 60-day comment period is in line with E.O. 12866, which encourages, but does not require, agencies to provide at least 60

[89] *See generally Matter of R–S–H–,* 23 I. & N. Dec. 629, 630 n.5 (BIA 2003) (''As a result of the transfer of the functions of the Immigration and Naturalization Service to the Department of Homeland Security, the regulations in chapter I of the Code of Federal Regulations were transferred or duplicated to a new chapter V.'')

[90] DHS NPRM, *Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I–765 Employment Authorization Applications,* 84 FR 47148 (Sept. 9, 2019); DHS NPRM, *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,* 84 FR 62280 (Nov. 14, 2019); and DHS and DOJ–EOIR Joint NPRM, *Procedures for Asylum and Bars to Asylum Eligibility,* 84 FR 69640 (Dec. 19, 2019).

[91] *See* 5 U.S.C. 553(c).

days for the public to comment on significant rules.

The sufficiency of the 60-day comment period for this rule is supported by the over 1,000 public comments received. The public, including attorneys, advocacy groups, religious, community, and social organizations, law firms, federal, state, local, and tribal entities, and elected officials provided a great number of detailed and informative comments. In addition, DHS notes that the proposed rule has been listed in the publicly available Unified Agenda of Federal Regulatory and Deregulatory Actions since the Fall 2018 publication, so the public has been made aware of DHS's intent to publish a rule of this nature. Further, in the proposed rule, DHS specifically referenced the 30-day asylum-EAD processing NPRM, indicating that it had been published separately and that this rule and the 30-day asylum-EAD processing NPRM contained distinct proposals. DHS directed commenters to comment on each rule separately and to send comments to the correct docket for each rule.

Given the quantity and quality of the comments received in response to the proposed rule, and other publicly available information regarding the rule, DHS believes that the 60-day comment period has been more than sufficient.

C. Severability Clause

One commenter noted that the proposed rule contained a severability clause which would allow DHS to implement portions of the proposed rule if other portions were found to be unlawful by a court. The commenter asked DHS to withdraw the rule in its entirety because the commenter believed that the whole rule was based on an unsubstantiated premise that it will deter frivolous and fraudulent asylum applications, and that sections of this rule were unnecessary and duplicative of USCIS processes that were already in place. The commenter also stated that the rule violated the APA but did not provide a rationale for the statement.

Response: DHS disagrees with the commenters and will not withdraw the rule. By engaging in the current rulemaking, DHS has satisfied its obligations under the APA and given the public ample opportunity to comment on the proposals within the rule. DHS also articulated specific and individualized rationales for the numerous changes proposed in the rule that are supported by data and that are in keeping with the immigration priorities and policies of the Executive branch as they relate to the management of discretionary EADs based on pending asylum applications.

DHS also will not remove the severability clause. A severability clause is a standard legal provision. It allows Congress and the Executive Branch to sever certain provisions of a law or rule, if a court finds that they are unconstitutional or unlawful, without nullifying the entire law or rule. Those provisions that are unaffected by a legal ruling can be implemented by an agency without requiring a new round of rulemaking simply to promulgate provisions that are not subject to a court ruling.

D. Comments Expressing General Support for the NPRM

Comment: A minority of the commenters expressed overall support for the rule. Several commenters agreed that the asylum system needed to be reformed because of fraud and abuse. Many commenters believed that the asylum system was being exploited by aliens who do not qualify for asylum. The commenters stated that the asylum system needed to change because real asylum seekers were being deprived of the protection and services in the United States. Many commenters stated that aliens who enter the United States illegally should not be allowed to obtain immigration benefits or work, especially if it created additional burdens and costs for U.S. taxpayers. Several commenters supported the rule and agreed that DHS should not authorize asylum seekers to work until DHS or the courts have determined that the alien actually meets the requirements for asylum. The commenters also agreed that criminal aliens should not be allowed to work in the United States and that any alien who commits a crime while in the United States should have his or her employment authorization revoked.

Several commenters supported DHS taking action to eliminate the ''pull'' factors that cause illegal migration and to remove the incentives for aliens to file frivolous or fraudulent asylum claims. Several commenters expressed concern with the amount of resources and taxpayer dollars that DHS was expending to deal with the recent surges in aliens crossings the border illegally. One commenter noted that asylum is not a right but a privilege and another commenter noted that Congress gave the Secretary of Homeland Security authority to bar employment authorization for asylum applicants altogether. One commenter supported the rule, stating that illegal aliens have no right to establish a residence or obtain employment in the United States. Several commenters also supported the rule and believed that, without changes, the agency backlogs would continue to grow, and true asylum seekers would continue to live in limbo and fear of being returned to their home countries. Another individual supported the proposed rule as a good ''workaround [because of] our legislators' inability to limit mass immigration.''

Response: DHS agrees that the current asylum process needs to be substantially reformed. DHS believes that the reforms being implemented in this Final Rule will help return integrity to the asylum system and help ensure that aliens who are genuinely fleeing persecution based on their race, religion, nationality, political opinion, or membership in a particular social group, can have their claims heard expeditiously. The asylum system was never meant to be an avenue for economic migrants to reside and work in the United States. DHS is implementing this rule to remove the incentives for aliens to come to the United States solely for economic reasons and to eliminate meritless asylum filings solely to obtain work authorization. As some commenters noted, our immigration system already provides multiple legal pathways for those who wish to work legally in the United States. In addition, Congress expressly gave the Secretary of Homeland Security the discretion to grant employment authorization to asylum seekers. Asylum is a discretionary benefit that is reserved for those who meet the requirements. Asylum seekers are not entitled to work in the United States until the Secretary or Attorney General determines that they actually qualify for and should be granted asylum.

This rule is being implemented to ensure the asylum process is managed in a safe, humane, and orderly manner, to provide access to protection in the United States for aliens who qualify, and to ensure that those who do not qualify are not incentivized to prolong proceedings or delay removal for economic purposes. This rulemaking also is part of a series of reforms DHS is undertaking to improve and streamline the asylum system so that those with bona fide asylum claims can be prioritized and extended the protections that the United States has to offer.

E. Comments Expressing General Opposition to the NPRM

Comment: A majority of the commenters opposed the rule. Many commenters were concerned that the rule would place an ''inordinate

burden'' on asylum seekers, many of whom are impoverished and ''will not have the ability to work immediately upon their arrival into the United States.'' Many commenters argued that asylum seekers should be allowed to work and support their families while they are in the United States. The commenters believed that allowing asylum seekers to work would promote self-sufficiency, alleviate the need for them to rely on government benefits, save U.S. taxpayer dollars, and reduce the incentives to work illegally. The commenters also believed that asylum seekers should be able to contribute to the U.S. economy, realize the American dream, and integrate into American society.

Several commenters felt that the rule was immoral, cruel, and inhumane, because many asylum seekers who had already fled persecution in their home countries and were already poor and destitute would have to wait even longer before they could start a new life in America and support themselves and their families. Some commenters argued that denying work to asylum seekers was not in keeping with Christian and American values. Other commenters believed that the motives behind the promulgation of the rule were not deterrence but based on xenophobia and racism.

Several commenters expressed concern that prohibiting employment authorization until their cases are decided would: (1) Increase asylum seekers' vulnerability to being exploited by unscrupulous people and bad actors, (2) ''force'' them to work illegally, commit crimes, and ''remain in the shadows,'' (3) limit their access to legal counsel, and (4) allegedly further victimize them because of the ''detrimental effect lack of employment would have on their physical well-being and mental health.'' Some commenters also believed that denying asylum seekers the ability to work would potentially force them to return to their home countries and the dangerous situations from which they had fled. Other commenters were concerned that asylum seekers who are currently employed would lose their jobs and that the businesses or companies who had hired them would be disrupted because of the loss of their workforce. Several other commenters argued that the rule illegally ''infringes'' on an alien's right to apply for asylum and dissuades asylum seekers from applying for protection in the United States.

Finally, a few commenters suggested that DHS should ''grandfather'' asylum seekers who were already in the United States and apply the previous regulations to their requests for employment authorization. The commenters also suggested that DHS should make an exception for asylum applicants who have been in the United States for more than 10 years, paid taxes, and have no felony convictions.

Response: Obtaining employment authorization in the United States has been, and continues to be, a significant incentive for aliens to migrate, legally and illegally, to the United States.[92] While DHS supports the ability of aliens who have established eligibility for employment in the United States, including asylees and refugees, to participate in the U.S economy, DHS believes that employment authorization must be carefully regulated, not only to protect U.S. workers, but also to maintain the integrity of the U.S. immigration system. DHS has identified (c)(8) employment authorization, with its low eligibility threshold and nearly limitless renewals, coupled with the lengthy adjudication and judicial processes, as a driver for economic migrants who are ineligible for lawful status in the United States to file frivolous, fraudulent, and otherwise non-meritorious asylum applications.[93]

Notwithstanding claims by some commenters, by statute, asylum seekers are not immediately eligible to work upon arrival in the United States. They are required to wait for at least 6 months, and often wait longer, before they can receive employment authorization. This waiting period is temporary and not a bar to employment authorization. With this rulemaking and other streamlining measures, DHS believes that those who would abuse the asylum system solely to gain work authorization will be disincentivized to make the dangerous journey to the United States to file asylum claims for employment authorization. This in turn will decrease existing backlogs, allow legitimate asylum seekers to have their cases processed in a timely fashion, and allow them to obtain employment authorization immediately after DHS or DOJ–EOIR determines they are asylees.

DHS fully appreciates the values embodied in our humanitarian programs, and continues to uphold those values while adhering to the statutory obligations that underpin this rule. DHS strongly disagrees with comments asserting that this rule is based on racial animus. This rulemaking applies equally to all asylum seekers, and does not create disparate treatment or have discriminatory effect on applicants. The demographics of asylum seekers are as vast and varied as the number of countries around the globe and DHS did not promulgate this rule to affect any particular race, religion, nationality, or category of aliens who may seek asylum. Further, the overall impact of the rule will not make aliens less likely to qualify for asylum, more vulnerable to persecution, force them to return to their home countries, or force them to work illegally in the United States. This final rule will help mitigate the humanitarian crisis at our southern border by encouraging only legitimate asylum seekers who are fleeing persecution to seek asylum. DHS also disagrees that this rule illegally ''infringes'' on the right to obtain asylum. Unlike statutory withholding of removal and protections under the Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment (CAT), asylum is a discretionary benefit. No one has the right to be granted asylum in the United States. In addition, this rule does not alter the eligibility requirements for asylum—establishing persecution or a well-founded fear of persecution on the five protected grounds (race, religion, nationality, membership in a particular social group, or political opinion). Employment authorization for asylum seekers is discretionary. No asylum seeker is entitled to employment authorization unless specifically authorized pursuant to statute or granted by the Secretary as a matter of discretion. Employment authorization for asylum seekers is not an entitlement but an ancillary benefit that Congress authorized and entrusted to the Secretary to decide if employment authorization should be granted, and if so under what terms and conditions. Through this rule DHS seeks to separate the asylum application process from employment authorization as a deterrent to aliens who are not bona fide asylum seekers, but are simply abusing the asylum process solely to remain and work in the United States.[94] *See* INS final rule, *Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization,* 59 FR 62284–01, 62291 (Dec. 5, 1994).

[92] *See supra* fns. 32 and 84.

[93] *See Martin, supra* note 27, at p. 734; *see also David A. Martin, Reforming Asylum Adjudication: On Navigating the Coast of Bohemia,* 138 U. Pa. L. Rev. 1247 (May 1990) at pp. 1267–69, 1288–89, and 1373.

[94] In the 1994 Final Rule implementing the 180-day employment authorization waiting period, the agency stated that it ''strongly believes that the asylum process must be separated from the employment authorization process,'' and intended that ''the rule will discourage applicants from filing meritless claims solely as a means to obtain employment authorization.'' *Id.* at 62290.

DHS has carefully considered the suggestions for modifications of the rule. While DHS will not ''grandfather'' any classes of aliens or create the exceptions proposed by the commenters, it has determined to apply many provisions of the rule to actions that occur on or after the effective date of this Final Rule, such as the illegal entry, one-year filing, and most of the criminal bars. To ''grandfather'' in a class of aliens would create an unworkable parallel adjudicatory framework and there is no legal or policy reason to establish such a framework, especially since (c)(8) employment authorization is a discretionary, temporary benefit that is subject to expiration and a new analysis of whether an alien warrants employment authorization as a matter of discretion upon the filing of each new request for renewal of an EAD.

DHS also considered the claim that asylum applicants will disregard this rule and work without authorization. Commenters raised similar concerns when the former INS implemented the 180-day waiting period. DHS rejects the premise of these claims and agrees with the responses stated by the former INS and adopts the response stated in the 1994 final rule.[95]

F. Comments Regarding Legal Authority and Statutory Provisions

1. Relevant Statutes

a. Refugee Act of 1980

Comment: Several commenters argued that the rule contravenes the Refugee Act of 1980 (hereinafter Refugee Act) Public Law 96–212, 94 Stat. 102. One advocacy group argued that asylum seekers fit within the definition of a refugee and that through the passage of the Refugee Act, DHS became ''legally bound'' to provide sanctuary to such aliens. Another commenter argued that the Refugee Act specifically requires that asylum seekers be supported with job training and employment assistance. Several commenters argued that DHS was ''changing the grant of employment authorization into a discretionary decision.'' Some commenters argued that making EADs subject to agency discretion, without clearly expressed criteria, would be contrary to the Refugee Act and its provision for refugees' self-reliance. One commenter argued that the Refugee Act was intended to promote the effective resettlement and absorption of refugees into the United States, which means helping refugees to become economically self-sufficient as soon as possible. Another commenter noted that the Refugee Act requires the President to adjust the number of refugees admitted each year based on humanitarian concerns but, because only a small percent have been designated refugees, the United States is severely limiting the number of aliens eligible for employment in the United States under the Refugee Act.

Response: While DHS agrees that the Refugee Act is intended to promote the effective resettlement of refugees, it disagrees with the commenter's presumption that an asylum applicant is, by default, a refugee. U.S. law states that the burden of proof is on the asylum applicant to establish that the he or she is a refugee, within the meaning of section 101(a)(42)(A) of the INA, 8 U.S.C. 1101(a)(42). To be considered a refugee, an applicant must establish that he or she has experienced persecution or has a well-founded fear of future persecution on account of one of the five protected grounds. The applicant must show that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for the applicant's persecution or fear of persecution.

An alien admitted as a refugee has already been determined by the U.S. government through an adjudication overseas to meet the statutory definition of a refugee and is therefore entitled to the benefits and protections of the Refugee Act upon arrival to the United States. No similar determination is made for an asylum applicant until an asylum officer or an IJ adjudicates the asylum application. Significantly, only a small fraction of asylum applicants are determined to meet the definition of a refugee and are granted asylum. In FY 2019, the DOJ–EOIR asylum grant rate for affirmative and defensive asylum applications was 20.60 percent.[96] From FY 2015 to FY 2019, the average asylum grant rate was 19.08 percent, and the grant rate for the first quarter of FY 2020 was 19.79 percent.[97] Therefore, equating an asylum applicant with a refugee and insisting all asylum applicants are entitled to the same benefits and protections under the Refugee Act is premature and inaccurate. DHS is promulgating this rule in order to focus its attention and resources on bona fide asylum applicants, rather than continuing to provide a discretionary benefit with virtually no eligibility criteria and nearly limitless renewal opportunity to approximately 80 percent of the current (c)(8) EAD population who cannot establish eligibility for asylum or to remain in the United States as an asylee.

DHS also notes that when Congress passed the Refugee Act in 1980, its main purpose was to replace the ad hoc process that existed at the time for admitting refugees and to provide a more uniform refugee process.[98] The Refugee Act did not explicitly address how the United States should reform the asylum process or handle the sudden influx of asylum seekers. The commenters are correct that the Refugee Act established programs for providing assistance and job training to refugees who are admitted into the United States. However, those programs only apply to aliens who had already been granted refugee status, not to asylum applicants. Finally, as noted above, Congress requires the Secretary to provide employment authorization to those who are *granted* asylum. *See* INA section 208(c)(1)(B), 8 U.S.C. 1158(c)(1)(B). Nothing in this final rule changes that treatment of work authorization for asylees. However, Congress left it to the discretion of the Secretary to decide whether an asylum applicant should be provided employment authorization. *See* INA section 208(d)(2), 8 U.S.C. 1158(d)(2) (''An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the [Secretary].''). Therefore, this rule is within the Secretary's discretionary statutory authority and is consistent with the Refugee Act.

b. INA and Homeland Security Act

Comment: Some commenters argued that the proposed rule was inconsistent with the provisions of the INA governing withholding of removal,

[95] *Id.* at 62291. The INS stated that—

''While [it] is possible [that asylum applicants may choose to work without authorization], it also is true that unlawful employment is a phenomenon not limited to asylum applicants, but is found among many categories of persons who have illegally entered or remained in the United States. The Department does not believe that the solution to this problem is to loosen eligibility standards for employment authorization. This is particularly so because of the evidence that many persons apply for asylum primarily as a means of being authorized to work. These rules will discourage applications filed for such reasons and thus enable the INS to more promptly grant asylum—and provide work authorization—to those who merit relief . . .''

[96] *See* Executive Office for Immigration Review Adjudication Statistics, Asylum Decision Rates (Jan. 23, 2020) available at *https://www.justice.gov/eoir/page/file/1248491/download.*

[97] *Id.* This average equals the sum of the grant rates from FY15 through FY19 divided by five.

[98] *See* Public Law 96–212, 94 Stat. 102, § 101(b) and S. Rep. 96–256 (July 23, 1979), at pp. 141–143. Earlier treatment of refugees came from the Displaced Persons Act of 1948, 62 Stat. 1009, as amended, the Refugee Relief Act of 1953, 67 Stat. 400, and the Refugee-Escapee Act of 1957, 71 Stat. 643.

section 241(b)(3)(A) of the INA (8 U.S.C. 1231(b)(3)(A)), and asylum, section 208(a)(1) of the INA (8 U.S.C. 1158(a)(1)). One commenter argued that these laws were meant to safeguard those who fled danger and that this rule essentially denies asylum seekers the ability to provide for themselves while physically present in the United States. One commenter also opposed the rule arguing that it not only is inconsistent with the following provisions of the INA, 8 U.S.C. 1103(a)(1), (3), 1158, 1225, 1226, 1231, and 1324(a), but also several provisions of the HSA, 6 U.S.C. 112, 202(4), 271(a)(3), 271(b) (relating to the authorities and adjudicatory functions of the Secretary and Director of USCIS) and existing regulations.

Response: DHS disagrees with the commenters. This rule is consistent with the Secretary's authority under the INA, the HSA, and DHS regulations as they relate to the discretionary authority of the Secretary to grant employment authorization to an asylum applicant. Congress has clearly indicated when employment authorization is mandatory and when it is discretionary. In the context of asylum, Congress specifically mandates the Secretary to give employment authorization to those who are *granted* asylum. *See* INA section 208(c)(1)(B), 8 U.S.C. 1158(c)(1)(B). However, Congress left it to the discretion of the Secretary to decide whether an alien who is seeking asylum should be provided employment authorization. *See* INA 208(d)(2) (''An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the [Secretary].'')

The Secretary has the statutory authority to provide, limit, or bar asylum seekers completely from obtaining employment authorization based on the pending asylum application and this authority exists regardless of an alien's manner of entry, when the alien applied for asylum, and whether the alien may or may not be barred from asylum under the statute or regulations. However, the Acting Secretary has chosen through this final rule to exercise his discretionary authority narrowly and to prescribe the limited conditions under which certain asylum seekers may obtain employment authorization while they are in the United States and before they have established eligibility for asylum in the first instance. DHS, therefore, believes that this final rule is consistent with the Secretary's statutory authorities under the INA and HSA and is necessary to achieve the stated purposes of this rule.

2. Acting Secretary of Homeland Security's Legal Authority

Comment: Two commenters argued that the proposed rule was invalid because Acting Secretary Chad Wolf did not have a ''valid legal claim to the office of the DHS Secretary.'' Both organizations cited the Federal Vacancies Reform Act of 1998 (FVRA), 5 U.S.C. 3348, the HSA (6 U.S.C. 113(g)(1)),[99] and the E.O. 13753, *Amending the Order of Succession in the Department of Homeland Security,* 81 FR 90667 (Dec. 9, 2016), to support their assertions, the commenters stated that because the rules of succession following the resignation of former DHS Secretary Kirstjen Nielsen were not followed, any rules promulgated by the current Acting Secretary were essentially null and void.

Response: DHS disagrees with the comments. Under section 103(a)(1) of the INA, 8 U.S.C. 1103(a)(1), the Secretary of Homeland Security is charged with the administration and enforcement of the INA and all other immigration laws (except for the powers, functions, and duties of the Secretary of State and Attorney General). The Secretary is also authorized to delegate his or her authority to any officer or employee of the agency and to designate other officers of the Department to serve as Acting Secretary. *See* 8 U.S.C. 103 and 6 U.S.C. 113(g)(2). The HSA further provides that every officer of the Department ''shall perform the functions specified by law for the official's office or prescribed by the Secretary.'' 6 U.S.C. 113(f).

On April 9, 2019, then-Secretary Nielsen, who was Senate confirmed, used the authority provided by 6 U.S.C. 113(g)(2) to establish the order of succession for the Secretary of Homeland Security. This change to the order of succession applied to any vacancy. Exercising the authority to establish an order of succession for the Department pursuant to 6 U.S.C. 113(g)(2), superseded the FVRA and the order of succession found in E.O. 13753.

As a result of this change and pursuant to 6 U.S.C. 113(g)(2), Mr. McAleenan, who was Senate confirmed as the commissioner of CBP, was the next successor and served as Acting Secretary without time limitation. Acting Secretary McAleenan was the signing official of the proposed rule. Acting Secretary McAleenan subsequently amended the Secretary's order of succession pursuant to 6 U.S.C. 113(g)(2), placing the Under Secretary for Strategy, Policy, and Plans position third in the order of succession below the positions of the Deputy Secretary and Under Secretary for Management. Because these positions were vacant when Mr. McAleenan resigned, Mr. Wolf, as the Senate confirmed Under Secretary for Strategy, Policy, and Plans, was the next successor and began serving as the Acting Secretary.

3. Litigation

Several commenters mentioned recent litigation and court decisions which they believed affected the Secretary's authority to promulgate this final rule. DHS addresses each case in turn below.

a. East Bay Sanctuary Covenant v. Trump

Comment: Several commenters cited the injunction in *East Bay Sanctuary Covenant* v. *Trump,* 354 F.Supp.3d 1094 (N.D. Cal. 2018) (''*East Bay I*''), issued by the U.S. District Court for the Northern District of California as a reason why DHS could not publish this rule. In *East Bay I,* plaintiffs challenged an interim rule jointly published by DHS and DOJ, ''*Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protections of Claims,* 83 FR 55934 (Nov. 9, 2018), which essentially barred asylum to any alien who entered the United States outside of a U.S. port of entry. The *East Bay I* court issued a temporary restraining order (TRO) on November 19, 2018, and a preliminary injunction in December 2018 that enjoined DHS from denying asylum to aliens who failed to present themselves at a U.S. port of entry.[100] On February 28, 2020, the Ninth Circuit affirmed the district court's decision granting preliminary injunctive relief. *East Bay Sanctuary Covenant* v. *Trump,* No. 18–

[99] Section 103(g) of the HSA (6 U.S.C. 113(g)(1)) states:

(g) Vacancies

(1) Absence, disability, or vacancy of Secretary or Deputy Secretary.—Notwithstanding chapter 33 of title 5, the Under Secretary for Management shall serve as the Acting Secretary if by reason of absence, disability, or vacancy in office, neither the Secretary nor Deputy Secretary is available to exercise the duties of the Office of the Secretary.

(2) Further order of succession.—Notwithstanding chapter 33 of title 5, the Secretary may designate such other officers of the Department in further order of succession to serve as Acting Secretary.

[100] Several commenters also cited to district court decisions in two cases which have subsequently been consolidated—*O.A.* v. *Trump,* Civ. No. 18–2718/S.M.S.R. v. Trump, Civ. No. 18–2838 (hereinafter ''*O.A.* v. *Trump*''), 404 F.Supp.3d 109 (D.D.C 2019). The commenters citing these cases made similar arguments that this rule was inconsistent with the courts' decisions finding that the interim final rule was consistent with INA section 208(a), 8 U.S.C. 1158(a), which allows any alien to apply for asylum regardless of manner of entry.

17274, 2020 WL 962336 (9th Cir. Feb. 28, 2020).

Several commenters stated that this rule was the government's attempt to ''end run'' the TRO in *East Bay I* and punish people who were trying to seek asylum. Another commenter stated that this rule was an attempt to deter the same group of aliens that the court enjoined DHS from denying asylum because of their manner of entry by creating an absolute bar to employment authorization. One commenter argued that people are entitled by law to seek asylum and as such, after a reasonable time, should be permitted to work while they pursue their claims. Another commenter, citing the interim rule and *East Bay I,* claimed that the INA and the courts have made clear that aliens who enter the United States illegally are ''truly in need of protection'' and that they have a right to claim asylum, regardless of their manner of entry. The commenter argued that based on this fundamental principle, the court struck down DHS's attempt to block aliens who entered illegally from applying for asylum and found that the rule was arbitrary and capricious.

Response: DHS disagrees with the commenters assertions. The district court's decision in *East Bay I* only addressed who is eligible to apply for asylum. It did not address employment authorization for asylum seekers. This final rule does not conflict with *East Bay I* and is consistent with section 208(d)(2) of the INA, 8 U.S.C. 1158(d)(2), the statute governing the Secretary's discretion to grant employment authorization to asylum seekers. DHS also disagrees with the commenters' characterization of its purpose in promulgating the rule. DHS does not intend to bypass the court's decisions in *East Bay I.* DHS has a strong interest in prioritizing bona fide asylum seekers over those who abuse the asylum system for economic reasons. In addition, DHS is not prohibiting all asylum seekers who enter the United States illegally from obtaining employment authorization. An asylum seeker who enters illegally may still qualify for employment authorization if he or she presents to DHS within 48 hours of entry and expresses a fear of persecution or an intent to seek asylum, and establishes good cause for the illegal entry. Further, this rule does not deter legitimate asylum seekers who are fleeing persecution from entering the United States, nor does it bar them from obtaining employment authorization once they are granted asylum or if they qualify for discretionary employment authorization pursuant to the provisions of this rule. Bona fide asylum-seekers urgently needing protection from persecution for whom the U.S. is the first country available in which to seek refuge will apply for asylum regardless of when they would receive work authorization.

Finally, the commenters misstate DHS' justification for barring illegal entrants from employment authorization. DHS has a strong interest in ensuring a safe and orderly immigration system and securing its borders. DHS has provided exceptions to the illegal entry provision, which reflects DHS's understanding that some asylum seekers may have good cause to enter the United States illegally. However, DHS seeks to incentivize aliens to comply with the law to the extent possible, to avoid injury and death associated with illegal entries, and to reduce government expenditures related to detecting, apprehending, processing, housing, and transporting escalating numbers of illegal entrants.

b. *Mendez Rojas* v. *Johnson*

Comment: Several commenters argued that the final rule does not make an exception for those aliens who are protected by the interim joint settlement agreement in *Mendez Rojas* v. *Johnson,* 2018 WL 1532715 (W.D. Wash. Mar. 29, 2018). In *Mendez Rojas,* the court held that DHS failed to adequately advise asylum applicants of the requirement to file an asylum application within one year of entry into the United States. The commenters argued that the rule would undermine the interim joint settlement agreement and unlawfully penalize the class members of the *Mendez Rojas* decision.

Response: With respect to the claim that this rulemaking would affect *Mendez-Rojas* class members, DHS does not comment on ongoing litigation.

c. *Rosario* v. *USCIS*

Comment: Several commenters argued that the rule contravenes the holding of *Rosario* v. *USCIS,* 365 F. Supp. 3d 1156 (W.D. Wash. 2018). In *Rosario,* plaintiffs brought a class action to compel USCIS to comply with the 30-day processing timeframe for adjudicating EAD applications. The court enjoined USCIS for failing to adhere to that timeframe. Two commenters referenced the court's opinion in *Rosario* and discussed the potential negative impact any delay in granting employment authorization would have on asylum seekers. One commenter stated that the rule intentionally delays the ability of asylum seekers to obtain work authorization and that the change was a drastic departure from longstanding policy and the recent court order in *Rosario.* Another commenter stated that the changes made by this rule to extend the waiting period, plus the elimination of the 30-day EAD processing requirement in the NPRM ''*Removal of 30-day Processing Provision for asylum Applicant-Related Form I–765 Employment Authorization Applications,*'' DHS Docket No. USCIS–2018–0001, would make employment authorization for asylum seekers ''virtually unattainable.'' The commenter argued that since the *Rosario* decision, even with higher workloads, USCIS has been able to adjudicate EADs within the 30-day timeframe. Two commenters also discussed the history of the 30-day EAD processing regulation and noted that the Court stated that the government had already considered the possibility of unsuccessful asylum claims but chose to expedite processing of such claims above the merits of the underlying asylum claim. *Rosario,* 365 F. Supp. at 1160–61.

Response: DHS does not believe this rule contravenes the *Rosario* decision. The decision in *Rosario* was predicated on a regulatory scheme requiring USCIS to process initial (c)(8) EAD requests within 30 days, provided that the application was filed after the asylum application had been pending for a minimum of 150 days. The *Rosario* court order simply enforced the self-imposed 30-day processing requirement.

As noted in the separate rule eliminating the 30-day processing timeframe, DHS Docket No. USICS–2018–0001, DHS has determined that changing conditions, including increased vetting requirements and rising application volumes, render the former regulatory scheme outdated and too onerous for USCIS to continue administering. Further, USCIS has only been able to comply with the *Rosario* order by temporarily shifting resources from other product lines to comply with the court injunction. DHS strives to ensure that all applicants seeking an immigration benefit have their cases adjudicated fairly and in a timely manner. However, where DHS is required to adjudicate a form type pursuant to an outdated requirement that is unreasonable under current circumstances, it can often delay other applicants seeking immigration benefits. Finally, DHS specified in the NPRM that USCIS would not apply the provisions of this final rule to any *Rosario* class member whose initial application for an EAD is pending with USCIS on the effective date of the final rule so long as the *Rosario* injunction remains in effect.

d. *Ramos* v. *Thornburgh*

One commenter cited the district court's decision in *Ramos* v. *Thornburgh,* 732 F. Supp. 696 (E.D. Tex. 1989), and argued that any impediment to an asylum seeker's right to work threatens their ability to survive and that the survival of asylum seekers outweighs any prospective benefit from such an impediment.

Response: While the court in *Ramos* v. *Thornburgh* notes potential considerations for asylum seekers applying for work authorization, DHS maintains that for legitimate asylees, an asylum grant leads to immediate employment authorization and certainty of status and humanitarian protections. Further, the section 208(d)(2) of the INA, 8 U.S.C. 1158(d)(2), states that ''[a]n applicant for asylum is not entitled to employment authorization.'' This Final Rule is not eliminating EADs but extending the waiting period to apply for employment authorization and revising the requirements an alien must meet to obtain a discretionary EAD.

4. U.S. Obligations Under International Law

Comment: Many commenters stated that the rule violates the United States' obligations under international law and the 1951 Convention relating to the Status of Refugees, 19 U.S.T. 6259, 189 U.N.T.S. 137 (Jul. 28, 1951) (hereinafter referred to as ''Refugee Convention''), articles 2 through 34 of which are binding on the United States by incorporation in the 1967 Protocol relating to the Status of Refugees, 19 U.S.T. 6223, 606 U.N.T.S. 267 (Oct. 4, 1967). See *INS* v. *Stevic*, 467 U.S. 407, 416 (1984). One commenter argued that the rule discourages and criminalizes asylum seekers and goes beyond the principles expressed in the Refugee Convention. Several commenters believed that the rule violated the Refugee Convention because it impermissibly limited refugees' access to employment and created categorical bars to protection. The commenters also stated that the rule created more obstacles to employment and increased the chances that a bona fide refugee would not be accorded ''favorable'' treatment. Several commenters argued that the rule contravened the Refugee Convention and 1967 Protocol because it was far more restrictive in terms of access to work than what was provided by other State Parties, such as Canada, with whom the United States has a Safe Third Country Agreement. The commenters argued that the rule was contrary to the international right to work recognized in Article 6 of the International Covenant on Economic, Social and Cultural Rights, Article 45 of the Organization of the American States, Article XIV of the American Declaration on the Rights and Duties of Man, and Article 6 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights. Another commenter argued that the proposal improperly relies on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), arguing that the protections provided by CAT are insufficient to support affected asylum seekers harmed by their limited ability to apply for employment authorization.

Several other commenters referred to Articles 17 and 31 of the Refugee Convention, arguing that the rule violates the ''language and spirit'' of the convention. One commenter argued that that Article 17 gives refugees the right to engage in employment. Another commenter, citing the United Nations High Commissioner for Refugees (UNHCR), Handbook on Procedures and Criteria for Determining Refugee Status, and UNHCR's interpretation of Article 31, argued that since an alien is considered a refugee as soon as he or she meets the refugee definition and not when a state recognizes his or her status as a refugee, an asylum seeker should similarly be considered lawfully in the United States with the consent of the government and thus eligible to work even if his or her asylum case has not been decided. The commenter also argued that Article 17 of the Convention provides refugees ''lawfully staying'' in a territory ''the right to engage in wage-earning employment,'' noting that UNHCR interpreted the term ''stay'' to ''embrace both permanent and temporary residence'' and that the term ''lawful'' includes circumstances when ''the stay in question is known and not prohibited.'' The commenter further argued that, because international refugee law makes clear that an individual is a refugee as soon as he or she meets the refugee definition, as opposed to when a state recognizes his or her status as such, an asylum seeker should be considered as ''lawfully staying'' when he or she initiates his or her asylum application, and that the filing of the asylum application while present in the United States reflects the consent of the U.S. government.

Several other commenters argued that Article 31 of the Refugee Convention specifically prohibits States from imposing penalties on refugees on account of their illegal entry or presence and to deny employment authorization to asylum seekers essentially was a ''penalty.'' Another commenter argued that Articles 17 and 18 of the Convention explicitly protects the rights of refugees and asylum seekers to obtain work and self-employment in host countries. Another commenter also argued that the extended waiting period is inconsistent with the Refugee Convention and the INA. That commenter said that under the modern asylum system created by the 1980 Refugee Act, the government anticipated that asylum applications would be processed quickly, and created a 180-day processing deadline to ensure that employment authorization could be issued expeditiously. A commenter argued that DHS is obligated under domestic and international law to accept asylum seekers and ensure that they are eligible for employment authorization as soon as possible. Another commenter added that the extended waiting period undermines asylum seekers' rights to pursue claims under domestic and international law.

Finally, one commenter argued that without the right to work legally, some asylum seekers would be ''forced'' back to countries where their lives and freedom could be in danger, thereby violating the U.S. obligations of *non-refoulement* under international law.

Response: DHS disagrees that this rule violates or is inconsistent with U.S obligations under international laws. DHS first notes that, although the United States is a party to the 1967 Protocol, which incorporates Articles 2 to 34 of the 1951 Refugee Convention, this treaty is not self-executing; consequently, it is not directly enforceable in U.S law. It is the domestic implementing law that governs, and Supreme Court and other case law makes clear that the Protocol serves only as a useful guide in determining congressional intent in enacting the Refugee Act of 1980 because the Act sought to bring U.S. law into conformity with the Protocol. *See, e.g., INS* v. *Stevic,* 467 U.S. 407, 428 n.22 (1984); *Khan* v. *Holder,* 584 F.3d 773, 783 (9th Cir. 2009).

Congress implemented many of the provisions of the Refugee Convention through the passage of the Refugee Act of 1980, which included immigration provisions governing withholding of removal, adjustment of status for asylees and refugees, and the bars to asylum eligibility for aliens who were convicted of a serious crime, were persecutors, or were a danger to the security of the United States. The United States has implemented Article 34 of the 1951 Convention—which provides that State Parties ''shall as far as possible facilitate the assimilation and naturalization of

refugees''—through the INA's asylum provision, section 208, 8 U.S.C. 1158. *See INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 441 (1987). As the Supreme Court has recognized, Article 34 is ''precatory'' and ''does not require [an] implementing authority actually to grant asylum to all'' persons determined to be refugees. *Id.* Nor is the United States required to provide work authorization for asylum applicants, but DHS is doing so pursuant to its discretion under the INA. INA section 208(d)(2), 8 U.S.C. 1158(d)(2).

DHS also notes that the INA provisions and DHS regulations applicable to refugees and asylees fully comply with of Articles 17 and 31 of the Refugee Convention. The commenters argue that this rule violates Article 17 because DHS is depriving asylum seekers the right to work in the United States.[101] However, paragraphs (1) and (3) of Article 17 related to wage-earning employment specifically state:

''1. *The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards to engage in wage-earning employment.*

. . . .

''3. *The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.*'' (Emphasis added)

Nothing in Article 17 requires DHS to provide employment authorization to aliens seeking refugee status or asylum *before* DHS or an IJ has determined that they meet the definition of a refugee under 101(a)(42) of the INA, 8 U.S.C. 1101(a)(42), and granted status on that basis. Nor does Article 17 limit DHS's ability to place restrictions on (c)(8) EADs before an alien is granted asylum. Once DHS or an IJ has determined that an alien meets the definition of a refugee and has been granted status, the alien is immediately authorized to work pursuant to his or her status, consistent with the statute and regulations governing employment authorization for those who have been granted refugee status or asylum. Nothing in the rule changes this treatment of employment authorization for refugees or asylees.

DHS also believes that this rule is compliant with Article 31 of the Refugee Convention as it relates to refugees who enter the United States illegally. Article 31 specifically states:

''1. *The Contracting States shall not impose penalties, on account of their illegally entry or presence, on refugees who, coming directly from a territory where there life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without to the authorities and show good cause for their illegal entry or presence.*

''2. *The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.*''

DHS views the Article 31(1) restriction on imposition of ''penalties'' on asylum seekers as not encompassing discretionary ancillary benefits such as employment authorization which the Secretary may grant to aliens in the United States, notwithstanding their immigration status *Cf. Mejia* v. *Sessions,* 866 F.3d 573, 588 (4th Cir. 2017) (denying illegal re-entrants the opportunity to apply for the discretionary relief of asylum does not constitute a penalty, as considered by Art. 31(1) of the Refugee Convention). Even if DHS's proposed change could be considered a ''penalty'' within the meaning of Article 31(1), DHS believes that its ''good cause'' exception is sufficient to address any concerns about an asylum seeker's ability to seek discretionary employment authorization after illegal entry into the United States. Aliens who establish good cause for entering or attempting to enter the United States at a place and time other than lawfully through a U.S. port of entry and, within 48 hours, express to DHS a fear of persecution or an intent to seek asylum, will not be barred from applying for employment authorization after the required waiting period.

5. Administrative Procedure Act

Comment: Several commenters argued that the rulemaking violates the APA, 5 U.S.C. 551 et. seq., and is arbitrary and capricious. Other commenters believed the rule is arbitrary and capricious because, in their view, the rationale for the changes was insufficient, or the explanations provided disregarded relevant facts or prior policies. For example, one commenter cited to a joint interim rule by the former INS and DOJ–EOIR, *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,* 62 FR 10312 (Mar. 6, 1997), saying that the rule was meant to ensure that bona fide asylum seekers obtain employment as quickly as possible. The commenter also claimed that the government stated in the interim rule that a period beyond the 150-day for granting an EAD was a period which would not be appropriate to deny work authorization to an alien whose claim has not been adjudicated. One commenter stated that none of the rationales offered in the rule, especially as it relates to the waiting period for an EAD, strike the appropriate balance between the concerns about incentives to file fraudulent or frivolous applications and the hardships on applicants.

Several commenters believed the rule was *ultra vires* and beyond DHS's authority. One commenter argued that, although the statute gave the agency some discretion regarding employment authorization generally, it did not authorize the agency to impose its own waiting period instead of the one expressly provided by Congress.

Several commenters argued that the rule is arbitrary and capricious under the APA for its inadequate evaluation of its impacts. The impacts listed by the commenters included the deterrence of bona fide applicants, impacts to state workforces, labor- and civil-rights law enforcement, and economic losses from foregone, rather than merely delayed, EADs. The commenters also argued that the rule's proffered justifications were unreasonable and stated that deterring aliens from exercising a humanitarian ''right enshrined in INA and international law'' could not justify blocking ''poor immigrants.'' The commenters further stated that there is no evidence that low-income applicants have less meritorious cases than wealthy applicants, and that the proposal arbitrarily excludes the former.

Response: DHS will address the comments relating to the specific provisions in the Final Rule in greater detail below, including impacts of the rule's provisions. However, as to the general comments, DHS disagrees with the arguments that this rulemaking failed to provide a sufficient rationale to support the amendments, is *ultra vires,* or is generally arbitrary and capricious.

Under the APA, a court may review the Secretary's exercise of discretion under the deferential ''arbitrary and capricious'' standard. 5 U.S.C. 706(2)(A). The court's review is narrow, and the court can only review the Secretary's exercise of discretion to determine if ''the Secretary examined 'the relevant data' and articulated 'a satisfactory explanation' for his decision, including a rational

[101] Most of the comments related to Article 17 of the Refugee Convention, though one comment referenced Article 18 in conjunction with Article 17. DHS' response to the comments on Article 17 apply to the reference to Article 18 as well.

connection between the facts found and the choice made.'' *Dep't of Commerce* v. *New York,*__U.S.__, 139 S.Ct. 2551, 2569 (June 27, 2019)(citations omitted). Courts may not substitute their judgment for the Secretary's ''but instead must confine ourselves to ensuring that he remained 'within the bounds of reasoned decision-making.' '' The courts also have noted that agencies are not bound by prior policies or interpretations of their statutory authority. *See, e.g., Rust* v. *Sullivan,* 500 U.S. 173, 186–87 (1991) (acknowledging that changed circumstances and policy revision may serve as a valid basis for changes in agency interpretations of statutes); *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837, 863–64 (1984) (''The fact that the agency has from time to time changed its interpretation of the term 'source' does not, as respondents argue, lead us to conclude that no deference should be accorded the agency's interpretation of the statute. An initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis.''); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42 (1983) (agencies ''must be given ample latitude to 'adapt their rules and policies to the demands of changing circumstances' '' (*quoting Permian Basin Area Rate Cases,* 390 U.S. 747, 784 (1968))). In addition, an agency need not prove that the new interpretation is the best interpretation but should acknowledge that it is making a change, provide a reasoned explanation for the change, and indicate why it believes the new interpretation of its authority is better. *See generally FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009).

DHS disagrees that this rulemaking is arbitrary and capricious. Significantly, although DHS is not bound by statements made in prior rulemakings, this rule builds on prior amendments to regulations managing asylum applications, interviews, and employment authorization based on a pending asylum application. For example, previous rulemakings set a mandatory waiting period for (c)(8) EADs, articulated applicant-caused delays that would prolong that wait, and prescribed the effects of failing to appear for an asylum interview. Moreover, the prior amendments were triggered by similar realities, albeit on a smaller scale, that the agency faces today. The rationale and justifications for those amendments are in line with those expressed here—namely, addressing significant influxes of aliens abusing the asylum system for economic benefit and ballooning asylum adjudication backlogs, and the desire to prioritize bona fide asylum applicants.[102] DHS believes that this rulemaking is necessary to achieve the several purposes expressed herein and that it is consistent, both in rationale and the mechanisms employed, with previous efforts to preserve the integrity of U.S. humanitarian programs.

DHS acknowledges that it is changing longstanding eligibility requirements for (c)(8) employment authorization. While these stricter requirements stand to have a significant impact on those who would have qualified for a (c)(8) EAD under prior regulations, DHS believes that this rule is not *ultra vires* and falls squarely within the Secretary's authority under sections 103 and 208 of the INA, 8 U.S.C. 1103, 1158, and that it complies with the United States' obligations under international law. As noted earlier, asylum seekers are not entitled to employment authorization under the INA and the Secretary is under no obligation to provide employment authorization to asylum seekers. Further, it is within the Secretary's discretion to bar employment authorization to asylum seekers outright. *See* INA section 208(d)(2), 8 U.S.C. 1158(d)(2). Instead of instituting an outright bar to employment authorization, however, the Secretary has chosen to exercise his discretion more narrowly and permit certain asylum seekers to obtain employment authorization if they meet the requirements specified in this rule. In addition, contrary to the assertion of one commenter, the 180-day waiting period specified in section 208(d)(2) of the INA does not in any way limit the Secretary's authority to impose additional restrictions on applying for employment authorization or to extend the timeframe beyond 180 days.

DHS has explained why it believes the new rule is necessary in light of the country's overwhelmed asylum system—it seeks to restore integrity to the asylum process, prevent aliens with significant criminal convictions from obtaining a discretionary benefit, reduce the incentives for illegal migration, deter frivolous, fraudulent, and non-meritorious filings, and ensure that bona fide asylum seekers are able to have their claims decided expeditiously so they can receive the protection and benefits available for refugees and asylees in the United States.

By engaging in this rulemaking, DHS has satisfied its obligations under the APA and given the public ample opportunity to comment on the proposals within this rule. DHS carefully considered the public comments on this rule and made adjustments based on the input it received. DHS has also articulated its rationale for the changes in this rule and it is in keeping with the immigration priorities and policies of the Administration as they relate to the management of humanitarian immigration programs. Accordingly, DHS believes this rule has been issued in compliance with the APA.

6. Constitutional Concerns

Several commenters argued that the provisions in the rule were unconstitutional based on a variety of grounds. DHS addresses the various Constitutional claims separately below.

a. Discrimination and the Equal Protection Clause of the U.S. Constitution

Comment: One commenter stated the rule was unconstitutional because it was based on racial animus towards Latin American asylum seekers and was ''part of an insidious agenda of discrimination.'' The commenter argued that DHS should withdraw the rule since the rule was likely ''animated by unconstitutional prejudice and animus.'' One commenter argued that the rule violates the 14th amendment because of its disproportionate impact on non-white applicants and its racially discriminatory animus. Another commenter stated that the rule disproportionately impacts black and Latino communities, especially in terms of access to healthcare. One commenter also believed that the rule was racially motivated, pointing to the 30-day and Fee rulemakings, Third Country Transit Bars, and the Migrant Protection Protocols (MPP), and ''family separations policy,'' to support the commenter's position. The commenter argued that the administration's focus on the U.S.-Mexico border exhibited discrimination against Latino immigrants.

Response: DHS rejects the comments asserting that this rule is based on racial animus and is discriminatory. Nowhere in the rule does DHS draw distinctions between asylum seekers based on their race, national origin, or religion—

[102] *See, e.g.,* INS final rule, *Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization,* 59 FR 62284–01 (Dec. 5, 1994) (The rulemaking intended to ''discourage applicants from filing meritless claims solely as a means to obtain employment authorization,'' so that asylum officers and IJ can ''concentrate their efforts on approving meritorious [asylum] claims'').

protected classifications which implicate the Equal Protection Clauses of the Fifth and Fourteenth Amendments. *See, e.g., Korematsu* v. *U.S.,* 323 U.S. 24. This rule applies equally to all asylum seekers, regardless of their race, nationality, age, gender, or religion, and therefore does not have a discriminatory effect on asylum seekers. The demographics of asylum seekers, a population that has yet to establish eligibility for asylum, shift over time based on country conditions around the globe. Even though the demographics of asylum seekers during any particular era or from any particular part of the world may change, this fact did not influence DHS in this rulemaking. Further, this rule applies equally to all aliens who enter or attempt to enter the United States, whether at the southern border, the northern border, or any of the more than 300 land, air and sea ports of entry.

To the extent that commenters are arguing that DHS is discriminating because it is treating asylum seekers differently than other aliens or immigrants to the United States, or U.S. citizens, DHS notes that the U.S. Supreme Court has long recognized Congress's authority to draw such distinctions. *See, e.g., Demore* v. *Kim,* 538 U.S. 510, 521–522 (2018) (''[T]his Court has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens. [A]ny policy toward aliens is vitally and intricately interwoven to the conduct of foreign relations, the war power, and the maintenance of a republican form of government.''). *See also Mathews* v. *Diaz,* 426 U.S. 67, 80–83 (1976) (holding that providing an income benefit to one class of aliens and withholding the same benefit from a similar class of aliens did not violate the Due Process Clause, and that the decision to withhold a benefit ''may take into account the character of the relationship between the alien and this country'').

This rulemaking addresses DHS' interest in deterring unlawful entry into the United States, the intentional abuse of the U.S. asylum system, and preventing illegal entrants and aliens with significant criminal histories from obtaining a discretionary benefit. As a sovereign nation, we must secure our borders and preserve the rule of law, which is fundamental to the maintenance of our republican form of government. Asylum applicants must establish, *inter alia,* that their government is unable or unwilling to protect them. Asylum applicants commonly allege that they are fleeing rampant crime and that the governments in their home countries fail to protect them by enforcing the law. It follows that aliens seek to enter the United States *because* it respects and enforces its laws. To stand idly by while more than 850,000 aliens sought to illegally enter the United States in a single year, not accounting for those aliens that CBP did not apprehend, is to forfeit sovereignty and erode the very rule of law that attracts and protects bona fide asylees.[103] To continue to provide an ancillary discretionary benefit with virtually no eligibility criteria and nearly limitless renewal opportunity where approximately 80 percent of the beneficiaries cannot establish eligibility for asylum, serves to further erode the rule of law. Accordingly, DHS is implementing this rule and other rules and programs not to discriminate against any class, but as an act of sovereignty, to provide security, and to preserve the integrity of the asylum system.

b. Due Process

Comment: Several commenters argued that the changes in the rule violated the Fifth Amendment and Due Process clause of the U.S. Constitution. One commenter argued that the rule would deprive asylum seekers of ''life and liberty and the pursuit of happiness.'' Another commenter argued that the rule violated the ''spirit'' of the U.S. Constitution and Congressional intent as it related to asylum seekers. One commenter argued that the rule violated the Suspension Clause and Due Process clause by not allowing asylum seekers to work while their cases are on appeal in the federal courts.

One commenter argued that removing ''immigrants' right to work'' undermines their ability to pay for counsel and thus their access to due process under law. Another commenter cited the Constitutional prohibition on bills of attainder and guarantee of due process in arguing against ''punishing'' all asylum applicants for the fraudulent claims of some. A few commenters stated that denying EADs for unresolved arrests or pending charges is draconian and violates the due process clause of the Constitution.

Response: DHS has considered commenters' concerns about due process in the asylum system and disagrees that this rule violates asylum applicants' due process rights. Nothing in this rule prevents an alien from seeking asylum, participating in the adjudication process, or from seeking administrative or judicial review of an adverse asylum decision.

Contrary to the commenter's assertion, asylum applicants do not have a ''right to work.'' Throughout the INA, Congress has drawn clear distinctions between different classes of aliens and the benefits to which they are entitled. In the context of this rule, Congress drew distinctions between asylees and asylum applicants. Asylees have a ''right to work,'' while asylum applicants do not.[104] An asylee has established eligibility to remain in the United States and is conferred a host of benefits, including life-long residence in the United States (absent termination on limited grounds), and a pathway to U.S. citizenship. An asylum applicant has not established eligibility to remain in the United States—where the alien has no lawful status, DHS may not remove the alien to his or her home country while the application is pending. As discussed below, this distinction significantly affects the character of the relationship between the alien and the United States, and the benefits that the United States offers. In this rule, DHS is continuing to provide employment authorization to certain asylum applicants present in the United States, but is extending the waiting period for that benefit and is excluding certain applicants who enter illegally without good cause, who engage in certain significant criminal behavior, and who fail to timely file their applications as required by statute.

The eligibility distinctions drawn by DHS in this rule are analogous to those in *Mathews* v. *Diaz,* 426 U.S. 67 (1976). There, the Supreme Court found a Social Security Act provision constitutional where it denied an income benefit to all aliens unless they had been admitted for permanent residence and had resided in the United States for at least five years.[105] The Court held that Congress permissibly distinguished LPRs with five years residence from all other aliens, including LPRs with less than five years' residents, and further, that this

[103] *See* CBP Southwest Border Migration Statistics FY 2019, available at *https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019.*

[104] Compare INA 208(c)(1)(B), 8 U.S.C. 1158(c)(1)(B), with INA 208(d)(2), 8 U.S.C. 1158(d)(2).

[105] *See Diaz,* 426 U.S. at 78–79 (''The fact that all persons, aliens and citizens alike, are protected by the Due Process Clause does not lead to the further conclusion that all aliens are entitled to enjoy all the advantages of citizenship or, indeed, to the conclusion that all aliens must be placed in a single homogeneous legal classification. For a host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other; and the class of aliens is itself a heterogeneous multitude of persons with a wide-ranging variety of ties to this country.'').

distinction did not deprive the aliens of liberty or property without due process of law.[106]

Similar to LPRs with five or more years of residence in the United States, the relative permanency of asylees strengthens the ties with this country and therefore they enjoy immediate and secure access to a ''bounty'' of benefits, including employment authorization and its potential attendant income.[107] In contrast, asylum applicants, a class who have yet to establish eligibility to remain in the country, have weaker ties to the United States and therefore have more limited, temporary access to the same ''bounty.'' [108] The relationship between an asylum applicant and the United States is made even weaker where the applicant has diminished his or her chances of obtaining asylum by violating U.S. immigration and criminal laws, which is reflected in the narrowed EAD eligibility requirements in this rule.

DHS recognizes that many aliens choose to hire counsel or seek pro bono assistance as they pursue their asylum claims, but disagrees that delaying or barring employment authorization while an asylum application is pending prevents access to due process under law. Aliens in immigration proceedings do not enjoy the same right to free counsel as defendants in criminal proceedings, but can obtain legal counsel and be represented in any immigration proceeding the alien chooses, at no cost to the Government.[109] As provided by Congress, whether an alien's asylum application is being reviewed by USCIS, an IJ, the BIA, a Circuit Court of Appeals, or the United States Supreme Court, that alien ''is not entitled to employment authorization[.]'' INA 208(d)(2), 8 U.S.C. 1158(d)(2). Thus, it is not a violation of an alien's due process rights if the Secretary chooses to restrict employment authorization during administrative or judicial review of a denied asylum claim. The Secretary may, in his or her discretion, establish regulations to provide employment authorization during any point in the review of the asylum application, or preclude employment authorization during the entire review process.

Precluding employment authorization during all or part of the asylum review process also is consistent with the longstanding statutory and regulatory framework. For example, in the 1994 final rule, as in this rulemaking, INS provided that an alien whose asylum application is denied during the 150-day waiting period would never be eligible for an EAD, even if the alien pursued an administrative appeal or sought judicial review of the denial.[110] Further, in 1996, Congress expressly prohibited DHS from providing employment authorization to an asylum applicant during the 180-day waiting period while simultaneously mandating that initial asylum claims should be adjudicated in 180 days or less, absent exceptional circumstances.[111] When read together, it is apparent that Congress endorsed separating asylum adjudications from employment authorization, and recognized that the alien would not be employed during the adjudication of the asylum application, and very likely during judicial review. As noted in the proposed rule, ''the 365-day period was based on an average of the current processing times for asylum applications which can range anywhere from 6 months to over 2 years, before there is an initial decision, especially in cases that are referred to DOJ–EOIR from an asylum office.'' The 1994 rule set a 180-day EAD waiting period anticipating a 180-day or shorter asylum application adjudication period when the volume of cases was significantly lower than the present day levels. The current rule sets a 365-day EAD waiting period based on an average adjudication time that often stretches well beyond two years. DHS anticipates that by reducing the adjudication backlog, this adjudication time will shorten.

DHS believes that restricting access to asylum applicants' employment authorization during a period of judicial review is necessary to ensure that aliens who have failed to establish eligibility for asylum during multiple levels of administrative review (before the asylum officer and/or the IJ, and the BIA) do not abuse the appeals processes in order to remain employment authorized. As noted above, the relationship between an asylum applicant and the United States is made weaker where the applicant's chances of receiving asylum are diminished, here by failing to establish eligibility for asylum through two or three levels of administrative review. The termination provision narrows (c)(8) EAD eligibility commensurate with the attenuation from asylum eligibility after multiple, successive asylum denials.

DHS acknowledges that this provision, along with others in this rule, may negatively impact those aliens who succeed in challenging their asylum denials upon judicial review. However, it is necessary to remove the incentive of EAD eligibility during judicial review that existed under the previous regulation, which amounted in most cases to several additional years of employment authorization after multiple asylum denials. Returning to *Diaz,* the Supreme Court held that barring all aliens, including LPRs with less than five years' residence, from drawing Social Security benefits was permissible under the due process clause despite the potential for harm experienced by those who failed to meet the eligibility threshold drawn by the statute.[112] Although aliens' due process

[106] *Id.,* at 84.

[107] Id., at 80 (''Neither the overnight visitor, the unfriendly agent of a hostile foreign power, the resident diplomat, nor the illegal entrant, can advance even a colorable constitutional claim to a share in the bounty that a conscientious sovereign makes available to its own citizens and Some of its guests. The decision to share that bounty with our guests may take into account the character of the relationship between the alien and this country: Congress may decide that as the alien's tie grows stronger, so does the strength of his claim to an equal share of that munificence.'').

[108] Unlike asylum applicants, LPRs with less than five years of residence in the United States are employment authorized incident to status. However, Social Security benefits are reserved for those who are not receiving income from employment because they are retired, disabled, are dependents of beneficiaries, or are survivors of workers who have died. *See* Understanding The Benefits (Jan. 2020), available at *https://www.ssa.gov/pubs/EN-05-10024.pdf.* Social Security income benefits are therefore analogous to income benefits derived from employment authorization.

[109] INA sec. 292, 8 U.S.C. 1362 (''In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.'').

[110] *See* 62 FR 10337 (March 6, 1997) (''An applicant whose asylum application has been denied by an asylum officer or by an immigration judge within the 150-day period shall not be eligible to apply for employment authorization. If an asylum application is denied prior to a decision on the application for employment authorization, the application for employment authorization shall be denied.'') *See* amended 8 CFR 208.7(a)(iii)(E) (An asylum applicant is not eligible for an EAD if ''[a]n asylum officer or an Immigration Judge has denied the applicant's asylum application within the 365-day period or before the adjudication of the initial request for employment authorization.'').

[111] *See* Omnibus Consolidated Appropriations Act, 1997, Pl 104–208, September 30, 1996, 110 Stat 3009. INA 208(d)(2), 8 U.S.C. 1158(d)(2) states, ''[a]n applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.'' INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii) states, ''in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed.''

[112] *See Diaz,* 426 U.S. at 83 (''We may assume that the five-year line drawn by Congress is longer than necessary to protect the fiscal integrity of the program. We may also assume that unnecessary hardship is incurred by persons just short of qualifying. But it remains true that some line is essential, that any line must produce some harsh

Continued

rights are protected in the United States, this does not require DHS to provide access to income via an employment authorization document during any point in the asylum adjudication process.[113]

With regard to the commenter's claim that the rule violates the Suspension Clause of the U.S. Constitution, Art. I, § 9, cl. 2, and constitutes a bill of attainder under the U.S. Constitution, Art. I, § 9, cl. 3, DHS respectfully disagrees. This rule does not in any way implicate or address habeas petitions and it does not unlawfully suspend the writ of habeas corpus. This rule also does not address the detention of aliens or the release of aliens from custody. The rule does not ''punish'' asylum seekers by delaying their ability to obtain employment authorization until their asylum claim is decided. This rule simply provides the conditions under which employment may be authorized, pursuant to the Secretary's discretionary statutory authority to provide (or not provide) employment authorization to asylum seekers.

With regard to bills of attainder, the Supreme Court has stated that the Bill of Attainder Clause applies only to Congress, noting that ''[t]he distinguishing feature of a bill of attainder is the substitution of a legislative for a judicial determination of guilt.'' *De Veau* v. *Braisted,* 363 U.S. 144, 160 (1960) (citation omitted). A bill of attainder has been described as ''a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial.'' *See Nixon* v. *Adm'r of Gen. Servs.,* 433 U.S. 425, 468 (1977) (*citing* prior Supreme Court precedent). Accordingly, the Bill of Attainder Clause does not apply ''to regulations promulgated by an executive agency.'' *Paradissiotis* v. *Rubin,* 171 F.3d 983, 988–89 (5th Cir. 1999) (*citing Walmer* v. *U.S. Dep't of Defense,* 52 F.3d 851, 855 (10th Cir. 1995) (''The bulk of authority suggests that the constitutional prohibition against bills of attainder applies to legislative acts, not to regulatory actions of administrative agencies.'')); *see also Korte* v. *Office of Personnel Mgmt.,* 797 F.2d 967, 972 (Fed. Cir. 1986); *Marshall* v. *Sawyer,* 365 F.2d 105, 111 (9th Cir. 1966).

Finally, DHS respectfully disagrees with commenters' statements that this rule violates aliens' due process rights in seeking employment authorization. As noted, there is no statutory or constitutional right to employment authorization for asylum applicants. Although aliens present in the United States are protected by the due process clause, federal immigration laws and their implementing regulations generally enjoy a highly deferential standard of review. Nonetheless, nothing in this rule prevents an alien from requesting employment authorization or obtaining employment authorization if they meet the requirements specified in the INA and this rule, and DHS believes this rule provides adequate notice of the eligibility criteria for employment authorization.

G. Comments on Specific Rule Provisions

1. 365-Day Waiting Period

a. INA 208(d)(2) and 180-Day Period

Comment: A few commenters supported extending the (c)(8) EAD wait period to 365 days. One commenter believed this change along with other measures would discourage people from entering the United States illegally and hurting American jobs. One commenter supported the change citing the incentives for the filing of asylum applications by unqualified aliens due to the extended time periods for asylum adjudications versus the relatively short period for obtaining employment authorization. The commenter stated that the increased processing times that resulted from more unqualified applications unfairly increased the burden on bona fide asylum seekers. The commenter also agreed with DHS that extending the waiting period to better approximate the actual average adjudication completion periods, combined with the LIFO policy, was the most effective remedial approach.

Many commenters, however, including several advocacy groups from the State of Maine, government officials from the State of New York, and representatives from several cities around the United States, opposed DHS extending the waiting period for asylum seekers to obtain an EAD from 180 days to 365 days. One commenter representing the State of New York argued that the rule ''interferes'' with the State's ability to enforce its labor and civil rights laws. Another commenter argued that the rule would ''impede or delay'' the State's ability to provide services under the Workforce Innovation and Opportunity Act (WIOA), Public Law 113–128, 128 Stat. 1425 (2014).

Several commenters argued that the proposal to extend the waiting period was contrary to 5 U.S.C. 706(1). Another commenter argued that DHS was effectively amending the statute, section 208(d)(2) of the INA, 8 U.S.C. 1158(d)(2), by treating the 180-day provision as the ''floor.'' Several commenters also argued that DHS was disregarding the context and history behind Congress's enactment of the provision and should not extend the employment authorization waiting period because Congress ''adopted'' an approach that was based on the ''careful balance that the INA had struck between 'discourag[ing] applicants from filing meritless claims solely as a mean to obtain employment authorization' and 'providing legitimate refugees with lawful employment authorization.'' [114]

A few commenters opposed extending the period to 365 days and suggested the DHS adopt a different timeframe. Several commenters suggested the waiting period should be eliminated altogether or significantly shortened, such as for a period of 30–60 days or not more than 90 days. One commenter suggested that the 150-day period was a sufficient deterrent for fraudulent asylum applications. Another commenter opposed lengthening of the waiting period but indicated that if DHS had to extend, it should not exceed more than 240 days, and that DHS should consider the impact on legitimate asylum seekers. One commenter suggested that DHS make the waiting period 180 days, plus one day for each day after the alien's lawful entry into the United States, and that DHS bar asylum seekers who entered illegally from qualifying for employment authorization. Another commenter argued that the 365-day waiting period was simply a delay tactic and that DHS could simply count 180 calendar days from the receipt of the asylum application. One commenter stated that DHS's issues with calculating days and the Asylum EAD Clock could be eliminated by simply allowing concurrent filing.

Several commenters argued that extending the period to 365 days was punitive, immoral, cruel and not consistent with American values. One commenter argued that extending the waiting period was inhumane and would make it harder for aliens to get asylum protection in the United States. Another commenter believed that,

and apparently arbitrary consequences, and, of greatest importance, that those who qualify under the test Congress has chosen may reasonably be presumed to have a greater affinity with the United States than those who do not.'').

[113] *Id.,* at 78 (''The fact that all persons, aliens and citizens alike, are protected by the Due Process Clause does not lead to the further conclusion that all aliens are entitled to enjoy all the advantages of citizenship or, indeed, to the conclusion that all aliens must be placed in a single homogeneous legal classification.'').

[114] *See* fn. 88.

though DHS's intent is to reduce frivolous, fraudulent, and non-meritorious claims, it will actually discourage and reduce legitimate claims for asylum. One commenter noted that there are aliens in the backlog who have been waiting for years for a decision on their cases and with the reintroduction of LIFO and current backlogs, aliens basically will have to wait an indefinite amount of time to work. Another commenter argued that asylum seekers cannot be deprived of employment authorization because of government delays. Several commenters argued that extended waiting period would incentivize immigrants to work illegally. Several state government agencies said that during the lengthened waiting period, asylum applicants are more likely to ''work off the books'' to earn income, which puts them at risk of abuse and wage theft.

Response: DHS disagrees that the proposal to extend the time frame for eligibility for employment authorization from 180 to 365 days is contrary to 5 U.S.C. 706(1). Section 706 of the APA describes the scope of judicial review of agency rulemaking under the APA and does not relate to the Secretary's authority over asylum or asylum-related employment authorization. DHS also disagrees that it is ''amending'' the statute that authorizes employment authorization by unlawfully treating the 180-day period as a ''floor'' as opposed to a ''ceiling'' for the amount of time an asylum seeker must wait until he or she is eligible for employment authorization.

Under section 208(d)(2) of the INA, 8 U.S.C. 1182(d)(2), Congress gave the Secretary authority to give asylum seekers employment authorization on a discretionary basis and created a minimum period an asylum application must be pending before the discretionary authority to grant employment authorization is permitted. As noted above, the Secretary is not obligated to provide employment authorization to asylum seekers during any period of review of the asylum application, and it is within the Secretary's authority to bar employment authorization to asylum seekers outright. In addition, contrary to the commenters assertions, the 180-day waiting period specified in INA section 208(d)(2), 8 U.S.C. 1158(d)(2), represents a minimum waiting period and does not in any way limit the Secretary's discretion to impose additional restrictions on applying for employment authorization, including extending the timeframe beyond 180 days.

In response to comments suggesting that DHS should either eliminate or significantly shorten the time an asylum seeker must wait, DHS believes it would contravene the purpose of this rule to do so, and notes that it is constrained by the statute and cannot shorten the period of time to less than 180 days. DHS could only make such a change if authorized by Congress. DHS also notes that there was a period in the 1990s when asylum seekers were able to obtain employment authorization immediately, and as a result, numerous fraudulent asylum claims were filed simply to obtain an EAD.[115] Since the 1990s, both Congress and the Executive Branch have witnessed the incentives for aliens to file false claims for asylum simply to be able to work in the United States and not because they qualify for asylum based on any of the grounds specified in section 101(a)(42) of the INA, 8 U.S.C. 1101(a)(42). DHS recognizes that when Congress enacted INA section 208(d), 8 U.S.C. 1158(d), Congress adopted the agency's 180-day minimum waiting period for employment authorization as the statutory standard. Congress also made clear that asylum applicants are *not entitled* to employment authorization. Nothing in the statute prevents DHS from extending the waiting period beyond 180 days.

b. Impact on Asylum Seekers and Their Ability To Be Self-Sufficient

Comment: Many commenters opposed the change arguing that it is overly burdensome, would inhibit asylum seekers' ability to become economically self-sufficient, and ability to become productive members of society. Similarly, many commenters argued that the extended waiting period would cause significant economic hardship for asylum applicants who are unable to work and financially support themselves. One commenter argued that extending the waiting period could impact a parent's ability to support his or her child and would reduce critical financial resources for children by reducing child support collections. Several commenters said denying asylum applicants the opportunity to work and become self-sufficient will require them to depend on government welfare and community services. A few commenters argued that DHS did not adequately address how applicants are expected to be able to provide for themselves as they are not eligible for federal welfare benefits. Similarly, a few commenters wrote that the extended waiting period is inconsistent with U.S. policy to reduce the number of public charges. Several commenters said that without employment and financial stability, applicants will have difficulty obtaining access to services, such as healthcare, banking, education, and would not be able to obtain driver's licenses or hire legal counsel. A commenter also stated that work permits are the only form of photo identification for many asylum seekers and that without photo identification, they will have difficulty accessing community support programs like shelters, food banks, and medical clinics. Other commenters argued that the extended waiting period would cause significant harm to asylum applicants' physical and mental health, including causing anxiety and depression.

One commenter stated that if applicants are granted asylum, it will be more challenging to find employment because they would need to explain a longer period of unemployment than they would under the 180-day rule. Multiple commenters argued that the proposed rule would increase the risk of labor trafficking, coercive employment practices, and violations of state labor laws because asylum seekers would not be legally authorized to work. Several commenters said asylum applicants are more likely to become or remain homeless while waiting for their EAD because they cannot afford stable housing. Another commenter said the consequences of housing instability are especially acute for children, including harm to their physical and mental health, behavioral problems, and educational achievement. Several commenters said that women, HIV-positive, and lesbian, gay, bisexual, transgender, queer (LGBTQ) asylum seekers are especially vulnerable to homelessness, abusive living situations, exploitative labor practices, and hunger. One commenter stated that employment opportunities and economic resources are necessary for survivors of domestic violence, sexual assault, and human trafficking. The commenter said the extended wait times undermine federal and state policies to support victims and may trap victims in exploitative situations.

Response: DHS recognizes that this rule may have a substantial impact on asylum applicants, but does not agree that a 365-day waiting period for employment authorization is overly burdensome, cruel, or precludes aliens from becoming self-sufficient. For at least 24 years, the statutory and regulatory scheme set the expectation that asylum applicants must wait a

[115] See discussion *supra* in section II, part A regarding efforts to reform the asylum system.

minimum of 6 months, often much longer due to applicant-caused delays, before asylum applicants may apply for employment authorization. Therefore, it is not reasonable for asylum applicants to come to the United States with the expectation that they will be employment authorized immediately upon their arrival.

While DHS supports the ability of aliens who have established eligibility for an immigration benefit in the United States, including asylees and refugees, to participate in and contribute to the U.S economy, DHS believes that employment authorization must be carefully regulated, not only to protect U.S. workers, but also to maintain the integrity of the U.S. immigration system. DHS has identified (c)(8) employment authorization, with its low eligibility threshold and nearly limitless renewals, coupled with the lengthy adjudication and judicial processes, as a driver for economic migrants who are ineligible for lawful status in the United States to file frivolous, fraudulent, and otherwise non-meritorious asylum applications. Asylum seekers are not immediately eligible to work as soon as they arrive in the United States. They are required to wait for at least 6 months, often longer, before they can receive work authorization. This waiting period is temporary and not a bar to employment authorization. DHS acknowledges that the extended period for which aliens will not be employment authorized may impact their access to other services, but this is a temporary period. In the interim, access to some services can be mitigated by organizations that provide these services without charge. There is no cost, for example, to attend public school. All children living in the United States have the right to a free public education.[116] Several states have implemented community health outreach programs specifically to provide access to preventive care services for aliens, and federally funded health care centers, which are required to treat anyone, charge on a sliding scale and do not ask for citizenship documentation.[117] DOJ–EOIR and USCIS maintain lists of legal providers who provide services at low or no cost.[118]

Regarding explaining a longer period of employment authorization to an employer, DHS believes that compliance with the law constitutes a reasonable explanation for any potential employer who may ask about an alien's period of unemployment. Regarding reliance on public benefits, while state programs may differ, in general, asylum seekers are not eligible for federally funded benefits until they receive asylum. Individuals cannot be compelled to rely on public benefits for which they are not eligible. Nothing in this rule modifies that eligibility. Further, as a point of clarity, asylum seekers are not subject to the public charge inadmissibility ground under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), in the adjudication of their asylum applications.[119] Nor is the public charge inadmissibility ground applicable to asylees seeking adjustment of status to lawful permanent residence in the United States.

DHS also disagrees that this rule would ''force'' asylum seekers to work illegally to survive. Currently, asylum seekers have to wait a minimum of 180 days, often longer, before their employment authorization request is adjudicated. There is no mechanism for an asylum seeker to gain immediate employment authorization upon arrival to the United States. It is precisely because of the loopholes in the current asylum process that many economic migrants have been incentivized to migrate illegally to the United States. Transnational criminal organizations and human smugglers have long been aware of DHS's limited resources, insufficient detention capacity, and prior policies related to ''catch and release,'' as well as asylum adjudication backlogs and prolonged immigration court proceedings. These criminal organizations and smugglers have marketed these loopholes to economic migrants as an avenue to enter the United States, be automatically released, and be allowed to remain and work for extended periods of time.[120]

Finally, DHS believes that the reforms made by this rule and recent procedural changes, like LIFO, will significantly reduce the number of filings solely for economic reasons, which in turn will ensure that bona fide asylum seekers have their claims decided in an expeditious manner. Since USCIS returned to scheduling asylum interviews based on LIFO, newer filings are being prioritized for interview scheduling and, upon a positive grant of asylum, those bona fide applicants are immediately employment authorized. Therefore, many legitimate asylum applicants likely will not have to wait the full 365-day period before they can work lawfully in the United States.

DHS strives to process all benefit requests as fairly and expeditiously as possible, while also conducting necessary vetting to identify national security and public safety concerns and detect fraud. From 2017 to 2020, over 80 percent of (c)(8) EADs were processed within 60 days. Processing times for individual applications vary based on the particular facts of a case and broader processing times can vary due to outside factors. As for the commenters who are concerned about asylum seekers who are currently in the backlog and their ability to continue to work, DHS addresses the impact of this final rule on those aliens whose asylum claims are still pending as of the effective date of this final rule, in Section V, ¶ 7, Effective Date and Retroactive Application below.

c. Vulnerability to Human Trafficking, Poverty, and Homelessness

Response: DHS strongly condemns human trafficking in all its forms, including labor trafficking and coercive labor practices. DHS expects all noncitizens, including asylum applicants, to refrain from working in the United States unless they are employment authorized. Working while not employment authorized increases the risk of labor trafficking and other coercive employment practices, abuse, and wage theft. In order to mitigate these risks and for their own safety, aliens should not accept employment in the United States unless they are employment authorized. Moreover, DHS expects asylum seekers to obey the law while in the United States, and will not assume otherwise in promulgating its employment authorization policies.

Nothing in this rule changes access for asylum seekers to housing. It continues to be incumbent upon every asylum seeker to have a plan for where they intend to live during the pendency of their asylum claim and, in particular, while they are not employment authorized. Many asylum seekers stay with friends or relatives or avail

[116] *https://www2.ed.gov/policy/rights/guid/unaccompanied-children.html* (last accessed 2/19/2020).

[117] *https://www.ncsl.org/research/immigration/immigrant-eligibility-for-health-care-programs-in-the-united-states.aspx* (last accessed 02/19/2020).

[118] *https://www.justice.gov/eoir/list-pro-bono-legal-service-providers* (last accessed 3/24/2020); *https://www.uscis.gov/avoid-scams/find-legal-services* (last accessed 3/24/2020).

[119] *https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet* (last accessed 02/19/2020).

[120] *See, e.g.,* United Nations, Office on Drugs and Crime, *Global Study on Smuggling of Migrants,* 2018, *https://reliefweb.int/sites/reliefweb.int/files/resources/GLOSOM_2018_web_small.pdf.* As courts also have recognized, smugglers encourage aliens to enter the United States based on changes in U.S. immigration policy. *East Bay Sanctuary Covenant* v. *Trump,* 354 F. Supp. 3d 1094, 1115 (N.D. Cal. 2018) (noting a Washington Post article stating smugglers told potential asylum seekers that ''the Americans do not jail parents who bring children—and to hurry up before they might start doing so again.'').

themselves of services offered by community organizations such as charities and places of worship. There are no federal housing programs for asylum seekers. The Department of Health and Human Services maintains resources about housing in each state in the United States. Asylum seekers who are concerned about homelessness during the pendency of their employment authorization waiting period should become familiar with the homelessness resources provided by the state where they intend to reside.[121]

d. Interference With State's Rights

Response: DHS disagrees that this rule interferes with the rights of individual States to enforce WOIA or State labor and civil rights laws. While many States have laws that permit certain noncitizen residents of the State to access services or avail themselves of the protections under States' laws, those laws are subordinate to and preempted by the DHS's authority to administer and enforce the immigration laws as directed by Congress. As the Supreme Court recently noted in *Arizona* v. *United States,* 567 U.S. 367, 383, 132 S.Ct. 2492 (2012), ''[t]he Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens . . . This authority rests, in part, on the National Government's constitutional power to ''establish an uniform Rule of Naturalization,'' Art. I, § 8, cl. 4, and its inherent power as sovereign to control and conduct relations with foreign nations . . .'' (citations omitted). While laws like WOIA allow aliens to access services or to participate in programs if they are authorized to work,[122] it is solely within the province of the Secretary to grant employment authorization to aliens, based either on a specific statutory mandate requiring a class of aliens to be provided employment authorization or on the Secretary's discretion. Through this rule, DHS is providing discretionary employment authorization to asylum seekers if they meet certain eligibility requirements. DHS is not directing or compelling the States to enforce immigration laws. *See Printz* v. *United States,* 521 U.S. 898, 935, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997) (''The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.''). Nor is DHS precluding States' from authorizing aliens to access certain services under State law or pursuing any rights that may have been afforded by the States to noncitizens residing in their State.

2. One-Year Filing Deadline

Comment: One commenter supported barring late-filers from obtaining employment authorization and believed that this rule closed an important loophole. Citing asylum statistics and the USCIS Asylum Division's comments during quarterly stakeholder meetings in 2017 and 2018, the commenter stated that the asylum backlog contained tens of thousands of backlogged asylum applications that had been filed more than ten years after the alien's first entry into the United States. The commenter noted that long-time unlawfully present aliens often file frivolous affirmative asylum applications knowing they will be denied and then referred to the immigration courts, where the aliens can then seek cancellation of removal under section 240A of the INA, 8 U.S.C. 1229b. The commenter believed that closing this loophole that allows for late-filing asylum applicants to receive employment authorization would create a ''significant disincentive for several abusive application practices.'' Another commenter said that there was no good reason for aliens with legitimate asylum claims to delay applying for asylum. The commenter believed that those who fail to apply prior to the one-year filing deadline are very likely doing so only as a delay tactic to keep from being removed.

Many commenters opposed denying asylum seekers employment authorization if they failed to file within the one-year deadline specified under section 208(a)(2)(B) of the INA, 8 U.S.C. 1158(a)(2)(B). The commenters noted that the one-year filing deadline has statutory exceptions, such as for changed circumstances, and also specifically exempts UACs. See INA section 208(a)(2)(D) and (E), 8 U.S.C. 1158(a)(2)(D), (E). The commenters stated that the rule ignored these exceptions and failed to clarify how those exceptions applied in this rule. Several commenters expressed concern that the rule would render exceptions to the one-year deadline meaningless because IJs and asylum officers typically adjudicate the exceptions at the same time as the asylum adjudication. Other commenters believed that asylum officers and/or IJs were better suited to make decisions related to the asylum exceptions rather than USCIS officers who adjudicate EADs. One commenter felt that it was the responsibility of asylum officers or IJs to determine the outcome in a case and whether an exception was met, and that it was ''inappropriate'' for USCIS officers to prejudge the merits of a case where an asylum seeker filed after the one-year filing deadline by denying employment authorization.

Several commenters noted that many applicants file past the one year deadline because they were previously in a lawful nonimmigrant status. One commenter stated that being in a lawful nonimmigrant status was not listed as one of the exceptions to the EAD bar and, as a result, the rule puts a whole class of aliens at risk—not because they do not have a legitimate fear of persecution or harm, but solely because they chose to immigrate to the United States through a legal channel other than asylum. Another commenter stated that DHS should specifically exempt those who maintained a lawful status prior to filing for asylum from the bar and allow them to obtain an EAD without waiting for an asylum officer or IJ to approve their asylum application. Several commenters said circumstances that can lead to a failure to file by the one-year filing deadline are often legitimate and out of the control of the applicants. One commenter believed that the rule would punish legitimate asylum seekers, many of whom in their view had good reason to apply late, such as based on the advice of counsel or because they were in a lawful immigration status. The commenter noted that many applicants have to wait years for their cases to be heard in the immigration courts and many of them are ultimately found to have met one of the exceptions to the one-year filing deadline. The commenter also argued that it had been a longstanding policy of the former INS and now DHS not to force aliens who are in a lawful status in the United States to apply for asylum early because it would be premature, citing the regulations at 8 CFR 208.4(a)(5)(iv) and the rationale in the preamble of a former INS final rule.[123]

[121] *https://www.hud.gov/states* (last accessed 2/6/2020).

[122] For example, WOIA provides that—

''(5) Prohibition on Discrimination against Certain Noncitizens.—Participation in programs and activities or receiving funds under this title shall be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.''

See Public Law 113–128, at sec. 188.

[123] In its final rule, *Asylum Procedures,* 65 FR 76121, 76123–24 (Dec. 6, 2000), the former INS, in response to comments regarding exceptions for those maintaining a lawful status, stated—

''Several commenters recommended that the list of extraordinary circumstances be expanded to include maintaining valid immigrant or nonimmigrant status, in addition to maintaining Temporary Protected Status. The Department has

Continued

One commenter noted that the one-year filing deadline is not an absolute bar, like other provisions that require a mandatory denial, and that it can be overcome by an asylum seeker submitting evidence to establish that they either timely filed or meet one of the exceptions to late filing. The commenter argued that the rule creates a presumption against allowing an asylum seeker to apply for an EAD until the asylum officer or IJ determines that the alien meets an exception and that this essentially means the bar to employment authorization remains in place until the asylum claim is decided on its merits. The commenter stated that the rule does not have any provisions addressing how EAD adjudicators will make a fact-based analysis as to whether an exception has been met for purposes of obtaining an EAD. Similarly, some commenters were concerned that the rule lacked procedures to allow for an early ruling on whether an asylum seeker has met one of the exceptions prior to a final determination on the merits. The commenters argued that, as a result, many asylum applicants who had meritorious claims would have no way to support themselves until there was a final hearing on the merits of their case.

One commenter argued that the one-year filing deadline would not address fraudulent filings in order to trigger removal proceedings. The commenter argued that many asylum applicants have been in the United States unlawfully for less than 10 years, so they wouldn't be seeking relief through cancellation. One commenter stated it was wrong to penalize aliens with legitimate asylum claims for the ''transgressions of others.'' Another commenter argued that barring late-filers from obtaining employment authorization was not necessary because USCIS already had robust fraud prevention and protection procedures in place to determine when there are frivolous filings.

Finally, many commenters said that the application of the one-year filing deadline to EAD adjudications was punitive and would harm vulnerable asylum seekers. One commenter argued that this proposal would punish asylum seekers with valid asylum claims who will ultimately be found to meet an exception to the one-year filing deadline. Another commenter argued that this would cause asylum seekers with clear exceptions to the one-year filing deadline to suffer ''increased hardship and poverty unnecessarily.'' One commenter stated that it was ''sympathetic'' to one of DHS's justifications for barring late-filers from qualifying for employment authorization (in other words, deterring aliens from filing frivolous asylum claims solely to trigger removal proceedings to allow them to apply for cancellation of removal under section 240A of the INA, 8 U.S.C. 1229b), and understood that frivolous filings solely to obtain cancellation have contributed to the asylum case backlog. However, the commenter did not believe that DHS's proposed solution to the problem was a reasonable solution, especially since there were asylum seekers who had legitimate claims and reasons for why they were delayed in filing. The commenter noted, for example, that women and members of the LGBTQ community may fail to file within the one-year filing deadline for many legitimate reasons, such as suffering from Post-Traumatic Stress Disorder (PTSD) caused by their past persecution, fear of being stigmatized even within their own community, or lack of knowledge surrounding the asylum process. Several commenters said that people who experienced violence or trauma are often reluctant to reveal personal details, are unable to express their fear of return, or gain access to information about the asylum process—all reasons for why they may file beyond the one-year filing deadline.

Response: DHS acknowledges that there are statutory and regulatory exceptions to the one-year filing deadline under section 208(a)(2)(B), (D) and (E) of the INA, 8 U.S.C. 1158(a)(2)(B), (D) and (E), and under 8 CFR 208.4(a). These exceptions, however, apply to eligibility to apply for asylum *and not* eligibility for a (c)(8) EAD. DHS is not amending any statutory or regulatory exceptions, and USCIS and DOJ–EOIR will continue to render decisions on asylum applications that are late filed in accordance with current law and procedures. During the asylum process, asylum applicants will still have the opportunity to establish any changed circumstances that may have materially affected the alien's eligibility for asylum, or extraordinary circumstances that may have impacted the alien's ability to file during the 1-year period.[124] Asylum officers and IJs will still be adjudicating the merits of an asylum case and determining whether exceptions to the one-year filing deadline apply. USCIS Immigration Services Officers (ISOs) will still adjudicate requests for (c)(8) EADs, which are separate and apart from asylum adjudications.

Analyzing exceptions to the one-year filing deadline often requires factual determinations related to allegations made in the underlying asylum claim, elicited testimony during the asylum interview, legal analyses, and knowledge of country conditions. For this reason and as proposed, where the alien failed to file the asylum application within one year, he or she is ineligible to receive a (c)(8) EAD unless and until an asylum officer or IJ determines that an exception applies and that the alien filed within a reasonable period of time given the circumstances.

The fact that an applicant was a UAC at the time of filing does not create an exception to the one-year filing deadline. Rather, where the applicant was a UAC at the time of filing, the one-year filing deadline does not apply in the first place. When apparent UACs in removal proceedings appear to be filing asylum applications with USCIS, they are scheduled for an asylum interview and then, following the interview,

accepted the recommendation because there are sound policy reasons to permit persons who were in a valid immigrant or nonimmigrant status, or were given parole, to apply for asylum within a reasonable time after termination of parole or immigration status. The Department does not wish to force a premature application for asylum in cases in which an individual believes circumstances in his country may improve, thus permitting him to return to his country. For example, an individual admitted as a student who expects that the political situation in her country may soon change for the better as a result of recent elections may wish to refrain from applying for asylum until absolutely necessary. The Department would expect a person in that situation to apply for asylum, should conditions not improve, within a very short period of time after the expiration of her status. Failure to apply within a reasonable time after expiration of the status would foreclose the person from meeting the statutory filing requirements. Generally, the Department expects an asylum-seeker to apply as soon as possible after expiration of his or her valid status, and failure to do so will result in rejection of the asylum application. Clearly, waiting 6 months or longer after expiration or termination of status would not be considered reasonable. Shorter periods of time would be considered on a case-by-case basis, with the decision-maker taking into account the totality of the circumstances.''

[124] INA sec. 208(a)(2)(D), 8 U.S.C. 1158(a)(2)(D). The alien bears the burden to establish that he or she filed an asylum application within one year of entry or attempted entry to the United States, and the alien is ineligible for asylum unless he or she meets that burden. INA sec. 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B) (''Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.''). If an alien fails to file the asylum application within one year, the alien bears the burden to establish that he or she qualifies for an exception to the one-year-filing deadline. INA sec. 208(a)(2)(D), 8 U.S.C. 1158(a)(2)(D) (''An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).'').

USCIS makes a determination as to whether the application was filed by a UAC. If the alien was a UAC, USCIS will have initial jurisdiction over the application. Prior to confirming through the interview that an application was in fact filed by a UAC for jurisdictional purposes, however, USCIS examines the information available at the time it received the asylum application, and where appropriate, treats it as an apparent UAC filing. Accordingly, although the Asylum Division will make the jurisdictional determination at the interview stage, it is within the purview of an ISO at the time of an EAD adjudication to determine whether the asylum application was accepted by an apparent UAC on the date it was filed, and therefore if the applicant qualifies for employment authorization during the pendency of their asylum application. Notably, in these cases a grant of a (c)(8) EAD has no bearing on the asylum adjudication. If, during the course of adjudicating the asylum application, an asylum officer or an IJ later determines the alien was not a UAC at the time of filing the asylum application, a previous (c)(8) EAD issuance would not impact the UAC determination.

DHS disagrees with commenters that it failed to provide an exception for UACs. The rule states at 208.7(a)(1)(iii)(F) that the one-year filing requirement will not apply to any ''applicant [who] was an unaccompanied alien child on the date the asylum application was first filed.'' Congress did not place any restrictions on how the Secretary should exercise his discretion to grant EADs to asylum seekers except that employment authorization cannot be granted earlier than 180 days after the alien filed for asylum. Employment authorization is mandatory for those granted asylum (see INA section 208(c)(1)(B), 8 U.S.C. 1158(c)(1)(B)), and discretionary for asylum seekers (see INA section 208(d)(2), 8 U.S.C. 1158(d)(2)). The Secretary has discretion to set any conditions or restrictions on employment authorization for asylum seekers, including restricting eligibility for those who fail to file their asylum applications within the time specified by Congress. The Secretary also may amend its regulations or rescind employment authorization for asylum seekers altogether.

As part of the Secretary's reforms to the asylum process, DHS is emphasizing the importance of the statutory one-year filing deadline for asylum applications. Both DHS and DOJ–EOIR adjudicate asylum applications filed by aliens who reside in the United States for years before applying for asylum. Many aliens filing for asylum now are aliens who: (1) Were inspected and admitted or paroled, but failed to depart the United States at the end of their authorized period of stay (visa overstays), or (2) entered without inspection and admission or parole and remained in the United States, not because of a fear of persecution in their home country, but for economic reasons. Many aliens, overstays and illegal entrants alike, actively avoid detection for as long as possible and, once apprehended and facing removal from the United States, submit meritless asylum applications to delay or avoid removal. Due to the asylum application backlog, an asylum applicant could delay removal for several years while the applicant continues to enjoy government-sanctioned employment authorization during the adjudication process. As one commenter correctly noted, the asylum backlog has significantly increased in part because of aliens who overstayed their authorized period of stay in the United States, and subsequently decide to late-file an asylum application, either to continue employment authorization that expired at the end of their lawful nonimmigrant period or so that they can be placed into removal proceedings to apply for cancellation of removal.

DHS recognizes that the one-year filing deadline exception is determined at the time of the asylum adjudication, and that this provision may preclude from EAD eligibility many asylum applicants who fail to file their I–589 within one year as required by statute. This provision is necessary nonetheless. Abuse of the asylum system is rampant, and the current system is stretched to its breaking point. Bona fide applicants are forced to wait in limbo for years while DHS and the courts wade through hundreds of thousands of asylum applications, the majority of which are being referred or denied and for which DHS or DOJ–EOIR are only approving a small fraction. These symptoms, left unchecked, would stand to incentivize hundreds of thousands more to take advantage of the system each year.

DHS believes that one year is ample time for a bona fide asylum applicant to submit his or her application. This rule is necessary to disincentivize abusive behavior, and failing to take this significant action will invite more of the same behavior that has brought the asylum system to its current crisis.

If an asylum applicant who files past the one-year deadline qualifies for an exception to the one-year-filing-deadline as defined in at INA section 208(a)(2)(D), 8 U.S.C. 1158(a)(2)(D), and is granted asylum, the asylum applicant is immediately employment authorized incident to status. If an asylum officer or an IJ determines the applicant meets an exception and the asylum application remains pending, this provision will not apply. This rule does not establish a mechanism for determining the exception under INA section 208(a)(2)(D), 8 U.S.C. 1158(a)(2)(D). DHS could not bind DOJ–EOIR to such a mechanism, and it would add further delay to an already backlogged asylum system.

DHS carefully considered the suggestion that it exempt aliens from the one-year filing deadline provision where they allege they failed to timely file because they were in lawful status. DHS has determined it will not create such an exemption because it would contravene the purpose of this rule. Exempting such a class would incentivize nonimmigrants to delay filing their asylum applications until the end of their lawful stay in order to delay departure and obtain employment authorization. DHS has a strong interest in deterring aliens from residing in the United States unlawfully, including visa overstays. Aliens with bona fide asylum claims should file their asylum applications at their earliest opportunity and not delay. In doing so, the alien will have his or her claim adjudicated more quickly, and will consequently avoid being subject to this provision regarding discretionary employment eligibility on the basis of a pending asylum application.

One commenter noted a 2000 rulemaking in which the legacy agency created an exception for nonimmigrants to the one-year filing deadline for asylum applications. In that rulemaking, the former INS indicated, ''[t]he Department does not wish to force a premature application for asylum in cases in which an individual believes circumstances in his country may improve, thus permitting him to return to his country.'' DHS is not bound by that prior statement and takes a different position today. Namely, it believes that the agency should not encourage a bona fide asylum applicant to delay filing for the reasons stated above. Carving out an exception from this provision would encourage such a delay. Further, the two rulemakings differ in subject matter—the 2000 rulemaking addressing asylum and this rulemaking addressing EAD eligibility. A favorable asylum adjudication provides protection from persecution and leads to lawful permanent residence and a pathway to citizenship. The (c)(8) EAD is a temporary, ancillary benefit providing for a short period of authorized employment because the agency has yet

to adjudicate the merits of the asylum application. Additionally, the two rulemakings are separated by twenty years. During that time the asylum backlog has grown significantly. Therefore, this rulemaking is addressing a different subject matter and a different problem altogether.

DHS notes further that it declines to exempt nonimmigrants from this provision because a nonimmigrant is either permitted to work while in the United States and therefore does not need a (c)(8) EAD, such as an alien in H–1B status, or, the nonimmigrant is forbidden from working while in the United States and therefore should be excluded from any EAD, such as a B–1 visitor or an F–1 student not participating in optional practical training. As noted above, if the alien does not delay filing the asylum application, he or she would not be subject to this provision in the first place and would not need an exception. Further, if the alien's asylum claim is granted, he or she would be immediately employment authorized incident to status.

As for concerns about the procedures for EAD adjudications and how USCIS officers will be able to determine if an exception has been met, DHS does not believe it needs to articulate any new procedures in this rule for EAD adjudications. USCIS officers adjudicating employment authorization are well trained and will continue to follow the guidelines and rules governing eligibility for employment authorization. USCIS officers have access to a variety of DHS and DOJ–EOIR systems which they can review to determine if and when a decision is made on any asylum application and if an asylum officer or IJ determines that the asylum seeker failed to meet one of the exceptions to the one-year filing deadline. DHS will not create a separate adjudicative process outside of the current asylum and EAD processes solely to determine if an asylum seeker met an exception to the one-year deadline so that the alien can obtain employment authorization shortly after the 365-waiting period, rather than having to wait until an asylum officer or IJ determines that the alien meets one of the exceptions to late filing.

With regard to potential harm to asylum seekers who have legitimate claims, DHS does not intend to cause hardship to bona fide asylum seekers. The goal of this rule is to remove the incentives for aliens who do not have valid claims to file frivolous applications to obtain employment authorization. DHS disagrees that this rule will not deter fraudulent affirmative asylum applications. DHS recognizes that many asylum seekers have been in the country less than 10 years, however, based on a DHS assessment,[125] many asylum applications appear to be filed by aliens escaping generalized violence and poor economic conditions in their home countries. Since some of these asylum seekers are fleeing for reasons other than persecution which would qualify them for a grant of asylum or withholding of removal, DHS believes it is logical and prudent to impose more stringent requirements for employment eligibility based on a pending asylum application.

Finally, with regard to those asylum seekers who may file after one year of entering in the United States because they are women who suffered domestic violence or have PTSD, are aliens who are LGBTQ and may be stigmatized in their communities, or because they are individuals who are unfamiliar with the asylum process, DHS recognizes that there are legitimate reasons that an alien may be delayed from seeking asylum within the one-year filing deadline, which is why the current regulations at 8 CFR 208.4(a)(4) and (5) allow for an alien to establish either that there are changed circumstances that materially affect the alien's eligibility for asylum or that there are extraordinary circumstances related to the delay in filing. Under 8 CFR 208.4(a)(4) and (5), the alien's failure to file an asylum application within one year may be excused if they can establish changed or extraordinary circumstances and if they file the asylum application within a reasonable period after the changed or extraordinary circumstances occur.

The commenters did not provide, and DHS is not aware of data establishing how many aliens successfully overcome the one-year filing deadline based on extraordinary circumstances related to domestic violence, LGBTQ status, community stigmatization, or PTSD. DHS believes that the percentage of qualifying aliens affected by this rule will be relatively low when weighed against the increasing strain the asylum system would face were the government to take no responsive action. DHS believes exceptions to the one-year filing deadline should be exceptionally rare, and therefore the exceptions' limited application does not outweigh the government's interest in addressing the pervasive abuse of the asylum system by those flouting the one-year filing deadline in order to delay or prevent removal or to obtain cancellation of removal. Moreover, these issues relate directly to the alien's underlying asylum claim and are therefore better suited for determination by an asylum officer or IJ than a USCIS ISO. Finally, unfamiliarity with asylum procedure does not rise to the level of an extraordinary circumstance sufficient to excuse the failure to file within one year.[126]

3. Criminal Bars

DHS received numerous comments on the addition of criminal bars to eligibility for employment authorization. A few commenters supported the inclusion of the criminal bars to eligibility for employment authorization, especially for those who had committed or were convicted of felonies and misdemeanors. One commenter not only supported the criminal bars but also proposed that DHS consider the list of disqualifying crimes that bar eligibility under the Violence Against Women Act (VAWA), Public Law 103–322, 108 Stat. 1902, as criminal offenses that would be ''particularly serious crimes'' that bar eligibility for an EAD, and recommended that DHS wait for 6 months to 1 year to assess the effects of the rule before further expanding the list of disqualifying criminal activity.

Most commenters, however, opposed inclusion of the criminal bars to employment authorization. DHS has categorized the comments and incorporated responses to those comments below.

a. Statutory, Constitutional, and APA Concerns

Comment: Several commenters argued that the addition of the criminal bars was contrary to Congress's intent, violated international law, and violated the Due Process and Equal Protection Clause of the U.S. Constitution. One commenter argued that the rule violates the due process rights of asylum seekers by failing to provide a mechanism for applicants to refute or explain their criminal history. Several commenters argued that the rule was arbitrary and capricious because the terms were poorly defined and failed to give applicants proper notice of disqualifying conduct. The commenters

[125] *See supra* fn. 71.

[126] Ignorance of legal requirements does not excuse noncompliance. *See e.g. Federal Crop Ins. Corp.* v. *Merrill,* 332 U.S. 380, 384–385 (1947); *Antonio-Martinez* v. *INS,* 317 F.3d 1089, 1093 (9th Cir. 2003)(applying the general rule that ''ignorance of the law is no excuse'' to the asylum context); *Kay* v. *Ashcroft,* 387 F.3d 664, 671 (7th Cir. 2004)(other circumstances, ignorance of the law did not establish exceptional circumstances). *But see Mendez Rojas* v. *Johnson,* 2018 WL 1532715 (W.D. Wash. Mar. 29, 2018) (excusing the one-year filing deadline where DHS failed to provide adequate notice of the requirement) (case on appeal *Mendez Rojas, et al.* v. *Kirstjen Nielsen, et al.,* 18–35443).

also argued that the rule was arbitrary and capricious because it failed to provide a clear rationale for how adding the criminal bars supported the stated purpose for the rule (to deter frivolous, fraudulent, or nonmeritorious filings). Other commenters argued that DHS was violating the APA by creating a ''confusing framework'' and parallel, duplicative proceedings for employment authorization cases to decide the same issues that will be decided by asylum officers and IJs when they consider the merits of an asylum application.

Several commenters argued that the proposed criminal bars were ''void for vagueness'' because the types of disqualifying crimes, like public safety offenses and felonies, were ill-defined. The commenters argued that the rule failed to provide any guidance or specify which factors USCIS adjudicators would consider when assessing unresolved arrests, pending charges, or foreign offenses. One commenter argued that the rule would undermine asylum seekers' ability to counter the negative impact of an arrest or conviction with favorable lawful work history and demonstrated ability to support themselves and their families, as they would be able to do before an IJ. Several commenters also pointed out that there are numerous state criminal offenses that may or may not be disqualifying for immigration purposes and argued that creating categorical bars would potentially result in disparate treatment.

One commenter asserted that a categorical bar to people with ''public safety offenses'' departs from the criteria for analyzing such offenses as set forth by the BIA in *Matter of N–A–M,* 24 I&N Dec. 336 (BIA 2007), which requires that adjudicators consider all reliable evidence on a case-by-case basis. Some commenters argued that the criminal EAD bars were vague and failed to provide asylum seekers with a criminal history fair notice of their rights. The commenters noted that the rule failed to specify when and how asylum seekers could challenge a decision based on disqualifying criminal activity, or to provide a mechanism for aliens to resolve inaccuracies in their criminal records. Multiple commenters argued that allowing unresolved arrests and pending charges to be considered in EAD adjudications violates the ''presumption of innocence'' and basically would allow USCIS adjudicators to determine guilt even before the court or a jury had rendered a decision on the charges.

Many commenters argued that the criminal bars were overbroad and went far beyond the existing criminal bars to asylum. The commenters believed that the criminal bars to employment authorization should be consistent with the criminal bars to asylum [127] and that asylum seekers should not be barred from obtaining employment authorization if the arrests or convictions would not ultimately bar them from asylum. Some commenters argued that the rule would essentially prevent all asylum seekers who have had ''virtually any contact'' with the criminal justice system from ever qualifying for employment authorization. One commenter warned that denying an EAD based on a criminal charge that does not create a bar to asylum itself could prejudice an applicant during the asylum process and negatively impact a final decision on the applicant's asylum claim. Several commenters also were concerned about the impact criminal assessments in EAD adjudications might have on applicants who had pending charges and were considering plea deals. One commenter said that the proposal is problematic because it does not make exceptions for convictions or guilty pleas that are influenced by mental illnesses, including trauma from past persecution. Another commenter believed that the provision would make plea deals unacceptable for applicants facing charges, and thus would increase the number of cases going to trial in already overstretched court systems. Similarly, a commenter stated that the proposal would force asylum seekers to choose between a plea deal that would render them ineligible for employment authorization or going to trial where a conviction might ultimately cause them to lose eligibility for asylum.

Several commenters argued that criminal convictions, especially those for nonviolent acts, should not bar asylum applicants from receiving employment authorization. Some commenters argued that DHS should make exceptions for juveniles and aliens charged or convicted of minor offenses. Some commenters believed that the rule would discourage asylum seekers with potentially valid claims from applying or would bar them from employment authorization based on minor offenses that are not crimes under state law. A few commenters suggested that the rule could harm victims of domestic violence because their abusers could file false claims against them as retaliation for reporting abuse or to affect their employment authorization. One commenter cited several studies in arguing that the rule would harm asylum seekers with meritorious claims because many individuals who are accused of committing domestic violence are often survivors of family or societal violence, which may form the basis for a valid asylum claim. Another commenter stated that the proposal violated international law because asylum seekers may be seeking asylum because of unfounded criminal accusations in their home countries. Several commenters argued that failing to account for corruption in countries outside of the United States may harm applicants from countries that use criminal prosecution to suppress dissidence or for other political reasons.

Response: DHS disagrees that the addition of criminal bars violates the U.S. Constitution and the due process rights of asylum seekers, and is arbitrary and capricious under the APA. Nothing in this rule disturbs the due process protections built into the criminal proceedings that precede a conviction. DHS also disagrees that there is no rationale for adding the criminal bars or that these bars do not support the stated purposes for the rule. DHS has a strong interest in ensuring public safety and preventing aliens with significant criminal histories from obtaining a discretionary benefit.

This rule is not arbitrary and capricious. DHS is authorized to amend its regulations managing employment authorization based on a pending asylum application. Further, DHS has satisfied its obligations under the APA, given the public ample opportunity to comment on the proposals within this rule, and has adopted some amendments to the final rule based on public comments received. DHS is promulgating this rule not only to deter illegal entry, but also to address the crisis at the southern border, reduce abuse of the asylum system, especially by those who have engaged in significant criminal conduct, and restore integrity to the asylum process overall. Barring aliens convicted of certain crimes from obtaining the discretionary benefit of employment authorization is consistent with these stated purposes. The rule also is not arbitrary and capricious because it gives notice to aliens of the types of crimes DHS will consider when determining if an asylum seeker warrants employment authorization as a matter of discretion.

DHS disagrees that this rule has any impact on the ability of aliens in criminal proceedings to assess whether they should accept plea deals. Any time

[127] An alien is barred from asylum if the alien has been convicted of an aggravated felony under section 101(a)(43) of the INA, 8 U.S.C. 1101(a)(43), convicted of a particularly serious crimes, or has committed a serious nonpolitical crimes outside of the United States. See INA section 208(b)(2)(A)(ii) and (iii) of the INA, 8 U.S.C. 1158(b)(2)(A)(ii), (iii).

an alien is convicted of a crime in the United States, whether at a Federal or state level, the alien should be aware that such a conviction may have consequences for immigration purposes, and that such consequences are not limited solely to obtaining a discretionary benefit such as employment authorization. DHS also disagrees that the provisions of this rule create a ''confusing framework'' or parallel and duplicative scheme for determining eligibility for employment authorization based on criminal history, but notes that aligning criminal bars to a (c)(8) EAD with asylum bars under 8 CFR 208.13(c) addresses these concerns. DHS will continue adjudicating asylum applications separate and apart from employment authorization applications, and asylum decisions will still be made in accordance with our laws and policies under section 208 of the INA, 8 U.S.C. 1158, and 8 CFR 208.

DHS appreciates and acknowledges many of the concerns raised by commenters about the types of crimes that would be considered categorical bars to employment authorization. DHS carefully considered the public comments on this issue and is making a few adjustments based on the input DHS received. DHS is modifying 8 CFR 208.7(a)(1)(iii) to provide that aliens who are subject to the criminal bars for asylum under section 208(c) of the INA and subject to mandatory denial of asylum based on certain criminal grounds under 8 CFR 208.13(c) will be ineligible for (c)(8) EADs.

Finally, even though DHS has chosen to amend the provisions of the rule to align the categorical bars to discretionary EAD eligibility with the criminal bars to asylum under section 208(c) of the INA, 8 U.S.C. 1158(c), and corresponding regulations, DHS does not view this alignment as creating a mandate or legally obligating DHS to adopt the interpretations or procedures used by asylum officers and IJ to determine when and if an alien's conduct bars his or her eligibility for asylum. If an asylum seeker is denied a discretionary EAD based on a categorical bar under this rule, that determination does not alter whether the alien will be barred from asylum based on a bar under section 208(c) of the INA, 8 U.S.C. 1158(c). Similarly, the grant or denial of a discretionary EAD does not affect the asylum officer's or IJ's determination on criminal bars to asylum.

Nothing in this final rule precludes an alien with a criminal history from ultimately qualifying for asylum and becoming employment authorized pursuant to a grant of asylum. DHS is sensitive to the concerns about victims of domestic violence and to the concerns that some aliens may have pending criminal charges that will ultimately be resolved in their favor. The criminal bars in the separately proposed 8 CFR 208.13(c)(6), which will also be bars to a (c)(8) EAD if finalized, provide exemptions for certain victims,[128] and addresses the concerns about unresolved criminal charges.[129] All of these concerns will be taken into consideration when a USCIS ISO determines whether to grant employment authorization as a matter of discretion.

b. Criminal Convictions Prior to the Effective Date

Comment: Some commenters expressed concern that the rule would apply to convictions that occurred prior to the final rule's effective date.

Response: DHS addresses the impact of this final rule on asylum seekers who have criminal convictions prior to the effective date of this final rule, in ¶ 7, Effective Date and Retroactive Application below.

4. Illegal Entry and the Good Cause Exception

a. Illegal Entry

Comment: Several commenters supported barring asylum seekers who entered illegally from obtaining employment authorization. One commenter believed that this was a necessary process to help the government weed out threats. Another commenter supported the rule and recommended that DHS deny EADs to any alien who appeared to have been ''coached'' in how to make an asylum claim.

Most commenters, however, opposed barring asylum seekers who entered illegally from obtaining employment authorization. Many commenters stated that creating a categorical bar to EAD eligibility for aliens who entered the United States illegally violated the Constitution, the INA, the APA, and international law. The commenters argued that section 208(a) of the INA, 8 U.S.C. 1158(a), specifically allows aliens to file for asylum regardless of the manner of their entry and as such DHS could not bar aliens from obtaining EADs because of the manner of their entry. One commenter stated that the illegal entry bar would essentially prohibit an entire class of eligible asylum seekers from obtaining EADs—UACs. The commenter noted that UACs usually enter without inspection and argued the rule would essentially punish all UACs, who are some of the most vulnerable and traumatized asylum seekers, by barring them from obtaining EADs because of their illegal entry, even though illegal entry is not a bar to asylum. Several commenters stated that the illegal entry bar would be harmful to asylum seekers because they are often fleeing mortal danger, traumatized, and do not have the ''luxury'' of planning to enter the United States at an official port of entry.

Several commenters argued that barring EADs to asylum seekers who entered illegally contravened the United States' obligations to protect people fleeing persecution. The commenters also argued that DHS erroneously interpreted the Refugee Convention and that DHS was not meeting its obligations under the Refugee Conventions regarding the good cause exception. One commenter stated that Congress's inclusion of the parenthetical in section 208(a) of the INA (''whether or not at a designated port of arrival'') demonstrated Congress's intent to conform the U.S. asylum law with international laws and require the United States to comply with its obligations under such laws. Another commenter argued that DHS's position also conflicts with the expedited removal provisions under section 235 of the INA, 8 U.S.C. 1225, and improperly places the burden on applicants to express credible fear. One commenter claimed that in some instances CBP officers were not asking applicants if they had a credible fear or not properly recording that the applicants had expressed fear of persecution. Another commenter argued that CBP was required to ask asylum seekers four fear-related questions, and believed that this rule would result in EAD denials in cases where aliens fail to affirmatively state that they are seeking asylum or to express a fear of persecution or torture. The commenter also believed that DHS's

[128] The asylum bars proposed at 8 CFR 208.13(c)(6) (under the separate aforementioned proposed rule) would exempt aliens who are generally described in section 237(a)(7)(A) of the INA, 8 U.S.C. 1227(a)(7)(A), which provides a waiver of the domestic violence and stalking removability ground when it is determined that the alien (1) was acting in self-defense; (2) was found to have violated a protection order intended to protect the alien; or (3) committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime and the alien's having been battered or subjected to extreme cruelty.

[129] Each of the proposed bars at 8 CFR 208.13(c)(6) would require a conviction except for paragraph (vii), which would bar asylum where ''[t]here are serious reasons for believing the alien has engaged . . . in acts of battery or extreme cruelty as defined in 8 CFR 204.2(c)(1)(vi) . . .'' Paragraph (vii) would not require a conviction, arrest or pending charges.

interpretation of good cause was overly restrictive and cited the Refugee Convention and a U.N. General Assembly document as evidence that the United States had agreed not to penalize asylum seekers for illegal entry.

Some commenters argued that placing limitations on EAD eligibility for asylum seekers based on the manner of entry into the United States was arbitrary and capricious and inconsistent with the court's decision in *Diaz* v. *INS,* 648 F. Supp. 638 (E.D. CA. 1986), where a court recognized ''that since political asylum may be granted to an alien irrespective of the manner of entry, it is inconsistent to provide that the manner of entry is relevant to a determination relative to work authorization.'' *Id.* at 654 (E.D. Cal. 1986).

Response: DHS disagrees that the provisions of this rule barring aliens who enter illegally and fail to establish good cause for their illegal entry violates the U.S. Constitution, the INA, the APA, or international law. The commenters are conflating eligibility for asylum with eligibility for employment authorization, a discretionary, ancillary benefit, and are attempting to graft the requirements in INA 208(a)(1), 8 U.S.C. 1158(a)(1), into INA 208(d)(2), 8 U.S.C. 1158(d)(2), which Congress could have, but did not, do. Determining eligibility for asylum and eligibility for employment authorization are separate and distinct processes.

DHS also disagrees with commenters who argue that it is not possible for aliens to present themselves lawfully at a U.S. port of entry. DHS rejects the assertion that UACs or any other class of alien should be exempt from lawful entry requirements absent good cause. Returning U.S. citizens, no matter their age or sophistication level, are required to present themselves at a U.S. port of entry for inspection by an immigration official and no class of citizen is exempt. Congress has not exempted any class of aliens from lawful entry requirements, and DHS will not exempt any class in this provision except where the alien can establish good cause, such as fleeing imminent harm.

In many cases, aliens travel thousands of miles over several days, weeks, or months, and cross continents or oceans to enter the United States. It is unreasonable to assume that these same individuals cannot present themselves for inspection at a port of entry as required by law. If the alleged persecution or harm is attenuated by significant distance and time, it is reasonable to expect aliens to comply with U.S. laws requiring lawful entry. In the event an alien cannot enter the United States at a port of entry, the rule creates narrow exceptions for aliens who present themselves to DHS within 48 hours of unlawful entry, expresses intent to apply for asylum or fear of persecution, and demonstrates good cause for the manner of entry.

As a sovereign nation, we must secure our borders. With the illegal entry provision in this rule, DHS seeks to regain control of our southern border while preserving employment authorization for those who are genuinely fleeing imminent harm. According to CBP, its officers encountered approximately 126,001 inadmissible aliens who presented themselves at land ports of entry in fiscal year 2019.[130] In fiscal year 2019, CBP reported over 850,000 apprehensions of illegal entrants at the southern border.[131] Clearly, a vast majority of aliens are electing to enter the United States illegally rather than lawfully. Many aliens entering the United States have travelled for thousands of miles from countries all across the globe and from every continent, sometimes flying to South America to then travel locally to try and enter the United States by land. It is well documented that there are smuggling corridors around the world that are controlled by transnational criminal organizations, human smuggling rings, and criminal gangs. Many people pay hundreds, even thousands of dollars to these entities and organizations solely to try and enter the United States, not because they are fleeing persecution, but because they want to establish a life in a country that offers better security, a functional government, and economic opportunities that may not be available in their own countries.[132]

DHS appreciates that there are aliens seeking to cross our borders who are legitimate asylum seekers who are fleeing persecution based on the five protected grounds and DHS agrees that those aliens should have their cases heard expeditiously and be granted asylum so that they can have the protections offered by the United States and build a new life. DHS also recognizes that there are cases where aliens are facing imminent harm or exigent circumstances that warrant an exception to the illegal entry bar. For this reason, DHS has provided that where an alien enters illegally because he or she needs immediate medical attention because of a life or death situation or because the alien is fleeing imminent harm, DHS will consider such cases under the good cause exception.

DHS is not penalizing aliens because of their manner of entry. Instead, DHS, through this rule and other Administration policies and procedures, is ensuring that the asylum process is better regulated, more orderly, and designed to ensure that bona fide asylum seekers who follow the designated legal procedures can present their claims and have them heard as expeditiously as possible.

Finally, while the amendment to the rule makes any alien who entered or attempted to enter the United States at a place and time other than lawfully through a U.S. port of entry ineligible to receive a (c)(8) EAD, the limited good cause exception does not affect how an alien gives an indication that he or she has a fear of persecution or torture, or an intent to apply for asylum. An alien's ''indication'' of fear of persecution or torture or intent to apply for asylum also does not require an affirmative expression or a volunteering of that fear or intention—such an expression can be in response to a question. DHS notes that the language in the regulations governing expedited removal and inspection of aliens at section 235(b) of the INA, 8 U.S.C. 1225(b), also references an alien's indication of ''either an intention to apply for asylum . . . or a fear of persecution,'' thus prompting the DHS officer or agent to refer the alien for a credible fear interview with an asylum officer. DHS reads this ''indication'' of fear or persecution or an intent to apply for asylum as one that can be elicited affirmatively through CBP questioning or independently expressed by the alien. The language of this Final Rule

[130] *See* CBP Southwest Border Migration Statistics FY 2019, available at *https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019.*

[131] *Id.*

[132] *See* United Nations, Office on Drugs and Crime, *Global Study on Smuggling of Migrants,* 2018, *https://reliefweb.int/sites/reliefweb.int/files/resources/GLOSOM_2018_web_small.pdf. See also* Letter from the former Chairman of United States Senate Judiciary Committee to former DHS Secretary (Dec. 22, 2015): (''[I]n July of 2015, a woman gave Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) information regarding her entrance to the United States with her 'child.' According to the whistleblower, the woman allegedly paid a smuggling organization in Brazil $13,000 in fees to smuggle her to the United States. She flew from Rio de Janeiro, Brazil to Mexico City, Mexico where she was 'paired' with a minor child to accompany across the border. The woman stated that the smuggling organization instructed her to claim the child as her own upon arrival to the United States. This woman and the child that she accompanied were subsequently released on an order of recognizance in the United States. One week later, the woman was granted voluntary departure by an Immigration Judge. The whereabouts of the child are unknown.'').

related to the good cause exception mirrors the statute and does not require that the alien affirmatively express a fear of persecution or torture and it also does not alter CBP's existing inspection and examination processes.

b. Good Cause Exception

Comment: Several commenters stated that even though DHS provided a limited exception based on good cause, DHS's interpretation of good cause was too narrow and thus violated Article 31 of the Refugee Convention. The commenters argued that barring asylum seekers from eligibility for employment authorization because of their manner entry was a ''penalty'' within the meaning of Article 31 of the Refugee Convention, and impermissibly differentiated between those who presented at ports of entry and those who entered illegally. One commenter cited various scholarly articles discussing Article 31 and argued that DHS's definition of good cause was inconsistent, especially since UNHCR defined ''good cause'' to include ''fear of summary rejection at the border.'' Another commenter cited the ''travaux préparatoires''—the negotiations leading up to the 1951 Convention—in arguing that simply fleeing persecution alone suffices for ''good cause'' for entering illegally. The commenter also cited the Vienna Convention on the Law of Treaties, arguing that ''travaux préparatoires'' should be used when construing the meaning of the treaty's language.

Some commenters argued that the highly restrictive examples of what constitutes good cause made the illegal entry bar a ''penalty.'' One commenter argued good cause should be interpreted to include attempts to reach safety in the United States, especially when entering without inspection is a response to what the commenter viewed as U.S. violations of international and domestic law, through the practice of metering, the MPP, the third country transit ban, and the asylum cooperative agreements established with Guatemala, Honduras and El Salvador, as well as any additional countries in the future. One commenter said that USCIS adjudicators should be given guidance that the asylum seeker's good faith belief that someone in the family requires immediate medical attention or is facing imminent serious harm should be considered a reasonable justification. Another commenter requested that DHS expand the definition of good cause beyond medical emergencies to include victims of human trafficking, smugglers, and notarios.

Several commenters argued that DHS's definition of good cause was impermissibly vague and ill-defined and thus violated due process and was void for vagueness. The commenters noted that while the rule specifically defined those grounds that would not constitute good cause, DHS failed to list those grounds that would constitute good cause. One commenter, citing a law review article, stated that having a well-founded fear of persecution is considered good cause and traveling through a country where there is not protection also constitutes good cause. The commenters argued that DHS was creating different standards for good cause that would depend on the circumstances or the alien's ability to establish good cause.

Response: Congress did not place any restrictions on how the Secretary should exercise his discretion to grant EADs to asylum seekers except that employment authorization cannot be granted earlier than 180 days after the alien filed for asylum. Congress also did not incorporate or reference the exceptions or bars to asylum under sections 208(a) or (c) in section 208(d) of the INA or require the Secretary to adhere to limitations in those provisions when making a decision on whether to grant discretionary employment authorization to asylum seekers. Where language is included in one section of the statute but not another, it is presumed that Congress intentionally legislated the text in that manner. *See Dep't of Homeland Sec.* v. *MacLean,* 574 U.S. 383, 135 S. Ct. 913, 919 (2015) (''. . . Congress generally acts intentionally when it uses particular language in one section of a statute but omits it in another.'') (*citing Russello* v. *United States,* 464 U.S. 16, 23, 104 S. Ct. 296 (1983)).

Congress clearly left it to the Secretary's discretion to interpret the statute and set the parameters on how the statute governing discretionary employment authorization for asylum seekers should be applied. Nothing precludes an agency from changing its policy position as long as there is a rational explanation for the change and the agency describes how the change advances the interests of the agency. DHS has explained why the changes in this rule governing the issuance of discretionary EADs to asylum seekers is needed and DHS believes this rule will accomplish the stated goals. As discussed above, DHS believes that this rule is consistent with U.S. obligations under international law.

DHS intentionally did not provide circumstances or cases that may constitute good cause, and will not include blanket exceptions for any circumstances, including for human trafficking, human smuggling and notarios, as one commenter suggested. To create a list of good cause exceptions would be overly restrictive and result in a narrow application of the term to the exclusion of many scenarios which, when considered in their totality, would result in a finding that the good cause exception has been met. DHS strongly condemns human trafficking in all its forms and believes victims of human trafficking may be able to qualify for the good cause exception where the trafficking caused the alien to enter the United States illegally. Where it can be determined that an alien is not trafficked and elects to hire a human smuggler or a notario to assist in entering the United States illegally, that alien should not qualify for the benefit of employment authorization absent an element of fleeing imminent harm.[133] For every case where an alien claims the good cause exception for illegal entry, the alien bears the burden of establishing that he or she meets the exception. DHS will evaluate each request on a case-by-case basis.

DHS disagrees that it has narrowly interpreted the provisions of the Refugee Convention and disagrees that the bar to illegal entry and the good cause exception are ''penalties.'' DHS views the Article 31(1) restriction on imposition of ''penalties'' on asylum seekers as not encompassing discretionary ancillary benefits such as employment authorization which the Secretary may grant to aliens in the United States, notwithstanding their immigration status *C.f. Mejia* v. *Sessions,* 866 F.3d 573, 588 (4th Cir. 2017) (finding that denying illegal re-entrants the opportunity to apply for the discretionary relief of asylum does not constitute a penalty, as considered by Art. 31(1) of the Refugee Convention). Further, DHS is in compliance with the authority given to the Secretary under section 208(d) of the INA, 8 U.S.C. 1158(d), and this rule is within the parameters of the INA, which constitutes the United States' implementation of its treaty obligations.

[133] See ''Myths and Misconceptions,'' available at *https://www.dhs.gov/blue-campaign/myths-and-misconceptions* (''Human trafficking is not the same as smuggling. 'Trafficking' is based on exploitation and does not require movement across borders. 'Smuggling' is based on movement and involves moving a person across a country's border with that person's consent in violation of immigration laws. Although human smuggling is very different from human trafficking, human smuggling can turn into trafficking if the smuggler uses force, fraud, or coercion to hold people against their will for the purposes of labor or sexual exploitation. Under federal law, every minor induced to engage in commercial sex is a victim of human trafficking.'').

Even if DHS's proposed change could be considered a ''penalty'' within the meaning of Article 31(1), DHS believes that its ''good cause'' exception, which parallels the exception in Art. 31(1), is sufficient to address any concerns about an asylum seeker's ability to seek discretionary employment authorization after illegal entry into the United States. Aliens who establish good cause for entering or attempting to enter the United States at a place and time other than lawfully through a U.S. port of entry, and within 48 hours, express to DHS a fear of persecution or an intent to seek asylum, will not be barred from applying for employment authorization after the required waiting period.

DHS also does not agree that ''good cause'' is vague, ill-defined, or unconstitutionally void for vagueness. However, DHS has concluded it will slightly modify the provision requiring that an applicant who enters illegally present himself or herself ''without delay'' to the Secretary of Homeland Security (or his or her delegate), to read ''no later than 48 hours after the alien's entry or attempted entry.'' DHS initially provided the ''without delay'' general standard in the regulatory text but only explained the 48-hour requirement in the proposed form revisions and instructions for Form I–765. DHS is making a conforming change to the regulatory text to ensure that asylum seekers who apply for an EAD understand and have better notice of what DHS will require when determining whether an asylum seeker has met his or her burden to establish good cause for the illegal entry for EAD purposes.

c. Migrant Protection Protocols and Metering

Comment: Many commenters opposed MPP, arguing that it violates the due process rights of aliens because they would not be able to file an asylum application or application for employment authorization while they were outside of the United States. Several commenters argued that DHS was intentionally limiting access to asylum and making it impossible for aliens to file for asylum because most were not able reach the ports of entry or because DHS has closed some ports of entry. Many commenters also opposed DHS' use of metering at ports of entry, arguing that it severely limited aliens' ability to apply for asylum. The commenters also argued that MPP combined with metering only incentivized aliens to cross illegally.

Response: DHS will not address comments about whether recent Executive Orders, Administration policies or procedures, or other regulatory amendments outside this rule violate the INA, APA, or international law, as they are outside the scope of this rule. These include comments on MPP, the Safe Third Country interim final rule, metering at the U.S. ports of entry, changes in the credible or reasonable fear process, or the application of the expedited removal provisions to asylum seekers.

5. Procedural Reforms

There were several requests by commenters for clarification of certain aspects of the procedural reforms in this rule. Several commenters also asked how USCIS adjudicators will use discretion to grant or deny employment authorization. DHS addresses these requests and concerns below and has made some clarifying edits to the rule as described below.

a. Biometrics Requirement

Comment: A few commenters supported requiring biometric collection as part of the (c)(8) EAD process. One commenter indicated that requiring biometrics would increase DHS' ability to screen for disqualifying criminal conduct.

Many commenters, however, opposed making asylum seekers pay a biometric services fee and requiring them to travel to an ASC for biometrics capture. The commenters argued that most asylum seekers do not have any money once they reach the United States, and that requiring them to pay a fee would be especially burdensome if they are not allowed to work for a long period of time. One commenter stated that asylum seekers should not be required to submit to biometrics because it violated the principles and heritage of the United States. Another commenter argued that biometrics collection would discourage legitimate asylum seekers from filing because of their distrust of the government and how it might use their biometric information. Several commenters felt that requiring asylum seekers to appear for biometric services appointments was akin to treating them like criminals. Others believed that requiring biometrics was an invasion of privacy.

Many commenters felt that imposing a biometrics fee would burden an already vulnerable population. One commenter stated that the $85 biometrics combined with the proposed fee increase for employment authorization in a separate rulemaking, would put asylum out of the reach to many who are already relying on limited savings to survive. The commenter also noted that requiring applicants to appear at ASCs for biometric collection will impose additional costs on the asylum seeker such as for transportation and lodging.

Multiple commenters believed that adding the biometric requirement and requiring aliens to pay a biometric services fee was duplicative, a waste of government resources, and would extend the wait times for EADs. The commenters stated that additional biometrics were not needed because DHS already collects biometrics as part of the initial asylum application and those results are usually valid for 15 months. One commenter said that it would be impossible for asylum seekers to apply for asylum or pay for the cost of travel to a biometrics appointment especially since they were being kept in Mexico.

Some commenters noted that DHS was already increasing fees for applications for employment authorization and imposing a new fee for filing of asylum applications. Referring to the proposed fee rule,[134] the commenters noted that DHS said it was incorporating the biometric services fee into the costs for the underlying applications or petitions that would be filed with the agency. The commenters stated that pursuant to the fee rule, asylum seekers would have to pay $490 plus an additional $85 biometric services fee, plus the proposed $50 fee for asylum applications. Commenters asked DHS to clarify whether the $85 biometric services fee in this rule would be incorporated into the overall fee for the Form I–765.

A few commenters argued that DHS had not sufficiently justified the need for an additional biometric appointment or the biometric services fee especially since biometrics are always captured with the initial asylum application. The commenters stated that DHS had not provided any evidence that identity fraud was a significant problem among asylum seekers. One commenter questioned why DHS even needed to collect biometrics a second time and asked why DHS could not confirm an asylum seeker's identity with certainty the first time biometrics were collected in connection with the asylum application. Some commenters stated that DHS had not shown that the biometrics requirement would reduce the incentives for aliens to file frivolous, fraudulent, or non-meritorious asylum applications. Another commenter argued that DHS has not provided data

[134] *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,* 85 FR 4243 (proposed Jan. 24, 2020).

to support why additional vetting was required ''to ensure that [DHS] appropriately vetted asylum seekers who are seeking employment authorization.''

One commenter recommended that DHS only collect biometrics on initial EAD applications, and not renewals. The commenter believed that DHS only needed to verify the applicant's identity one time and, to the extent criminal history checks were necessary for renewal applications, there was no reason for DHS to re-take an applicant's fingerprints in order to submit the applicant's information to the FBI. Another commenter believed that making asylum seekers return to provide biometrics a second time was inefficient, duplicative, and a waste of resources.

Finally, several commenters argued that retroactively applying the biometrics provision to initial or renewal (c)(8) EAD applications pending on the effective date of this rule was impermissible under the APA. The commenters disagreed with DHS's rationale that the new biometrics requirement was needed to implement the criminal ineligibility provisions. The commenters argued that applying the new requirement to asylum seekers who had already received employment authorization is unjustified and that DHS should already know if anything has changed since the initial biometrics capture in connection with the filing of the asylum application.

Response: The biometrics requirements for immigration benefits is not a new requirement. DHS has general and specific authority to collect or require the submission of biometrics from applicants, co-applicants, petitioners, requesters, derivatives, beneficiaries, and others directly associated with a request for an immigration benefit. Section 103 of the INA, 8 U.S.C. 1103, provides the general authority for the Secretary to issue forms and regulations that the Secretary deems necessary to administer and enforce the immigration laws and implement the provisions of the INA. Several other statutes also authorize the collection of biometrics and bar DHS from approving any immigration benefit until the results of background and security checks have been received.[135] In addition, in the context of asylum applications, section 208(d)(5)(A) of the INA specifically bars DHS from approving an asylum application until—

''*the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State, including the Automated Visa Lookout System, to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum;*''

DHS collects the biometrics of asylum seekers to verify their identity and to determine if they have any disqualifying criminal history that would make them inadmissible to or subject to removal from the United States. In addition, under 8 CFR 103.15, DHS has the authority to require and collect biometrics from any applicant, petitioner, sponsor, beneficiary, or other individual residing in the United States for any immigration or naturalization benefit. DHS has been collecting biometrics for immigration benefits for years and uses biometrics to establish an alien's identity, determine if the applicant has a criminal record, and if yes, whether the alien's criminal history disqualifies the alien from receiving the immigration benefit. DHS does not believe it is burdensome, an invasion of privacy, or unreasonable to ask an alien who is seeking an immigration benefit to pay a biometric fee or to appear at a biometric services appointment.

While the commenters are correct that DHS collects biometrics when an alien first files for asylum, DHS does not view the collection of biometrics at the time an alien files an application for employment authorization as duplicative or wasteful. The results of criminal history check generally only last 15 months. In addition, when DHS collects biometrics, the collection is tied to the form and is not person centric. Biometrics collected for the asylum application remain with the asylum application. Biometrics collected for employment authorization remain with the EAD application. Asylum applications and EAD applications are processed and adjudicated at separate locations and by separate USCIS business units. USCIS is not able to refresh or reuse biometrics that were collected for one benefit type for another benefit type.

In addition, DHS will in many cases recapture biometrics to verify that the person who filed the application and appeared for biometrics capture when the application was filed is the same person who appears at the interview. Collecting biometrics for asylum EAD applicants enables DHS to know with greater certainty the identity of aliens seeking employment authorization by comparing EAD biometrics with those collected from the asylum applicant, to more easily vet those aliens for benefit eligibility, and to combat human trafficking and other types of exploitation. Requiring an applicant for an EAD to appear for biometrics does not affect or delay the processing of an asylum application because they are separate and distinct processes. The above stated benefits of capturing biometrics apply equally to both the initial and the renewal (c)(8) EAD application.

Finally, DHS proposed an $85 biometrics services fee, but now anticipates that the fee required for initial and renewal Form I–765 (c)(8) applicants will be less after adjustment via the USCIS fee rule.[136] DHS did not propose to recover the cost of collecting biometrics for (c)(8) EAD applicants into the fee for Form I–765 in its fee rule NPRM because this rule was not final at the time it developed the fee schedule. Therefore, USCIS did not incorporate the cost of such biometrics services into the budget projections used in the proposed fee rule. To recover the cost of (c)(8) biometrics services, DHS must assess a standalone biometrics fee on (c)(8) EAD applicants. DHS estimates that the cost to USCIS of providing biometrics services for an alien seeking a (c)(8) EAD is approximately $30; thus, DHS anticipates that the biometrics fee that (c)(8) EAD applicants will pay beginning on the effective date of the fee rule will be at least $30 and no more than $85. Until the effective date of the fee rule, all (c)(8) EAD applicants remain subject to the $85 biometrics fee.

b. Use of Discretion in EAD Adjudications

Comment: Several commenters argued that making EAD adjudications for asylum seekers discretionary was contrary to the law. One commenter opposed the rule because it changed the policy for granting EADs from a mandatory policy to a discretionary one. Another commenter asserted that DHS failed to detail the evidentiary standards the agency will consider when applying discretion, and suggested that if the rule is implemented, USCIS should institute mandatory training for USCIS adjudicators to ensure survivors are not punished. One commenter argued that DHS should exercise its discretion to grant employment authorization in all but limited, justified circumstances, and that the rule should codify these circumstances. Another commenter argued that the non-discretionary nature of (c)(8) EADs was intended to protect asylum seekers and reflect U.S. international obligations, and that the exception of (c)(8) EADs to discretionary determinations should not be reversed simply for the sake of ''consistency.''

[135] *See supra* fn. 88.

[136] See 84 FR 62280–62371 (Nov. 14, 2019).

The commenter also argued that DHS has discretion to promulgate regulations for asylum employment authorization, but that the INA does not provide a ''blank check'' of absolute discretion. Finally, the commenter added that the proposed expansion of discretion would lead to inconsistent, arbitrary, and capricious outcomes, as well as complicate the asylum process.

Several commenters stated that the rule did not contain any guidance for use of discretion or explain how USCIS adjudicators would make discretionary EAD determinations. The commenters stated that adding discretion into the EAD process, without guidance, would allow USCIS officers to deny a case without explanation and without giving applicants any recourse to challenge the decision. Another commenter believed that introducing discretion into the asylum EAD adjudication would create an ''inordinate'' amount of arbitrariness and introduce uncertainty into the asylum EAD process.

Multiple commenters suggested that USCIS officers who adjudicate EADs do not have the requisite expertise to make decisions that involve criminal assessments or to determine if a crime is disqualifying for immigration purposes. Some commenters argued that assessing whether a crime is disqualifying requires a complex review of the legal framework for analyzing Federal and state criminal laws and referred to the categorical and modified categorical approach applied by the courts when analyzing whether a crime is an aggravated felony. The commenters believed that asylum officers or IJs who regularly make decisions on asylum applications would be better equipped to determine if an asylum seeker should be barred from employment authorization as a matter of discretion based on criminal history. Another commenter argued that an applicant would be better able to discuss the nuances of their non-political crimes in their home countries before an IJ rather than a USCIS EAD adjudicator.

Response: DHS disagrees that changing the issuance of asylum EADs from mandatory to discretionary violates the law. The plain language of INA section 208(d)(2), 8 U.S.C. 1158(d)(2), confers authority to the Secretary to provide, amend, or rescind employment authorization for asylum applicants. With this amendment, the Secretary is returning discretion to the (c)(8) EAD adjudication. It is not clear from prior rulemakings why the agency determined to eliminate its discretion in this adjudication. It is clear, however, that the crisis at our southern border and in our asylum system necessitates that the regulation at 8 CFR 274a.13(a)(1) be revised to reinstate the Secretary's discretion and to narrowing the application of the Secretary's discretion in (c)(8) EAD adjudications. DHS cannot continue to provide EADs with virtually no eligibility criteria and nearly limitless renewal opportunities to a population of aliens where approximately 80 percent of those aliens are not eligible for asylum. A mandatory and limitless (c)(8) EAD is too strong a draw for economic migrants from around the world to enter and remain in the United States with no avenue for obtaining lawful status.

Also, there are many immigration benefits throughout the INA that have a discretionary component and USCIS adjudicators receive extensive training over multiple weeks to prepare them to adjudicate numerous applications, petitions, and other immigration benefits. USCIS adjudicators are trained on making discretionary determinations and given an introduction to asylum and refugee adjudications. The training also includes a module on how to make discretionary determinations and USCIS ISOs receive procedural guidance for making discretionary decisions for specific immigration benefit types. USCIS adjudicator training also covers topics like how to identify and interview victims of domestic violence and human trafficking.

Discretionary decisions are made on a case-by-case basis, taking into account all factors and considering the totality of the circumstances in each case. When making a discretionary EAD determination, USCIS adjudicators consider any statutory exceptions or exemptions that may affect the alien's eligibility and all relevant information contained in each application and submitted by the alien, including criminal history or other serious adverse factors that might weigh against a favorable exercise of discretion. EAD decisions are not appealable and Congress did not authorize judicial review of denials of applications for discretionary EADs.

USCIS adjudicators are instructed on how to render a discretionary decision and fully understand that a decision cannot be arbitrary and must articulate those factors the USCIS adjudicator considered. USCIS adjudicators also are instructed to consider both positive and negative factors that may be relevant to the applicant's case and to avoid using any specific formulations or any other analytical tools that may suggest that they are quantifying the exercise of favorable or unfavorable discretion. USCIS adjudicators assess whether on balance a favorable exercise of discretion is warranted in light of the totality of the circumstances. The ultimate decision to grant discretionary employment authorization in a case depends on whether, based on the facts and circumstances of each individual case, the USCIS adjudicator finds that the positive factors outweigh any negative factors that may be present. In instances where discretionary decisions involve complex or unusual facts, USCIS adjudicators may request supervisory review before the decision is issued.

Further, USCIS adjudicators who decide applications for employment authorization are trained on how to review criminal laws and criminal offenses that may disqualify an alien from eligibility for an EAD. USCIS adjudicators also receive general training on criminal grounds and eligibility for immigration benefits as part of their overall adjudicator training and they are kept abreast of changes in criminal and immigration laws and regulations that may affect decisions on specific immigration benefits. This is particularly true in the (c)(8) EAD context because under the former regulations, an asylum applicant who has been convicted of an aggravated felony is not eligible for employment authorization. *See* former 8 CFR 208.7(a)(1).

Even with the changes DHS is making in this rule to address which crimes will be deemed categorical bars to employment authorization, DHS does not believe this rule presents over-burdensome procedural or operational challenges for USCIS adjudicators when it comes to evaluating whether an asylum seeker with criminal history is eligible for employment authorization as a matter of discretion. DHS will update the USCIS Policy Manual, Adjudicator's Handbook, and the EAD Standard Operating Procedures appropriately and where needed to implement this rule.

c. USCIS No Longer Automatically Deeming Asylum Applications Complete

Comment: One commenter generally supported eliminating of the requirement that USCIS automatically deem an asylum application complete if not returned in thirty days, however, most commenters opposed it. Several commenters argued that eliminating the requirement would violate asylum seekers due process rights. The commenters believed that this would cause more delays, and increase wait times in EAD adjudications even when the delays were caused by USCIS. One commenter believed it did not take a

long time to review applications for completeness and questioned whether USCIS really was burdened by such reviews. Several commenters noted that many applications for asylum are pending for years and that recently USCIS has been rejecting cases that were in the backlogs for minor omissions or errors. The commenters were concerned that these rejections after the one-year filing deadline had already passed effectively barred many applicants from EAD eligibility. One commenter argued that if USCIS delays returning an incomplete application beyond 30-days that delay should be attributable to USCIS and should not stop the alien's accrual of time towards eligibility to apply for an EAD.

Some commenters believed that removing the requirement would allow the Government to delay processing, remove the incentive for USCIS to reduce backlogs, and would extend EAD processing wait times. One commenter felt that removing the Asylum EAD clock removed the accountability mechanism that had been in place to ensure that USCIS does not delay processing. The commenter stated that eliminating the clock effectively allowed USCIS to ''duck'' responsibility to process in a timely manner. Finally, one commenter recommended that DHS adopt a tolling mechanism for aliens who file incomplete applications to submit an amended application even after the one-year filing deadline has passed.

Response: DHS is eliminating the requirement that any asylum application is automatically deemed complete if not returned to the alien within 30 days. This amendment brings the asylum application filing process in line with the general rules governing all immigration benefit requests under 8 CFR 103.2, which requires all applicants for immigration benefits to file complete applications and petitions. Requiring an applicant to file a complete application does not diminish due process, substantively effect the applicant's eligibility for asylum, or prejudice the applicant. Nor does it preclude the applicant from submitting supporting documents with the application, or later amending the application. DHS is eliminating the requirement because it arbitrarily allowed an incomplete application to be treated as complete and created unnecessary administrative burdens for USCIS. Ensuring that USCIS adjudicators devote time and resources to the processing of *complete* applications not only benefits USCIS, but also applicants.

DHS will not adopt a tolling mechanism to allow aliens who initially submitted incomplete applications to submit amended applications after the one-year filing deadline or allow aliens to continue to accrue time towards EAD eligibility when they file incomplete applications. Applicants always bear the burden and responsibility to ensure that their applications are complete when filed. USCIS will continue to review all applications for completeness as it currently does and will reject and return applications with the reasons for the rejection, as is done with other applications and benefit types.

Finally, DHS believes that one year is a sufficient length of time to allow an alien to file a complete application. Aliens who fail to file complete applications during the 1-year deadline will still have an opportunity to qualify for employment authorization if they can establish that their failure to file a complete application was due to changed or extraordinary circumstances under section 208(a)(2)(D) of the INA, 8 U.S.C. 1158(a)(2)(D) and 8 CFR 208.4(a)(5)(v).

d. Elimination of Recommended Approvals

Comment: Several commenters opposed the elimination of recommended approvals. One commenter stated that it was critical for applicants to know the outcome of their asylum interview and to know that their employment authorization continues if their cases are referred to an IJ. Another commenter agreed that if an applicant's case is being referred to an IJ, USCIS should be clear in the referral letter about the applicant's eligibility. One commenter believed that by eliminating recommended approvals, DHS was essentially denying aliens the ability to work even when the delays were attributable to the federal government due to the delays in background checks. The commenter claimed that background checks can take years and eliminating recommended approvals would leave people in limbo. The commenter stated that rather than eliminating recommended approvals, government agencies should work together to clear background checks in a more timely manner. Several commenters argued that the elimination of recommended approvals did not support the purposes of the rule and DHS failed to explain how elimination of recommended approvals would reduce incentives to file frivolous, fraudulent, or non-meritorious claims.

Response: As noted earlier, previously DHS issued recommended approvals even when all required background and security check results had not been received, and recipients of such notices were eligible for employment authorization. However, Congress has since statutorily precluded DHS from granting any immigration benefit, including EADs, until all background and security checks have been completed.[137] DHS understands commenters concerns about the length of time it takes in certain cases to obtain background check results and DHS is working collaboratively with other agencies involved in the background check process to reduce such delays.

DHS disagrees with the commenters who argue that elimination of recommended approvals does not support the purpose of the rule. As noted, this outdated provision is inconsistent with Congressional mandate.[138] This amendment helps restore integrity into the provision of asylum-based EADs by ensuring aliens who might ultimately be found ineligible for asylum after the results of all background and security checks are received and reviewed do not receive EADs based on preliminary decisions. DHS must have the results of all required background and security checks before it grants any immigration benefit to verify an alien's identity and thoroughly review any immigration and criminal history which would disqualify the alien from eligibility for the immigration benefit, including discretionary EADs. Eliminating recommended approvals is consistent with the stated purposes of the rule.

e. Applicant-Caused Delays

Comment: Several commenters argued that the 14-day period for filing supplementary evidence in asylum cases was not sufficient and strained the resources of nonprofit advocacy organizations and law firms because it did not provide them enough time to prepare responses for their clients. Several commenters mentioned the delays in mail and alleged USCIS's ''chronic'' mail problems. The commenters were concerned that applicants would not have sufficient time to submit supplementary information prior to the interview or prior to the 14-day window, and argued that it was unfair for applicants to be penalized for agency-caused delays. The

[137] *See supra* fn. 88.

[138] *See, e.g., Consolidated Appropriations Act,* 2019, Public Law 116–6, 113 Stat. 33, Div. A, tit. IV, sec. 402 (2019) (''None of the funds made available in this Act may be used by U.S. Citizenship and Immigration Services to grant an immigration benefit unless the results of background checks required by law to be completed prior to the granting of the benefit have been received by U.S. Citizenship and Immigration Services, and the results do not preclude the granting of the benefit.'').

commenters also indicated that, even though interviews are scheduled 21 days prior to the interview date, given current mailing procedures if an applicant does not receive the notice of interview for 5–7 days, then the applicant may not meet the 14-day deadline at all.

One commenter argued that it is unfair to expect an applicant to justify missing an interview date when the NPRM creates no rules for USCIS to notify an applicant when he or she misses an interview or biometric services appointment. Another commenter said that USCIS should not stop sending notifications to applicants when they fail to appear for an interview or miss a biometric services appointment, especially given that there is a problem with USCIS sending notices to the wrong address even though applicants promptly inform USCIS of their new address.

One commenter raised concerns that the new rule, without notice of failure to appear, will more significantly impact EAD adjudications of domestic violence survivors, as violent perpetrators of domestic violence often intercept mail and confiscate hearing notices. Another commenter said that barring those who fail to appear or respond to a notice penalizes survivors for the abuse they've experienced, as many times perpetrators of violence have used deportation as a threat. The commenter stated that the rule disregards the ways in which survivors are isolated and controlled by their abusers, who may exploit victims' lack of English proficiency and isolation from their support systems.

Several comments believed that the definition of what constitutes an applicant-caused delay was overbroad, and that, when combined with other proposals by the administration that target asylum processing, the definition would result in indefinite delays and thereby force asylum seekers into destitution. One commenter argued that rejecting applications for applicant-caused delays would prevent such applicants from making their strongest cases and applicants would have no way of knowing when USCIS would adjudicate their cases.

Several commenters believed that denials for applicant-caused delays would result in arbitrary denials and increased inefficiencies in asylum adjudications. One commenter argued that DHS was denying asylum seekers due process because it did not take into account delays that are out of control of the applicant or out of necessity such as illness or requests for changes in venue. Another commenter argued the denial of an EAD for actions such as rescheduling or transfer requests, not providing an interpreter, or not appearing for a biometrics appointment violates the rights of asylum seekers under domestic and international law. A few commenters argued that denying employment authorization to asylum applicants who may cause a delay in their asylum case out of necessity will create due process issues because many asylum applicants in desperate financial straits may prioritize employment authorization over taking action critical to their asylum case. One commenter stated that DHS would be forcing asylum seekers to choose between presenting a fully supported asylum application and supporting themselves financially and as such this rule was coercive and violated their rights under the Refugee Convention and the 1980 Refugee Act. Finally, several commenters opposed denials for applicant-caused delays especially because the current regulations allow for an exception where the notice of interview or of the biometrics appointment is not mailed to the applicants correct address.

Response: DHS disagrees with commenters' assertions that the definition of applicant-caused delays is too broad, punishes applicants, or violates the Refugee Convention or Refugee Act of 1980. DHS also disagrees that the list of applicant-caused delays is arbitrary and violates asylum seekers due process rights.

While DHS disagrees that the applicant-caused delays infringe on due process, DHS did consider whether the alien would have sufficient notice of the date of the EAD adjudication, which USCIS would use to determine EAD eligibility under the proposed rule. The alien would have little control over the date of adjudication, an eligibility factor, which implicates due process. Accordingly, DHS has amended this provision to provide that applicant-caused delays existing on the date the alien files the (c)(8) EAD application will be considered. Unlike the date of adjudication, the alien has control over the date of filing. DHS believes this amendment provides more certainty of the eligibility requirements, while disincentivizing the alien from prolonging the asylum adjudication.

Under the amended regulations, asylum seekers continue to have the opportunity to present their asylum claims in accordance with international law and with the laws passed by Congress. USCIS provides information about the asylum application process in the Form I–589 and in the accompanying filing instructions. USCIS also provides advance notice of scheduled asylum interviews and biometric services appointments, and makes information about the status of asylum applications available online. These procedures provide asylum applicants with sufficient notice and adequate process to prepare for the asylum process and establish their eligibility for asylum.

DHS has provided examples of applicant-caused delays in 8 CFR 208.7(a)(1)(iv) which give asylum seekers notice of the types of actions DHS will consider as delays to application processing. Unfortunately, many aliens file skeletal asylum applications without all the necessary supporting documentation as a way to start the EAD clock, and wait until the day of their interview to supplement their application with hundreds of pages of evidence that cannot all be reviewed at the interview. Sometimes skeletal filings or last minute submissions of supplementary evidence require interviews to be rescheduled so that the documents can be reviewed. Such loopholes, left unaddressed, are ripe for abuse by aliens who wish merely to delay the asylum adjudication in order to live and work in the United States. The regulatory reforms in this rule are designed to reduce the need to reschedule interviews by ensuring that all asylum applicants submit a complete application and submit supplementary evidence well in advance of their interviews or hearings.

Nothing in this rule precludes an asylum applicant from submitting a complete application at the time of filing. Even if there are potential delays in obtaining documents that are material to the applicant's eligibility for asylum, nothing precludes the applicant from submitting these documents once they are received at any time after the date of filing of the application up to 14-days prior to the applicant's interview date. USCIS, in its sole discretion, also has the authority to excuse a failure to appear for an interview or biometric services appointment due to exceptional circumstances. *See* 8 CFR 208.7(a)(1)(iv)(D), 8 CFR 208.10(b)(1). Finally, DHS is not eliminating or ending the practice of notifying asylum applicants about the consequences of failing to appear for an interview or biometrics appointment in their I–589 receipt notice and in their notices for an interview and biometrics appointment.

With regard to an applicant's ability to supplement or amend an EAD application, DHS does not believe that establishing eligibility for an EAD is an onerous requirement and EAD applications do not require extensive

documentation or the level of evidence that is required for asylum applicants. Applicants for employment need only to submit evidence to demonstrate that they are not subject to a disqualifying criminal ground or ground that would result in a mandatory denial, or if they are, that they still warrant an EAD as a matter of discretion because the positive factors in their cases outweigh the negative. DHS has required applicants to show that they are not aggravated felons in the past and USCIS adjudicators are well versed in the criminal laws to be able to make a determination in the EAD context. DHS believes that the time given to prepare the application for an EAD, make arguments, and supplement the EAD application prior to adjudication is sufficient for an alien to make his or her case.

DHS acknowledges the commenters' concerns about the rule's potential impact on domestic violence survivors and that certain circumstances may prevent applicants from appearing for necessary appointments. USCIS strives to ensure that applicants receive proper notice of their scheduled biometric services appointments for EADs. As is provided in the regulation, USCIS may, in its sole discretion, excuse the failure to appear for a biometrics services appointment, and reschedule the missed appointment. See 8 CFR 103.2(b)(13)(ii).

With regard to comments associated with mail problems, asylum applicants are advised in the I–589 instructions and in their I–589 receipt notices that they will need to provide any documentary evidence at least 14 days prior to the interview with USCIS. Accordingly, they are provided notice in advance of receiving information about their scheduled interview that any documents they want considered must be submitted in advance, or they risk causing a delay in the adjudication of their asylum application, which may affect their EAD eligibility. In addition, most asylum interview notices are automatically generated and mailed to applicants, so it is unclear why there would be a 5 to 7 day delay for applicants to receive notices, absent postal issues or improper addresses. These issues are outside the agency's control.

f. Denials and Terminations

Comment: Some commenters supported terminations immediately after denial of an asylum application or when the asylum decision was administratively final. However, most opposed denying employment authorization to those who sought review of their denials in federal court. Some commenters believed that it was arbitrary and capricious, premature, and unreasonable not to allow an alien seeking review of a denial in federal courts especially when they might ultimately win their cases in court. The commenter cited examples of cases where asylum seekers were ultimately able to prevail on appeal despite the denials at the administrative levels. A few commenters argued that DHS had not provided a sufficient rationale for restricting eligibility for EAD authorization at the appeals stage or for termination immediately after an asylum officer or IJ renders a decision on the asylum application. One commenter questioned how DHS could believe that limiting employment authorization until the end of the administrative appeal process complied with the due process requirements. One commenter stated that immigration court decision-making is notoriously arbitrary, and this arbitrariness is not corrected by the BIA. The commenter went on to say that immigration courts have been criticized for a multitude of other flaws and cited court cases exemplifying such ''adjudicatory failings.'' The commenter provided examples of recent changes that have made immigration courts and the BIA ''even more beholden to the political whims'' of the Trump Administration. Thus, the commenter said, given these considerations, petitioning for review is necessary for noncitizens with meritorious claims who are seeking protection. Another commenter argued that, in light of the ''meager procedural protections afforded by the administrative scheme,'' (*citing Thuraissigiam* v. *United States Department of Homeland Security,* 917 F.3d 1097, 1118 (9th Cir. 2019)), the right to appeal to federal court is particularly important to asylum seekers whose applications have been denied in the ''highly flawed administrative process.''

Several commenters argued that Congress gave aliens the right to pursue judicial review of their claims through petitions for review under section 242 of the INA and that the proper remedy was not to deny employment authorization during judicial review but for the government to challenge any concerns they had about the validity or frivolousness of the claim at the petition for review stage. Some commenters believed that denying employment authorization during the federal appeals process was an Equal Protection and Due Process violation. Another commenter argued that DHS's rationale was insufficient and the change amounted to a denial of access to the courts, in violation of the Due Process and the Suspension Clauses. Some commenters argued that the poor would be precluded from challenging denials and that this constituted a denial of access to judicial review. One commenter stated that if an alien was seeking review in the federal courts it was more indicative that the alien had a meritorious claim, not less. The commenter argued that DHS was simply using the changes in this rule as a ''backdoor'' to deny poor asylum seekers access to the courts. Several commenters believed that denying EADs while a case is on appeal to the federal courts was highly prejudicial especially when the alien puts forth a claim that has merit and that claim is being heard for the first time by an Article III court. One commenter asked why the EAD even needed to be terminated when an asylum officer denies a case, especially since almost all cases are automatically referred to the immigration courts. Several commenters argued that denying asylum seekers the ability to work while they pursue their cases in federal court discourages applicants from seeking review of their cases. Another commenter said that not allowing asylum seekers to work while their cases were on appeal to the federal courts would essentially mean that asylum will only be available to the wealthy. One commenter said that denying or terminating EADs especially in cases where the alien was in a lawful status and their cases were not referred to immigration court would be disruptive.

Some commenters raised concerns about how the auto-termination provisions would work. One commenter believed auto-termination was unworkable, especially for employers. The commenter questioned how employers would know whether an EAD was based on a pending asylum application, if the EAD had been auto-terminated, or if the alien's case was on appeal. Several commenters believed that the new termination procedures would be a huge financial and logistical burden for employers. Many commenters argued that denying or automatically terminating the EADs of asylum applicants who were employment authorized prior to the effective date of the rule essentially meant that they were prohibited from getting their EADs renewed.

Finally, several commenters asked DHS to clarify how the terminations provisions would work in cases where EADs were filed by UACs that were referred to the immigration courts. One commenter said it is unclear how the

termination provisions apply to unaccompanied children whose applications are not granted by USCIS. The commenter stated that, under the TVPRA, when an unaccompanied child's case is denied by USCIS, the case reverts to immigration court, where the child can again seek asylum defensively before an IJ. The commenter asked whether DHS would consider a case that reverted to the immigration court a denial or a referral, for purposes of EAD continuation, under this rule. The commenter suggested that, if the rule is finalized, proposed paragraph 208.7(b)(1)(i) should be revised expressly to state that UAC applications are to be treated the same as the other ''referrals'' covered by that paragraph.

Response: Congress did not mandate employment authorization for asylum seekers, and asylum seekers are not entitled to employment authorization under the law. Nothing in this rule violates the Equal Protection, Due Process, or Suspension Clauses of the U.S. Constitution. In addition, as noted earlier, even if DHS chooses to distinguish between classes of aliens to whom it will give employment authorization, such distinctions are permissible by law.[139] This rule is not arbitrary or capricious and does not draw distinctions based on any protected categories which would trigger judicial scrutiny on constitutional grounds.

Since asylum seekers are not entitled to employment authorization, the Secretary could chose to exercise his discretion to bar all asylum seekers from obtaining employment authorization. However, through this rule, the Secretary has chosen to allow asylum seekers to obtain employment authorization under certain limited circumstances. DHS does not believe that (c)(8) EADs should be granted or remain valid for those who have been denied asylum through multiple levels of administrative review. DHS also disagrees that failing to grant employment authorization to those seeking an appeal in Federal court is arbitrary and capricious. Aliens are afforded multiple levels of administrative review within DHS as well as before the immigration courts and BIA, which provides sufficient time and a reasonable process for asylum seekers to establish that they warrant a favorable exercise of discretion for a grant of asylum. If an alien is in immigration court proceedings and his or her asylum case is denied, the alien will be able to appeal the decision to the BIA. If a timely appeal is filed, employment authorization will be available to the alien during the BIA appeal process. If an asylum officer denies an affirmative asylum application or an IJ or the BIA denies an asylum application, the alien should not remain authorized to work.

DHS disagrees that prohibiting employment authorization during the federal court appeal process is an attempt to discourage aliens from seeking federal court review. This rule does not place any limits on an alien's right to pursue federal court review. Rather, this rule places limits on access to employment authorization in situations in which aliens have been found not to be eligible for asylum by multiple decision-makers, including an asylum officer and/or IJ, and the BIA. Following the federal court appeals process, the alien could reapply for an EAD if the federal court remands the asylum case to the BIA. DHS believes that aliens seeking federal court review have the opportunity and time to plan and prepare for the lack of access to employment authorization during the federal court appeal process. Prohibiting employment authorization for aliens whose cases have been denied by DHS and DOJ and are moving through the federal court system does not violate the INA.

With regard to questions about referrals to immigration court, not all asylum cases get referred to immigration court after the asylum officer renders a decision. There is a difference between an affirmative asylum referral and an affirmative asylum denial. An affirmative asylum referral means that the alien who filed the application is not in any lawful status, therefore upon not receiving a grant of asylum, they are referred to an IJ. An affirmative asylum denial means that the alien who filed the application is still in lawful status, they are issued a Notice of Intent to Deny (NOID), the alien can respond to the NOID and if he or she does not overcome the reasons for a denial, the affirmative asylum application is denied and not referred to an immigration court. The reason an affirmative asylum denial is not referred to immigration court is because the alien is maintaining valid immigrant or nonimmigrant status or Temporary Protected Status (TPS) and is not amenable to removal. An asylum officer has the authority to deny, dismiss, or refer the case to immigration court.[140] This rule does allow an alien to maintain their EAD while being referred to an immigration court.

Finally, with regard to how these provisions affect cases filed by UACs, this rule will not impact UAC cases that are adjudicated by USCIS. If USCIS has jurisdiction over an asylum application for a UAC, as defined in 6 U.S.C. 279(g)(2), then USCIS can either grant asylum or issue a ''UAC Decision Notice for Non-Eligibility'' if the UAC is already in removal proceedings. If a UAC is issued a notice for non-eligibility, then their asylum application is returned to immigration court. If a UAC is already in immigration court proceedings they are not issued a new Notice to Appear (NTA). If the UAC had not yet been placed in immigration court proceedings and is not granted asylum before USCIS, then the UAC would be issued an NTA and referred to immigration court, where they can continue to pursue their asylum application. The only instance where a UAC would receive a final denial of their asylum application is where the UAC is in lawful status at the time of the final adjudication of their Form I–589. In all other instances, a UAC does not receive a final denial from USCIS and would still remain eligible for employment authorization. DHS does not find it necessary to amend 8 CFR 208.7(b)(1)(i) to reflect how UACs applications are adjudicated at USCIS. Under the TVPRA, USCIS has initial jurisdiction over a UAC and if the UAC is found ineligible for asylum, they are referred to an IJ and issued an NTA if they were not already in removal proceedings, or if they were already before Immigration Court, their case is returned to DOJ–EOIR to continue proceedings.[141]

g. Validity Periods

Comment: Some commenters claimed that DHS was shortening the validity periods. One commenter argued that affording USCIS discretion in shortening the duration of EADs would undermine asylum seekers' ability to find employment, as an overly short EAD can render an alien unemployable. The commenter faulted the proposal for failing to provide factors or guidelines concerning the duration of EADs. Multiple commenters generally opposed allowing EADs to have validity periods of less than 2 years, arguing that shorter validity periods would only increase fees and administrative waste by requiring more applications for renewal. One commenter recommended that DHS create a longer EADs validity period of 5 years in order to eliminate renewal applications and reduce immigration

[139] *See Mathews* v. *Diaz,* 426 U.S. 67, 82–83 (1976).

[140] 8 CFR 208.14.

[141] *See* TVPRA, Public Law 110–457, sec. 235(d)(7)(B) (effective March 23, 2009).

backlogs. Several other commenters were concerned that granting USCIS discretion to issue EADs with short validity terms would introduce uncertainty into the lives of asylum seekers and harm their job prospects.

Response: Individual adjudication officers will not have discretion to change the validity period of an EAD under this rule. The duration of the validity period of an EAD will be at the discretion of USCIS and will be set in order to promote consistency and fairness and will not be left up to the discretion of individual officers. Factors and guidelines concerning the duration of EADs will be set internally as a USCIS policy decision.

Effective October 5, 2016, USCIS increased the validity period for initial or renewal EADs for asylum applicants from one year to two years.[142] This change applied to all (c)(8)-based applications pending as of October 5, 2016 and all such applications filed on or after October 5, 2016. USCIS made this adjustment to align with adjudicatory work flows. Up until October 5, 2016, USCIS had been issuing (c)(8) EADs in 1 year increments. This rule does not shorten the current two-year validity period set by agency policy, but it ensures USCIS will not adjust the EAD validity period to greater than two years. DHS believes it is reasonable to limit the EAD validity period in this manner. The EAD renewal process is necessary for DHS to confirm the alien's continued eligibility for this ancillary benefit, and lengthening the validity period would jeopardize this important verification. These considerations must be balanced against adjudicative efficiency and potential administrative burden. Capping the EAD validity period to two years permits continuity of employment for the alien while ensuring that USCIS periodically verifies continued eligibility. DHS also notes that USCIS maintains multiple successful 1 year EAD programs, including for approved asylum applicants and aliens paroled as refugees. DHS emphasizes this rule does not shorten the existing 2 year EAD validity period, nor does it codify a permanent validity period of 2 years. It restricts the (c)(8) EAD validity duration to not longer than 2 years. However, nothing in this regulation limits USCIS's authority to reduce the validity period for an EAD to less than 2 years. The EAD validity period continues to depend on the adjudicatory work flows of the agency, an ongoing analysis of the extent to which the validity period of the EAD is encouraging economic migration and baseless asylum claims, and the ongoing security environment.

h. Parole-Based EADs for Asylum Seekers Who Establish Credible Fear

Comment: Several commenters opposed limiting parole-based EADs for asylum seekers who passed credible fear screenings. One commenter argued that the language in the rule does not give applicants adequate notice of what is being changed and fails to explain or address how many aliens who are paroled into the United States will be affected. The commenter indicated that DHS also failed to address the impact the proposed change would have on long-term parolees who have been in the United States. One commenter argued that DHS failed to define what constitutes ''foreign policy, law enforcement, or national security reasons''. Several commenters argued that the change to the parole EAD provisions did not support the rationale or stated purposes for the rule, that the rule did not consider or analyze the impact of such a change on long-term parolees, and that the rule lacked information as to how many parolees currently have (c)(11) authorization. One commenter remarked that the 2,700 beneficiaries in the Central American Minors Program (CAM) parole cases from a recent settlement would be impacted. The commenter wrote that employment authorization is important to these beneficiaries, who also relied on a USCIS statement from 2019 which explained that they would be eligible for employment authorization.

A commenter argued that the proposal would unreasonably target meritorious asylum applicants by denying immediate employment authorization under 8 CFR 274a.12(c)(11) to aliens paroled into the United States based on a credible fear determination. One commenter stated that the change furthers neither of the major objectives of the proposed rule, asserting that (c)(11) parolees are likely to qualify for relief under CAT. Another commenter also argued that it is unnecessary to codify current DHS policy and thereby constrain future administrations. One commenter stated that the proposal would increase state costs by removing (c)(11) parolees' ability to work and earn income.

Response: Through this rule, DHS is maintaining the distinction between those who are admitted into the country as parolees for urgent humanitarian reasons or significant public benefit and those who are paroled as claimed asylum seekers due to lack of detention capacity. DHS is revising the language at (c)(11) to more clearly draw this distinction. All asylum seekers should be subject to the same rules, including the rules governing eligibility for employment authorization. Unfortunately, many criminal organizations and human smugglers are well aware of DHS's limited detention capacity and have relied on this as a selling point for ''immediate'' employment authorization, which in turn has encouraged more economic migrants to pay to be smuggled and illegally enter the United States. DHS believes that it is important to distinguish the ability to seek employment authorization for certain aliens paroled truly for urgent humanitarian reasons or significant public benefit, and to treat the remaining aliens seeking to enter the United States uniformly in terms of requesting asylum based on credible fear.

In terms of CAM, the approximately 2,700 aliens covered by the April 12, 2019 settlement agreement in *S.A.* v. *Trump, et al.,* Case No. 3:18–cv–03539–LB (N.D. Cal.) involving CAM will not be impacted by the final rule. Specifically, the final rule continues to allow for individuals paroled for urgent humanitarian reasons or significant public benefit pursuant to section 212(d)(5) of the INA, 8 U.S.C. 1182(d)(5), to seek employment authorization, which would encompass minors who entered under CAM. The exceptions to 8 CFR 274a.12(c)(11) in the final rule preserve the ability of entrepreneur parolees and their spouses to obtain employment authorization under the current regulations at 8 CFR 274a.12(b)(37) and (c)(34).

In terms of the impact of the change on long-term parolees and how many aliens would be affected, DHS estimated in the NPRM at 84 FR 62405 that from FY 2014 and FY 2018, an average of 13,000 applicants sought employment authorization through the (c)(11) category. DHS also noted in the NPRM at 84 FR 62417 that even though (c)(11) parole based applications for employment authorization postmarked on or after the effective date of this final rule would be denied, such aliens would still be eligible to apply for employment authorization under the (c)(8) category subject to the eligibility changes in this rule, including the 365-day waiting period. DHS is unable to estimate how many would apply for an EAD under 8 CFR 274a.12(c)(8), and how many would be granted the EAD subject to the eligibility changes in this rule. Impacted aliens may incur delayed earnings or lost earnings if they do not

[142] *https://www.uscis.gov/archive/uscis-increases-validity-work-permits-two-years-asylum-applicants* (last accessed 2/14/2020).

apply for or are not eligible for a (c)(8) EAD.

DHS also disagrees with the commenters' unsupported assertions that the rule targets meritorious asylum applicants by requiring aliens paroled following a positive credible fear determination be subject to the same waiting period as all other asylum seekers. According to DOJ–EOIR data, very few of the aliens found to possess a credible fear ultimately succeed on the merits of their asylum claims. In FY 2019, DOJ–EOIR granted only 15.25 percent of asylum applications filed by aliens found to have a credible fear.[143] Over the past five years, the average DOJ–EOIR asylum grant rate of cases originating with a credible fear claim is only 14.25 percent.[144] Furthermore, according to DOJ–EOIR, between FYs 2008 and 2019 nearly 45 percent of aliens referred to the immigration court following a positive credible fear claim did not file for asylum with an IJ.[145] Even if all credible fear claims resulted in a grant of asylum, this would not justify disparate treatment under section 208(d)(2) of the INA, 8 U.S.C. 1158(d)(2). With this provision, DHS seeks to ensure fidelity to INA 208(d)(2), to ensure that all asylum applicants are treated equally, and to ensure consistent application of this policy across the Department's components. Congress purposefully imposed a minimum wait between the filing of an asylum application and the ability to obtain employment authorization. Congress did not provide an exception to obtaining employment authorization earlier for paroled asylum seekers. This final rule is consistent with congressional intent and inserts fairness into the process, so all asylum seekers are subject to the same standards and timeframes for obtaining an EAD.

Finally, with regard to the concern over the potential costs to States, as discussed in more detail later, DHS acknowledges that this rule could result in lost tax revenue. The NPRM stated at 84 FR 62418, ''There could also be a reduction in income tax transfers from employers and employees that could impact individual states and localities.'' DHS notes that the tax rates of states vary widely, and many states impose no income tax at all. It is also difficult to quantify income tax losses because individual tax situations vary widely. As a result, although DHS recognizes these impacts on states, DHS is unable to quantify the potential lost state taxes. DHS also realizes that the loss or deferment of income for asylum applicants could pose burdens to asylum applicants' support networks—which could involve state and local public service providers. See Section VI, Public Comments on Economic Analyses and Other Statutory and Regulatory Comments, and Section VII, Statutory and Regulatory Requirements below for additional discussion of the economic impact and analyses of this rule.

6. Miscellaneous Comments

DHS received several other comments on the rule, some of which were out of scope, including arguments about the constitutionality of the Administration's position on sanctuary cities. DHS will not address these comments. There also were some additional broader comments about the rule that DHS addresses below:

a. Administrative Burdens and Agency Backlogs

Comment: Several commenters argued that the rule would create additional burdens on USCIS overall and exacerbate existing backlogs. The commenters also believed that the rule would increase burdens on USCIS adjudicators by adding more requirements for asylum and EAD adjudications. Several commenters argued that with current agency backlogs (which they attributed either to agency mismanagement, eliminating the 30-day processing deadline, or decreased application receipts), it would be impossible for asylum seekers to ever obtain an EAD or to survive while waiting for their applications to be adjudicated. Other commenters argued that this rule would worsen agency backlogs and contribute to delays in processing of other immigration benefit types.

Several commenters recommended alternatives to the rule to alleviate agency backlogs, including requesting additional funding from Congress, allowing concurrent filing of the asylum and EAD applications, improving EAD processing, increasing asylum and immigration court staff, improving technology and allowing electronic filing, and creating a separate processing channel for cases involving cancellation of removal.

Response: DHS disagrees with the commenters' assertions that the current backlogs will make it impossible for asylum seekers to obtain employment authorization. Once an asylum applicant is granted asylum, the alien is immediately eligible for employment authorization as mandated by statute. *See* INA 208(c)(1)(B), 8 U.S.C. 1158(c)(1)(B). If an asylum application is still pending after 365 days, an alien can apply for employment authorization, and if eligible, receive an EAD.

With regard to the asylum backlogs, DHS disagrees that the agency has been mismanaging its resources. DHS recognizes that there are a large number of cases pending in the affirmative asylum backlog. However, one of the reasons for the backlog is the crisis at the southern border and the need for DHS to divert resources from the affirmative asylum caseload to the credible and reasonable fear caseload. DHS believes that by deterring economic migrants and those who are not bona fide asylum seekers from seeking asylum in the United States, DHS will be able to reallocate it resources to the affirmative asylum caseload and, through the LIFO policy, maintain timely adjudications. Backlogs at USCIS and the years-long wait for hearings in the immigration courts have allowed aliens to remain in the United States for many years, obtain EADs, and ultimately gain equities for an immigration benefit, even when most of their asylum applications will be denied on their merits.[146]

DHS also disagrees that this rule will worsen backlogs. USCIS adjudicators are well-trained and have numerous resources at their disposal for adjudicating cases. For instance, adjudicators already consider criminality, admissibility, and date of entry on a variety of forms. The requirements for the EAD adjudication set out in this rule are not new to USCIS adjudicators. Further, as this rule imposes more stringent requirements for employment authorization to disincentivize aliens who are economic migrants and who are not bona fide asylum applicants from filing asylum applications and exacerbating existing backlogs, DHS believes it will result in decreased filings of frivolous, fraudulent, or non-meritorious asylum applications, and relatedly, asylum-based EAD applications.

Finally, DHS does appreciate some of the recommendations and alternatives offered by the commenters. DHS has

[143] *See* Executive Office for Immigration Review Adjudication Statistics, Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim, available at *https://www.justice.gov/eoir/page/file/1062976/download.*

[144] *Id.* This average equals the sum of the grant rates from FY15 through FY19 divided by five.

[145] *Id.* This average equals the sum of Percentage of No Asylum Application Filed from FY08 through FY19 divided by twelve.

[146] *See, e.g.,* Doris Meissner, Faye Hipsman, and T. Alexander Aleinikoff, *The U.S. Asylum System in Crisis; Charting a Way Forward,* Migration Policy Institute (Sept. 2018) at pp. 4 and 9–12, for additional discussion on the impact of backlogs and delays in immigration proceedings.

been hiring additional staff in the Asylum Division to address the large number of affirmative asylum applications and increase in credible and reasonable fear screenings due to the crisis at our southern border. In addition to increasing Asylum Division staff, this rule will build upon a carefully planned and implemented comprehensive backlog reduction plan and amends the (c)(8) EAD process so that those with bona fide asylum claims can be prioritized and extended the protections, including employment authorization, that the United States offers to aliens seeking refuge from persecution or torture. Further, USCIS is already engaged in a multi-year initiative to transform its current paper-based process to a fully electronic filing and adjudication system and the agency is steadily making more applications available for online filing. DHS cannot adopt the recommendation to allow concurrent filing. This would contravene the intent of this rule as well as the prior regulations, which were specifically designed to ensure there is a waiting period for applying for an EAD that follows the filing of asylum application and have mechanisms for addressing periods where applicants delay the adjudication of their asylum applications. Additionally, allowing asylum seekers to file earlier creates a different operational burden. Because the statutory scheme mandates that employment authorization cannot be granted until the asylum application has been pending for a minimum of 180 days, USCIS would need to implement new tracking and records mechanisms to ensure applications would not be adjudicated too early. This would impede the agency's ability to nimbly move workloads between centers and officers. Allowing applicants to file earlier than the timeline currently in place would also necessitate creation of a new clock system to track how long asylum applications were pending prior to approval. This would require tracking and potentially holding applications over a longer span of time, adding complexity.

b. Rationale for the Rule

Comment: Several commenters argued that the changes made by the rule do not support the stated rationale for the rule (in other words, deterring frivolous, fraudulent, and non-meritorious filings). Other commenters doubted that the rule would address fraudulent filings. One commenter argued that contrary to DHS's characterization, the number of border apprehensions is not unprecedented, citing prior fiscal years where the numbers of apprehensions were significantly higher and when the number of border patrol agents were lower. Another commenter claimed that 90 percent of asylum seekers pass their credible fear interviews and pursue asylum despite its ''arduous, costly process.'' A few commenters argued that DHS's rationale for the rule was flawed because nearly one third of asylum applicants who passed a credible fear screening were successful in immigration court. Another commenter stated that one third of asylum claims succeed in substantive decisions and that the grant rate for those with legal representation should be used when considering what percent of applications are considered successful. Finally, one commenter argued that there were less ''harmful'' alternatives to address fraud in the asylum process than the proposals in the rule, such as changing the I–589 to emphasize the existing legal consequences of filing frivolous or fraudulent applications for asylum and requiring biometrics collection for initial EAD applicants only and not for renewal applicants.

Response: DHS disagrees that this rule fails to state a sufficient rationale or lacks data to support the changes made by this rule. The data illustrate a clear picture of a longstanding, critical and growing crisis in the U.S. asylum system and the need for strengthened laws.[147] Border enforcement resources, detention space, and adjudication capacity are far outpaced by the numbers of aliens illegally entering the United States and claiming asylum each year. Historical data indicate that only about twenty percent of these applicants are eligible for asylum. This rule, standing alone, is not intended to solve every aspect of the crisis in the asylum system. It is one of several measures that the Administration is combining to mitigate the crisis and ensure the integrity of the immigration system and security of our communities.

According to CBP data from FY 2019, the level of aliens unlawfully attempting to cross the Southern border reached a twelve-year high and nearly doubled from the same period in the previous fiscal year.[148] This increase demands that DHS respond to this crisis and strengthen and enforce our immigration laws. According to one DOJ–EOIR snapshot measuring eleven years of data, of the approximately 81% of USCIS credible fear referrals to IJs, only 17% of these aliens are granted asylum by an IJ.[149] While approximately one third of adjudicated asylum applications stemming from a positive credible fear finding are granted, the commenter fails to acknowledge that about forty five percent of aliens with a positive credible fear finding fail to pursue their asylum claims and are therefore never adjudicated.

According to another DOJ–EOIR snapshot, in FY 2019, DOJ–EOIR granted only 15.25 percent of asylum applications filed by aliens found to have a credible fear.[150] Over the past five years, the average DOJ–EOIR asylum grant rate of cases originating with a credible fear claim is only 14.25 percent.[151] This rule is designed to reduce the number of aliens who leave their home countries seeking economic opportunities in the United States by gaming the asylum system and its attendant employment authorization. DHS does not dispute that some applicants may have filed for asylum in good faith, but will still have their application denied. Nonetheless, by implementing this rule along with other measures, the integrity of the asylum system will be bolstered.

DHS remains committed to finding options to curb abuse of the asylum system while prioritizing bona fide asylum seekers. DHS has considered alternatives, including taking no action, rescinding its regulation conferring employment authorization to all asylum seekers, hiring more staff, and accepting forms electronically. In addition to this rulemaking, DHS has undertaken a range of initiatives to address the asylum adjudication backlog and mitigate its consequences for bona fide asylum seekers, agency operations, and the integrity of the asylum system.

[147] *See Humanitarian and Security Crisis at Southern Border Reaches 'Breaking Point'* (2019, March 6), available at *https://www.dhs.gov/news/2019/03/06/humanitarian-and-security-crisis-southern-border-reaches-breaking-point* (''Every DHS Secretary since the Department's inception has sounded the alarm about our unsecured border and its consequences. The American people and our law enforcement personnel rightfully demand effective border security: building the wall, *strengthening our laws,* and giving the men and women serving on the front lines the tools and resources they need to keep Americans safe. To that end, this Department pledges our unwavering resolve to confronting present and ever-evolving future threats to our national security at our Southwest Border.'') (emphasis added).

[148] *See Humanitarian and Security Crisis at Southern Border Reaches 'Breaking Point'* (2019, March 6), available at *https://www.dhs.gov/news/2019/03/06/humanitarian-and-security-crisis-southern-border-reaches-breaking-point.*

[149] *See* Adjudication Statistics, Credible Fear and Asylum Process: Fiscal Year (FY) 2008–FY 2019 (Oct. 23, 2019), available at *https://www.justice.gov/eoir/file/1216991/download.*

[150] *See* Executive Office for Immigration Review Adjudication Statistics, Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim, available at *https://www.justice.gov/eoir/page/file/1062976/download.*

[151] *Id.* This average equals the sum of the grant rates from FY15 through FY19 divided by five.

These efforts include: (1) Revised scheduling priorities including changing from First in First out (''FIFO'') order processing to LIFO; (2) staffing increases and retention initiatives; (3) acquiring new asylum division facilities; (4) assigning refugee officers to the Asylum Division; (5) conducting remote screenings; and (6) launching a pilot program for applicants seeking a route to immigration court to request cancellation of removal.[152] USCIS already accepts several forms electronically, and is considering steps to accept the Form I–765 electronically in the future. These efforts are a top priority for the agency.

DHS disagrees that a viable alternative to this rule is to reduce immigration enforcement. Reducing enforcement would add to the pull factors incentivizing abuse of the asylum system and exacerbate the asylum backlog rather than reduce it. The asylum adjudication backlog coupled with the previous (c)(8) EAD regulations' very low eligibility threshold with nearly unlimited renewal opportunity already created significant pull factor incentivizing abuse of the overburdened asylum system.[153] DHS does not agree that simply modifying the existing Form I–589 to emphasize the existing legal consequences of filing frivolous or fraudulent applications constitutes a sufficient deterrent to this practice and disagrees that this is a viable alternative to the rule.

DHS seeks to balance deterrence of those abusing the asylum process for economic purposes and providing more timely protection to those who merit such protection, which includes immediate and automatic employment authorization when the asylum application is granted. DHS believes the amendments in this rule strike a greater balance between these two interests.

c. Frivolous, Fraudulent, and Non-Meritorious Filings

Comment: Some commenters argued that the rule would not deter frivolous, fraudulent, or non-meritorious filings and that DHS had not provided any evidence or data showing fraudulent intent of asylum seekers to support the rationale. One commenter argued that DHS was conflating fraudulent applications with non-meritorious applications and noted that asylum applications can be denied for many reasons that are unrelated to the merits of the asylum claim.

Several commenters also stated that even if there are cases that are not ultimately successful, it does not necessarily mean that the filings were frivolous. One commenter recommended that DHS define the terms ''frivolous'' and ''fraud'' and another commenter argued that it is unclear what constitutes a ''non-meritorious'' claims and whether non-meritorious claims are nothing more than frivolous and fraudulent applications. A number of commenters attributed the failure of many asylum cases to lack of legal counsel, and cited data showing that represented applicants succeeded between 2–5 times the rate of their pro se peers. The commenters argued that DHS would not consider denied asylum cases ''frivolous'' if asylum seekers were provided legal counsel and DHS established more uniform standards.

Response: DHS agrees that not every case which is ultimately denied by an asylum officer or the immigration court is frivolous or fraudulent. However, DHS is promulgating this rule to also address cases where there is fraud and, to reduce the number of non-meritorious asylum applications. While an alien may have filed an asylum application in good faith, it does not mean that the application had merit, especially when the alien clearly does not meet any of the grounds for eligibility for asylum. As noted earlier, fleeing generalized violence or poverty in one's home country does not make an alien eligible for asylum. DHS seeks to reduce the incentive for aliens to file asylum applications simply to gain employment, have economic stability, and to avoid the generalized violence that is occurring in their country of origin or nationality.

DHS is not conflating fraudulent applications with non-meritorious applications. Fraud requires that a person knowingly made a false representation of a material fact with the intent to deceive the other party.[154] Fraud differs from non-meritorious applications; an alien who has a non-meritorious application may not have a legitimate asylum claim, but does not knowingly make a false representation of material facts to USCIS. The surge in border crossings and asylum claims has placed a strain on the nation's immigration system and DHS must take action to deter those who are not legitimate asylum seekers. DHS strongly believes that one of the ways to deter fraudulent, frivolous, and non-meritorious asylum claims is to adjust the eligibility requirements for an employment authorization for those with pending asylum applications and who are denied asylum. DHS agrees that an asylum application may be denied for many reasons unrelated to the merits of the claim, such as being barred from receiving asylum based on criminal grounds or the filing outside of the one year filing window. DHS intends to remove the incentives for aliens who are not legitimate asylum seekers and who come to the United States to exploit the system.

It is the asylum seeker's burden to establish that he or she has met the eligibility requirements for asylum and that is dependent on the specific circumstances and facts in the individual asylum seeker's case. In addition, asylum seekers are advised of their right to counsel in the affirmative asylum process. Aliens are provided a list of legal services in their area during the reasonable or credible fear processes. An alien is not required to have an attorney to file an EAD application or asylum application. DHS believes that aliens have numerous opportunities to obtain legal counsel at cost, low cost, or no cost.[155]

Finally, DHS has already provided a definition for a frivolous application under 8 CFR 208.20, which defines a frivolous application as, ''an asylum application is frivolous if any of its material elements is deliberately fabricated.'' [156] In addition, Congress has provided a specific ground of inadmissibility to address when an alien commits fraud for the purposes of obtaining a benefit under the INA [157] and USCIS adjudicators are well trained on how to make admissibility and removal determinations where there is a concern about fraud in the application or during the asylum process. DHS has existing definitions that clearly explain fraud in the context of immigration adjudications. Inadmissibility based on fraud requires a finding that a person knowingly made a false representation of a material fact with the intent to deceive the other party.[158] Further, the Form I–589 instructions indicate that if an alien knowingly makes a frivolous application for asylum, they may be

[152] Annual Report 2018 Citizenship and Immigration Services Ombudsman June 28, 2018 (page 44) *https://www.dhs.gov/sites/default/files/publications/cisomb/cisomb_2018-annual-report-to-congress.pdf.*

[153] *Id.,* at 43–44.

[154] *See Matter of Tijam,* 22 I&N Dec. 408, 424 (BIA 1998) (addressing excludability based on fraud and willful misrepresentation).

[155] *See e.g.,* EOIR's list of pro bono legal service providers, available at *https://www.justice.gov/eoir/list-pro-bono-legal-service-providers.*

[156] 8 CFR 208.20.

[157] INA 212(a)(6)(C)(i).

[158] *See Matter of Tijam,* 22 I&N Dec. 408, 424 (BIA 1998).

permanently ineligible for any benefits under the INA.[159]

Asylum applications that are non-fraudulent and non-frivolous will still need be evaluated on the merits of the case if they are eligible for the immigration benefit as defined in 8 CFR 208. Nothing in this rule changes eligibility for asylum and an application is still evaluated based on the merits. The purpose of this rule is to deter frivolous and fraudulent asylum claims, in addition to deter those who are not eligible for asylum and have the purpose of only obtaining employment authorization.

7. Effective Date and Retroactive Application

Comment: Several commenters expressed concern that the proposal would apply to any employment authorization applications pending on the effective date of this Final Rule. One commenter argued that rulemakings generally cannot have a retroactive effect. One commenter stated that if DHS imposed the requirements of the rule retroactively it would be unconstitutional. Another commenter opposed applying the rule to aliens with pending asylum applications who, in reliance on the prior regulations, made ''major'' life decisions, such as finding employment and ''buil[ding] their social lives'' in the United States. One commenter argued that applying the one-year filing EAD provision to aliens with pending asylum applications could result in loss of employment authorization, especially if the one-year filing bar would not be determined until the asylum application is adjudicated by an asylum officer or IJ. Another commenter argued that applying the biometrics requirement to aliens with (c)(8) EAD applications pending on the effective date of the rule would be impermissible under the APA.

Response: DHS initially proposed to apply changes made by this rule only to initial and renewal applications for employment authorization under 8 CFR 274a.12(c)(8) and (c)(11) filed on or after the effective date of the final rule, with two exceptions. DHS proposed to apply the provisions relating to criminal offenses and failure to file the asylum application within one year of the alien's last entry to the United States to initial and renewal (c)(8) EAD applications pending on the effective date of this rule and to require that these aliens appear at an ASC for biometrics collection.

DHS has carefully considered the comments about applying the rule to pending EAD applications, and has determined it will not apply any provisions of this rule to applications for employment authorization under 8 CFR 274a.12(c)(8) and (c)(11) pending with USCIS on the effective date of the final rule. Although DHS has an interest in immediately applying the criminal and one-year filing provisions, it is persuaded by the commenters' concerns about applying the provisions to pending (c)(8) EAD applications, and has determined that applying only portions of this rule to the population of pending (c)(8) EAD applicants may cause confusion externally and internally by implementing a two-tiered adjudication system. Accordingly, the provisions of this rule will apply only to (c)(8) (initial and renewal) and (c)(11) EAD applications that are postmarked (or if applicable, electronically submitted) on or after the effective date; applications that were postmarked before the effective date and accepted by USCIS pursuant to 8 CFR 103.2(a)(1) and (a)(2), and are pending on the effective date will be adjudicated under the respective prior regulations. As the criminal provisions will not be applied to aliens with EAD applications pending on the effective date of this rule, DHS will not require these aliens with EAD applications pending on the effective date of this Final Rule to appear for biometrics collection associated with the EAD. Aliens who file initial or renewal (c)(8) EAD applications on or after the effective date will be required to submit biometrics consistent with this rule.

Additionally, in recognition that the illegal-entry provision is designed to deter illegal entry and reduce its attendant risks and costs, DHS has determined that it will only apply the illegal-entry provision to aliens who enter or attempt to enter the United States illegally on or after the effective date of this Final Rule. Similarly, DHS will only apply the one-year filing bar to aliens who file their asylum applications on or after the effective date, and filed the application after the one-year filing deadline. Further, DHS will only apply the criminal bars for particularly serious crimes and serious non-political crimes where the conviction or offense triggering the bar occurred on or after the effective date of the rule. The criminal bar described in 8 CFR 208.7(a)(1)(iii)(D), which refers to 8 CFR 208.13(c), will apply where the conviction or offense occurred on or after the effective date of the Procedures for Asylum and Bars to Asylum Eligibility rulemaking, if finalized.[160] DHS will apply the aggravated felony bar to any conviction regardless of the conviction date.

DHS acknowledges that this rule will impact some aliens who filed asylum applications prior to the effective date of this rule, and that these applicants may have relied to some degree on the prior regulations governing (c)(8) employment authorization. However, DHS disagrees that this reliance renders this rulemaking impermissibly retroactive. Many of these applicants will remain eligible for employment authorization under the new rule, though some may be subject to a longer waiting period depending on when they filed their asylum application. Asylum applicants who are already employment authorized on the effective date will remain employment authorized until the expiration date on their EAD, unless the authorization is terminated or revoked on grounds noted in the prior regulations.

Employment authorization under section 208(d)(2) of the INA, 8 U.S.C. 1158(d)(2), is an ancillary benefit conferred at the discretion of the Secretary, a benefit which Congress determined an asylum applicant ''is not entitled to.'' Further, DHS has authorized this discretionary benefit by regulation, and it is therefore subject to amendment or rescission by the agency at any time through subsequent rulemaking. Under the previous regulatory framework and under this final rule, asylum applicants requesting employment authorization are required to submit regular renewal applications, which are subject to de novo eligibility review each time they seek to renew. As noted above, DHS has long sought to separate the asylum process from employment authorization in order to address abuses of the asylum system for economic benefit, and it is apparent that Congress concurred with the agency's separation of the two when it adopted DHS' regulation in the INA.

The reliance interests raised by the commenters do not outweigh the government's compelling interests in promulgating this rule. It is not reasonable to assume DHS would never

[159] *See* INA 208(d)(6); *https://www.uscis.gov/i-589.*

[160] *See* Proposed rule: *Procedures for Asylum and Bars to Asylum Eligibility,* 84 FR 69640 (Dec. 19, 2019). Under that proposed rule, aliens are only subject to the new criminal bars based on convictions or criminal behavior that occur on or after the effective date of that rule. Because 8 CFR 208.7(a)(1)(iii)(D) only applies to aliens who are ''subject to a mandatory bar to asylum'' under 8 CFR 208.13(c), those aliens with disqualifying convictions or criminal behavior that takes place after the effective date of the Asylum Bars rule, if finalized, will be barred from receiving a (c)(8) EAD.

alter the eligibility criteria for a discretionary EAD. It is not reasonable to presume, as one commenter suggested, that an alien would have based major life decisions on employment or engaging in ''social lives'' on an assumption or reliance that DHS would not amend its EAD regulations in the future. Further, it is not reasonable to presume that an alien would have refrained from violating immigration laws requiring lawful entry or a timely-filed asylum application, or criminal laws proscribing public safety offenses, if he had known it would later render him ineligible for an ancillary, discretionary benefit. Asylum itself is discretionary, and depending on the circumstances, the same violations of immigration and criminal law rendering a (c)(8) EAD applicant ineligible could render him ineligible for asylum. An asylum applicant hoping to maintain eligibility for asylum would presumably conduct himself in a way that preserved his eligibility for both asylum and ancillary employment authorization under this rule. Further, limiting the application of this rule to aliens who filed their asylum applications prior to the effective date would result in a two-tiered, parallel adjudication system, creating confusion. Accordingly, the interests raised by the commenters do not outweigh the government interests expressed in this rulemaking, and its application to aliens with asylum applications pending on the effective date of this final rule does not amount to impermissible retroactivity.

DHS disagrees with the claim that this rule violates the U.S. Constitution. The Constitution's *ex post facto* clause prohibits changes to the legal consequences of actions that were committed before the enactment of the law. The *ex post facto* clause would generally only apply to laws that impose criminal penalties. Although EAD eligibility determinations are not criminal penalties, and so are generally not subject to the *ex post facto* clause, this rule, in any event, is not impermissibly retroactive in application, as noted in the immediately preceding response.

VI. Public Comments on Economic Analysis and Other Statutory and Regulatory Requirements

Several commenters argued that DHS's economic analysis was deficient and that DHS should withdraw the rule until it completed a more thorough economic analysis of the impact of the rule. Others argued that the economic analysis underestimated the costs of the rule of the significant impact on the economy especially if those who were working in specialized areas or had professional skills in high demand lost their ability to work. Some commenters argued that DHS provided no statistics to actually quantify the problem the rule was trying to address re: fraud in the asylum process. The commenters also argued that DHS provided no evidence or statistics to support the claim that the rule would reduce the incentives of aliens to file frivolous, fraudulent, or otherwise non-meritorious claims. Some commenters noted that it failed to take into account state income taxes. Another commenter said that it failed to take into account how the rule protects U.S. workers.

Many commenters stated that DHS failed to take into consideration the impact and the costs of the rule on (1) the asylum applicants and their families, (2) state and local governments, (3) U.S. employers and businesses, (3) U.S. taxpayers, (4) faith-based organizations, (5) social services organizations, (6) USCIS applicants and petitioners, (7) the organizational impact of the agency itself in terms of financial, resource, and workload burdens. One commenter indicated that the rule failed to take into account the significant hardship it placed on nonprofit organizations, private attorneys and law firms because of the rule increases the complexity of asylum EAD adjudications and adds uncertainty to the asylum and EAD processes overall.

One commenter said that it forces USCIS applicants and petitioners to pay more in increased fees for less services. Many commenters discuss the impact the rule would have on the national, state, and local economics, arguing that it threatened the growth of businesses and productivity. Some commenters stated that the rule failed to address the negative impact on state tax revenue streams and failed to calculate loss to states especially in certain sectors. The commenters also indicated that it failed to take into account the increased costs to states such as healthcare costs. Some commenters argued that the rule would cause losses to companies and reduce tax transfers to the government. One commenter said that it would increase costs to the states, especially if paroled aliens were delayed in employment authorization, because they would have to rely on state benefits for a longer period of time. It would be a detriment to society and result in a loss of workforce. The commenters stated that it would threaten business growth and local economies especially in light of the record low national unemployment rate and the more than 1 million plus jobs that were vacant that did not have enough workers to fill them. One commenter argued that USCIS is mismanaging its resources as a fee-funded agency and if this rule was an attempt to fix this mismanagement it failed.

Several commenters said that DHS failed to do a proper analysis under the Executive Orders, Regulatory Flexibility Act and Federalism Assessment. One commenter said that the rule failed to take into account the increased costs to asylum seekers even after they were granted asylum because of how long it may take for the asylum seeker to obtain work.

Several commenters said that the rule failed to address the recent Presidential policies and costs and impact of such policies such as the Proclamation 9844 and instead just relied on data from prior years. The commenters argued that the rule disregarded the cumulative effect that policies like MPP and metering had on the asylum system overall. Some commenters argued that DHS failed to consider other alternatives and ways to gain efficiencies such as through electronic filing, restoring policies such as barring re-adjudication of original petition decisions, restoring the ability of aliens to get an interim EAD within 90 days, ending the diversion of asylum officers to other tasks, hiring more asylum officers, and increasing asylum interviews each month.

One commenter argued that DHS failed to do a correct impact assessment because it only assessed the impact for a quarter of the population of EAD holders. The commenter stated that DHS underestimated the actual population that would be affected. Another commenter said that it failed to deduct the UAC filing numbers and overestimated the cost of the rule. Another commenter said that it failed to take into account the burden on UACs in terms of their ability to access non-work resources like obtaining social security numbers and access to long-term educational opportunities.

Finally, some commenters said that the rule failed to take into account the cost to employers on loss of workforce and hiring new employees because of the retroactive application of the rule to aliens who were already work authorized. DHS addresses these comments below.

A. Impacts and Benefits (E.O. 12866 and 13563)

1. Assumptions

Approximately 20 submissions provided input on the assumptions and

methodology utilized for the rule's regulatory impact assessment.

Comments: A commenter claimed that the rule makes unfounded assumptions. First, when calculating the savings and costs, the analysis is said to have relied on the number of asylum application and EAD filings, but did not deduct the number of filings from unaccompanied minors, the numbers of whom have surged in recent years. The commenter said the rule specifically exempts UACs, but, by not deducting the UAC population from the number of asylum applications filed historically, DHS overestimated the savings and deterrent effect. Furthermore, the commenter said DHS assumed that aliens file for employment authorization only for the purpose of working, which is ''demonstrably false.'' For example, employment authorization is required in order to be issued a social security number (which is in turn needed to obtain a driver's license).

Response: DHS appreciates the submitted input. In the analysis, it was not possible to parse out which EADs linked to asylum claims represented UACs. However, any adjustment for UACs, if it were possible, would reduce the quantified costs of the rule. Additionally, DHS recognizes the reality that some who obtain EADs do so for purposes of documentation. However, DHS also does not have information about the number of aliens that file for employment authorization but do not obtain employment. Although USCIS issues EADs, it does not collect information about the employment of aliens with EADs. Accordingly, DHS conservatively assumes that all that seek and obtain EADs would enter the labor market and find employment. To the extent that the number of employed aliens is overstated, it would reduce the quantified impacts of the rule.

2. Adequacy of Cost/Impact Analysis

Comments: A submission said the rule violates Executive Order 12866 because DHS did not assess all the costs associated with the rule or provide an analysis of the available alternatives. Another said DHS has not considered all of the costs and benefits involved in making this regulatory change, and recommend that DHS abandon the proposed rule and keep in place the current regulations governing the issuance of EADs to asylum applicants.

Another commenter stated ''nowhere to be found'' is data about the number of legitimate and illegitimate asylum seekers, as well as the costs and benefits associated with implementation of the proposed rule on either group. Another commenter said DHS ''admits'' that it does not have the necessary data to fully quantify the rule's impacts, concluding that DHS cannot justify the rule and its substantial harms without fully considering and quantifying the impact of the proposed provisions, which it has failed to do here. The commenter further claimed that DHS ''does not know'' how many aliens will be subject to several of the proposed provisions, because DHS does not have the data necessary to quantify the impacts of these provisions, including barring asylum applicants with certain criminal history, barring those who did not enter at a U.S. port of entry, and barring those who did not file for asylum within one year of their last arrival to the United States. As such, DHS cannot quantify the lost earnings of asylum seekers or lost tax revenue for cities, states, and the federal government.

A commenter said DHS does not provide a breakdown of the affected population and how it determined who would be impacted by the rule, asserting that DHS has not quantified impacts with respect to the full pool of affected asylum seekers. Another argued that the analysis understated the number of applicants who would be impacted by the rule and failed to consider other impacts including loss of medical care and other necessary services. A commenter said DHS's method of calculating costs dramatically underestimates the costs to asylum seekers because DHS could not obtain data for a large portion of affected asylum seekers. Also, the commenter said DHS calculated losses based on the assumption that asylum seekers would receive employment authorization in 151 days under the rule, relying on average processing times from prior years, but this calculation is based on a flawed premise given that the proposed rule would significantly add to current processing times. In addition, the commenter said DHS does not attempt to estimate how many asylum seekers would be prevented from obtaining employment authorization due to the categorical bars. In summary, the commenter imparted that DHS significantly underestimates the losses even to those asylum seekers it identifies as adversely affected by the proposed rule.

Another commenter said the only projected costs of the proposed rule are based on an underestimation of the number of asylum applicants who would be impacted. Specifically, the commenter said DHS's calculation fails to estimate (1) the number of initial asylum applicants who will be impacted by elimination of employment authorization for asylum applicants who do not arrive at ports of entry, and (2) the number of asylum applicants who would be barred from employment authorization on the basis of past criminal convictions. This commenter also said DHS calculated the lost wages to asylum seekers and lost contributions to Social Security and Medicare by analyzing the impact of only about a quarter of EAD holders that the agency determined would be affected, and a quarter of EAD holders is likely an underestimation of the impacted population. In addition, the commenter said the estimated lost earnings is likely a substantial underestimate given the analysis's exclusion of all defensive cases. Lastly, the commenter said DHS fails to estimate how the proposed rule would impact the renewal of employment authorization for many asylum applicants who have also previously been granted EADs but would no longer be eligible for an EAD renewal.

A commenter said DHS has failed to consider reliance interests, asserting that it fails to calculate or consider the number of currently working asylum seekers who will be unable to continue working, the length of time they have been in the workforce, or any of the impacts on this group. The commenter also said the rule failed to consider the serious reliance interests related to asylum seekers who remain eligible for employment authorization and are able to renew but with a shorter period for employment authorization.

A commenter argued that the analysis underestimated the impacts of the proposal by understating the wages of asylum seekers, comparing the experience and wages of its own program participants to the wages relied on. Citing data to support their argument, a commenter challenged the wage rates used to calculate the lower and upper bound of the rule's financial impact, stating that some asylum seekers earn above-average salaries after securing an EAD. This commenter also said $12/hour should be the minimum wage relied on to calculate the lower bound of lost compensation to asylum seekers. Referencing the 365-day waiting period specifically, a commenter said while the rule accounts for the salary and wage loss of those waiting for a decision, amounting to nearly $542.7 million, it does not account for the promotions or raises aliens will miss out on due to lack of employment. The commenter cited a study showing that delaying asylum seeker's employment by seven months had persistent effects, and those who started work earlier had about a 27 percent higher income.

A commenter claimed that the proposal underestimated its impacts to employers, stating that most asylum seekers in its program are skilled workers with STEM and healthcare backgrounds, industries in the U.S. with high demand for additional labor.

Response: DHS disagrees that the rule does not comply with E.O. 12866 because it failed to adequately assess the costs associated with the rule or discuss available alternatives. Although DHS was not able to quantify all of the impacts of the rule, DHS has considered the major categories of impacts. DHS summarized in Table 5 of the NPRM at 84 FR 62396, each of the provisions of the rule, the affected populations, and the estimated impacts. This table illustrates the provisions for which it is not possible to provide a quantified estimated of the affected population, or a quantified estimate of the impacts. DHS assessed the costs and benefits to the extent possible given data availability, and discussed qualitatively those that could not be quantified, and included a reasoned discussion about why they could not be quantified. DHS considered qualitative benefits at 84 FR 62417, such as reducing incentives to files frivolous, fraudulent, or otherwise non-meritorious asylum applications thereby prioritizing aliens with bona fide asylum claims. At 84 FR 62398, DHS provided a separate description of possible distributional effects (*e.g.* transfers) resulting from the regulation. Finally, DHS discussed steps USCIS has undertaken to address the asylum backlog and mitigate its consequences for asylum seekers, agency operations, and the integrity of the asylum system, as alternatives to this rule, at 84 FR 62393. DHS appreciates commenters' input on the types of costs or other impacts that were not captured in the analysis, and has incorporated many into the analysis for this final rule.

As it relates to the concern regarding the understatement of costs, although DHS agrees that the quantified impacts are likely an underestimate of the total, the analysis also considers additional unquantified impacts of the rule. Indeed, DHS has an entire section of the analysis, beginning at 84 FR 62416, devoted to discussing impacts of the rule that DHS is unable to quantify. Specifically, DHS acknowledges that some of the most significant unquantified impacts of the rule include those from eliminating employment authorization for applicants who do not arrive at ports of entry, eliminating employment authorization on the basis of criminal convictions, and terminating employment authorization early for asylum applications denied/dismissed by an IJ. Please refer to Table 1 in this final rule for a summary of the unquantified impacts of the rule. DHS also acknowledges that certain quantified estimates may be overstated because, due to data limitations, DHS was only able to provide a maximum estimate of the potential impacts. These are also identified in the summary provided in Table 1 of this final rule.

Although there is nothing in this rule that specifically will drive the EAD processing times significantly higher, on average, it is possible that some applications could take longer to process, as some of the conditions in the rule could require more resources and add complexity to adjudicative review. There is potential for delay with the criminal bars. The I–765 form instructions require the alien to list all arrests and convictions, to explain those events, and provide certified copies of police and court documents. If the alien fails to provide sufficient information or documents relating to his or her criminal activity with the (c)(8) EAD application, the evaluation and assessment of biometrics that return criminal history information to determine ineligibility may require more resources and delays if USCIS must issue an RFE to complete the adjudication. Notably, DHS amended the criminal bars in the final rule, which no longer include many of the offenses and arrests about which many of the commenters expressed concern.

With respect to the concern that the analysis excluded all defensive cases and only analyzed the impacts of the 365-day wait period for a quarter of affected EADs, DHS disagrees. DHS adjudicates all EADs for applicants with pending asylum claims and therefore, DHS has data about the number of EADs for affirmative and defensive cases potentially impacted by this rule. This allows DHS to estimate the impacts to defensive cases for certain provisions, such as the proposed 365-day wait period. See analysis of ''the residual population'' at 84 FR 62410. However, DHS does not have data on when defensive asylum cases are adjudicated, and so DHS is unable to estimate the impacts to defensive cases for other provisions, such as terminating EADs when an asylum application is denied by an IJ. However, DHS again stresses that it has considered qualitatively any impacts for which DHS is unable to quantify the impacts of the rule for defensive cases.

As it relates specifically to the concern about the costs and benefits to legitimate and illegitimate asylum seekers, the analysis covers the cost to applicants that will have an asylum application approved and applicants that will have an asylum application denied. Where the impacts differ depending on an approved or denied asylum application (*e.g.,* the provisions for which an EAD would be terminated early for an alien denied asylum), DHS has assessed the costs specific to the impacted group.

Regarding the comment that DHS failed to consider reliance interests for currently working asylum seekers who will be unable to continue working under this rule, DHS disagrees. Although DHS was unable to quantify some of these impacts because it does not have data on the length of time that asylum seekers have been working or might continue to work had it not been for this rule, DHS did qualitatively consider the impacts of the rule on asylum seekers whose EAD renewal would be subject to changes made by this rule. See the discussion of unquantified impacts in the NPRM beginning at 84 FR 62416.

In terms of the wage rates relied upon, data are not directly available on the earnings of asylum seekers and, faced with uncertainty, DHS made reasonable estimates of the bounds. DHS frequently relies upon the prevailing minimum wage as a lower bound for new labor force entrants and it is consistent with other current DHS rulemakings. DHS agrees that some asylum seekers with EADs earn more than the national average, just as some could also earn less than the prevailing minimum wage. However, these possibilities in no way undermine the wage range we utilize as these bounds simply represent estimates of the range for this population's *average* wage.

In response to the comment regarding skilled workers in STEM and healthcare, it is noted that the information applies to an advocacy organization that assists asylum seekers in professional career development. While we do not question the validity of the data submitted, it is not clear that the data relevant to 300 aliens under the organization's purview can be extrapolated to the much larger population under the rule. As mentioned above, our impact assessment does not rule out the possibility that some asylum seekers with EADs earn high salaries or those above the national average, whether at the average STEM level or otherwise. The wage bounds and incumbent range are meant to capture average earnings levels.

Regarding the rule's effect on earnings over time, a commenter cited a study by the Immigration Policy Lab at Stanford University that found a seven-month

delay in work authorization for German asylum seekers dragged down their economic outcomes for a decade after. DHS reviewed the paper cited and its methodology and findings. We do not rule out the possibility that there could be some persistence effects for delayed labor force entrants that could impact their integration into the workforce and income. DHS agrees that earnings generally rise over time, meaning that the earnings at the end of an EADs validity period could be higher than at the time of issuance. However, it is noted that the paper focused on a particular European labor market. It is not clear that the findings from this study on German asylum applicants can be linearly extrapolated to the population regulated by this rulemaking. Further, we note that by relying on a range for the wage the asylum applicants might earn, any increases in wages that would have been earned had the asylum applicants been employment authorized sooner would be captured within the range unless the true average wage is at the higher end of the range used. We appreciate the input and include it qualitatively in the analysis herein.

DHS appreciates the commenters concerns regarding logistical burdens to employers, including small businesses, due to the provision to end some EADs early. However, this rule making is not imposing new obligations or conditions on employers, so DHS disagrees that this rule directly impacts small entities or imposes costs that DHS did not consider. As it relates to statistics to quantify fraud in the asylum process, DHS does not track cases that are frivolous, or fraudulent, or otherwise non-meritorious claims. However, we note that the relatively high rate of EOIR denials is reflective of the problem.

3. Cost Analysis Should Account for Other Asylum Initiatives

Comments: A commenter stated that DHS has recently issued other rule changes related to asylum and this proposed rule threatens to further limit avenues of relief for asylum seekers with valid claims, particularly in conjunction with recent administration policies such as the Migrant Protection Protocols. The commenter said DHS must conduct a full cost analysis of the compounded impact of these separate rules and policies. Similarly, a commenter stated that, through a combination of interim final rules, proposed regulations, and policy announcements, the Administration has restricted access to U.S. asylum protection, or even entrance to the United States to make such a request. As a result, the commenter said one would expect far fewer applications for employment authorization by asylum seekers, but the proposed rule curiously disregards the cumulative effect of these policies while asserting the necessity of the proposed reforms. The commenter said the rule must be withdrawn and an analysis of the anticipated effects of these other policies must be incorporated into the baseline analysis.

Response: DHS has assessed the costs and benefits of this rule with respect to its specific provisions. When examining the impacts of this rule, DHS considered the impacts of regulations and policies in effect when establishing the baseline used for the rule's analysis. For example, DHS' analysis controlled for the 2018 change from FIFO to LIFO. For other regulations that are proposed, but not yet implemented, the analysis acknowledges the potential interactions with other regulatory efforts, when possible. For example, the NPRM acknowledged DHS' rule regarding Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I–765 Employment Authorization Applications. However, incorporating such interactions in the impact assessments for this rule would be speculative as it assumes these rules will be finalized, and without change. While DHS agrees that a reduction in asylum claims caused by other asylum initiatives would, by definition reduce asylum-linked EAD filings, such a reduction would not necessarily be driven by the current rule and could falsely underestimate the impacts of this rule.

4. Population

Approximately 15 submissions provided input on the population that would be impacted by the proposed rule.

Comments: A joint submission stated that ''hundreds of thousands'' of asylum seekers would either have to wait for years before they could legally work, or many may not receive employment authorization at all. Another referenced research and estimates on the thousands of people that would be impacted by the rule. Many commenters provided an estimate on the number of asylum applicants that live in a specific city, county, or state that would be detrimentally impacted. A few commenters said that the number of foreign-born residents or asylees in certain states, including California, Maine, and Massachusetts, is high if not the highest in the nation. One local government stated that more foreign-born residents live in the county than native born residents. Citing the number of affirmative asylum applications in FY 2015, an individual commenter stated that Massachusetts was one of the top-ten states for new asylee residence.

Response: DHS does not question the accuracy of the comments and underlying data. The analysis is benchmarked to national figures—in other words, for wages, labor force, taxes—but does not rule out the likelihood that specific locations would experience more impacts, relatively speaking, than other areas. Based on historical I–765 data, DHS estimated in the NPRM that the maximum population that could be impacted at just over 300,000 the first effective year and slightly lower in subsequent years.

5. Impacts on Applicants (Lost Compensation/Wages)

Approximately 70 submissions provided input on the impacts on applicants.

Comments: Many expressed opposition to the proposed rule, as delaying and/or eliminating employment authorization eligibility would cause significant harm. Their arguments focused on: (1) Asylum seekers would lack sufficient income to support their families and pay for food, clothing, adequate housing, medical care, educational opportunities, and basic necessities; (2) Asylum seekers would not be able to integrate and contribute to local communities and the United States; (3) Asylum seekers would be forced to rely on local government assistance, social service organizations, and faith-based organizations when they would rather be self-supporting and contributing to their communities; (4) Asylum seekers would be pushed into the ''shadow'' economy, where there are no legal protections and the risk of exploitation is high; (5) Asylum seekers' mental health and wellbeing, capacity to recover from trauma would be negatively impacted. Commenters added that the ability to work is a form of therapy and self-help that sustains a person's dignity, purpose, independence, and feeling of self-worth; and (6) Asylum seekers would have difficulty obtaining a drivers' license, state-issued identification card, social security card, banking services, and social services benefits. Another commenter stated that the rule will force many bona fide asylum seekers, who do not have the means to go without employment, to abandon their meritorious asylum claims.

Citing a 2013 report documenting the hardships asylum seekers face by being denied employment authorization, a comment discussed specifically four major areas of impact: ''psychological

harm and interference with the ability to heal after torture and persecution; economic hardships and vulnerability to further victimization; the physical and health-related hardships created by an inability to provide for oneself; and difficulties with access to legal counsel in pursuit of asylum claims and work authorization.''

Response: DHS reviewed the cited reports and research, and understands that there could be monetary and qualitative impacts to applicants and their support networks, including numerous types of hardships. However, it is noted that aliens granted asylum would not need an EAD to work, and that other factors notwithstanding, denied asylum seekers would be generally removed from the labor force. The rule will alter the timing in which some or many asylum seekers are able to work. Asylum applicants will not be impacted in their pursuit of their asylum claims because this rule does not change any eligibility criteria for asylum. DHS expects asylum seekers to obey the law while in the United States, and will not assume otherwise in promulgating its employment authorization policies.

6. Impact to Health, Wellbeing, Access to Justice, and Vulnerable Populations

Comments: Citing multiple sources of research, commenters discussed how gainful employment is directly tied to food security, access to health care, housing, good physical and mental health. The commenters wrote that the proposed rule would worsen these issues by barring or delaying access to employment. Referencing multiple studies, a commenter argued that providing asylum seekers with employment authorization increases their access to social supports necessary to overcome trauma and reduce their likelihood of criminal and violent behavior. One comment supplied stories from trauma survivors and clinical therapists recounting how eventual employment authorization and employment reduced their emotional distress and allowed them to heal from trauma.

Multiple commenters said that the rule would limit applicants' ability to afford and procure legal assistance, which will in turn diminish their chances of succeeding in their cases. Citing studies, several commenters stated that legal counsel more than triples asylum seekers' odds of success, while also minimizing the need for the immigration court to provide lengthy explanations and continuances for individuals confused and overwhelmed by the system. A few comments addressed the other costs inherent in immigration cases, such as transportation costs to and from court, interviews, and meetings, which applicants may not be able to afford without employment authorization. The commenters added that loss of these would impact applicants' access to justice.

Numerous commenters argued that the proposed restrictions will result in further exploitation of already vulnerable populations, including LGBT individuals, women, survivors of violence, and children. Some stated that delaying and/or prohibiting employment authorization would irreparably harm women and children fleeing from gender-based violence. Many commenters warned that asylum seekers would be left with no choice but to work illegally in order to meet their needs while their asylum claims are pending which can lead to their abuse and exploitation. Citing multiple studies, commenters stated that unauthorized employees are often forced to endure abuses, including harassment, violence, and discrimination, unsafe working conditions, and wage theft.

An individual commenter wrote that restricting access to employment for LGBT applicants is particularly harmful. They wrote that many LGBT applications are unable to rely on traditional safety nets for housing and other basic needs due to widespread family and social rejection. They also cited a study that showed that LGBT asylum seekers are more likely to be poor, criminalized in their home countries, and to miss the 1-year deadline when filing. Another added that LGBQT asylum seekers are more likely to suffer from mental health issues as a result of their heightened vulnerability in the criminal justice system, lack of healthcare, and exposure to health risks such as HIV.

Several commenters warned that the proposed rule would create a significant risk to the health, safety, education, and wellbeing of children. One warned that children need EADs to receive a social security number, which is required to access long-term educational opportunities, vocational and technical programs, health insurance, preventative care, as well as local benefit programs. Another cited research indicating the lifelong health and development consequences to young people's malnutrition, housing instability, and other consequences of financial insecurity. Citing multiple research studies, group-sponsored comment urged DHS to withdraw the proposed rule due to its long-term detrimental impacts on children and families, describing its prospective impacts to housing, mental health, and academic success. Another warned that child support collections would be negatively impacted as any barrier to employment authorization limits a parent's ability to support a child.

One commenter cautioned that the largest share of the noncitizens they represent are minors with pending asylum applications who are either detained, likely to be ''stepped-down'' or reunified, or already reunified. The commenter reasoned that minors would be disproportionally affected by the proposal because an EAD provides minors with (1) their only form of identification and (2) provides them an opportunity to gain self-sufficiency and reduce their dependency on support services or sponsors. Another commenter reasoned that even those children who are too young for jobs will be harmed, as infants and other young children are forced to bear the burden of the immigration system's treatment of their parents' or guardians' delayed or barred eligibility.

Response: DHS has reviewed the cited reports and research. Nothing in this rule changes access for asylum seekers to housing. It continues to be incumbent upon every asylum seeker to have a plan for where they intend to live during the pendency of their asylum claim and, in particular, while they are not employment authorized. Many asylum seekers stay with friends or relatives or avail themselves to community organizations such as charities and places of worship. There are no federal housing programs for asylum seekers. The Department of Health and Human Services maintains resources about housing in each state in the United States. Asylum seekers who are concerned about homelessness during the pendency of their employment authorization waiting period should become familiar with the homelessness resources provided by the state where they intend to reside.

Asylum seekers may file after one year of entering the United States if they demonstrate to the satisfaction of an asylum officer or an IJ that an exception applies under INA section 208(a)(2)(D), 8 U.S.C. 1158(a)(2)(D). However, there is still a statutory requirement to file an asylum application within one year, unless a changed or extraordinary circumstance is met. As part of the reforms to the asylum process, DHS also is emphasizing the importance of the statutory one-year filing deadline for asylum applications. Both USCIS and DOJ–EOIR adjudicate asylum applications filed by aliens who reside

in the United States for years before applying for asylum. Many aliens filing for asylum now are aliens who were inspected and admitted or paroled but failed to depart at the end of their authorized period of stay (visa overstays), or who entered without inspection and admission or parole and remained, not because of a fear of persecution in their home country, but for economic reasons.

Asylum seekers will not be impacted in their pursuit of their claims because this rule does not change any eligibility criteria for asylum. The commenters' other assertions that the rule arbitrarily imposes bars to eligibility for employment authorization and contravenes Congressional intent that asylum applicants receive employment authorization expeditiously is based on a misunderstanding of the INA. The INA provides that ''[a]n applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General.'' INA 208(d)(2); 8 U.S.C. 1158(d)(2). Indeed, Congress forbids DHS from conferring employment authorization upon an asylum applicant before at least 180 days has passed since the filing of the asylum application. *Id.* While this rule allows asylum applicants to apply for employment authorization, the INA makes it clear that there is no entitlement to it.

8. Impacts on Support Network

Approximately 65 submissions provided input on impacts to support networks.

Comments: Multiple commenters cautioned that the rule would stretch social service organizations, nonprofits, faith-based organizations, and State and local governments beyond capacity as asylum seekers would lose their ability to be self-sufficient. Several commenters stated that, especially with the current backlog for asylum applicants, the proposal would impose an unreasonable burden on applicants' support networks. An individual commenter reasoned they would need to dramatically redirect focus and resources to shift its program to unemployment, public benefits, legal services, and other life-saving assistance that asylum applicants and their families would require as a result of the proposed rule change.

Many commenters warned that the proposed rule requires an ''unprecedented level of legal analysis'' for EAD applications, negatively impacting the capacity of legal service providers as more time, documentation, training, and resources will be required to put together EAD applications. A few commenters claimed that the proposal failed to consider the cost and time burden to social service and legal organizations. Commenters, mostly attorneys and advocacy groups, said that the proposed rule would negatively affect the legal community by:

a. Forcing legal organizations to redirect limited financial and staff resources towards training staff on new applicable standards governing how to counsel clients, litigate erroneously denied applications, and stay abreast of case-by-case USCIS adjudications.

b. Forcing organizations to serve fewer clients due to complexity and uncertainty of the EAD application processes, which could in turn jeopardize meeting funding deliverables and thereby put nonprofits' future funding at risk.

c. Forcing State-funded nonprofits to shift limited resources to handle the influx of asylum seekers who will need pro bono services due to financial hardships.

d. Increasing staff caseloads, as fewer clients would choose a plea deal in criminal cases that might render them ineligible for employment authorization.

A submission opposed the proposed rule claiming it would increase uncompensated care costs and strain safety net providers' already limited resources. Citing multiple studies, commenters said the proposed rule would increase states' healthcare costs and cause a decline in overall public health as asylum seekers would be uninsured and skip preventative care. An individual commenter and group of attorneys general explained that states and communities would have to bear health care costs as a result of denying asylum applicants work.

A few commenters argued that non-profit service providers and other charitable organizations that attempt to help the homeless would especially be impacted by the proposed rule. A State government opposed the rule because it would force non-citizens into homelessness, increasing unbudgeted costs (studies have found costs associated with homelessness could range from $20,000 to $50,000 per person per year) to local governments' already strained homeless shelter systems. An advocacy group stated that USCIS should partner with HHS and HUD to perform a comprehensive review on the impact the lack of employment authorization will have on domestic violence, shelter and housing providers, and victim advocacy organizations more generally before implementing the rule.

A comment stated that without a social security number, non-profit service providers and other charitable and faith-based organizations would be negatively impacted. The commenter wrote that a universal identifier for all individuals is necessary and organizations would be forced to expend time and money to create a totally new tracking systems for all state and federal aid provided.

Some commenters said the rule does not consider the estimated costs and substantial burdens that this proposed rule will likely create for legal services organizations, social services organizations, and state, local, and federal government agencies.

Response: DHS notes this rule does not directly regulate private support networks or any state programs. How the states or private organizations allocate their resources is a choice by the state or organization and is not compelled by this rule. DHS notes that asylum applicants statutorily cannot receive employment authorization prior to 180 days after filing an asylum application and may need to rely on their support networks during that time. DHS discussed in the NPRM, and reaffirms in this final rule, that the impacts of the rule, specifically in terms of lost or deferred labor compensation, could further burden the applicants' support network. The longer an asylum applicant is without an EAD, the longer the applicant's support network is providing assistance to the applicant. The types of entities affected could include, but may not be limited to, religious organizations and charities, family members and friends, state and local tax jurisdictions, non-governmental organizations (NGOs), legal services, and non-profit providers. However, DHS notes that the immediate indirect impact of this rule to an applicant's support network is likely not significantly more than the wages and benefits the applicant would have earned without this rule.

9. Impacts on Companies

Approximately three dozen submissions discussed the impacts on employers.

Comments: An individual commenter argued that the rule would disrupt business. A few commenters argued that the rule would make hiring more difficult for employers. Some of the commenters cited references and discussed the critical importance of asylum seekers to local economies, states, and businesses in the United States. The commenters wrote that many industries rely heavily on the labor of noncitizens, including direct healthcare, food services, housekeepers,

nannies, construction, and farming and agriculture.

Many commenters argued that the rule would hurt the U.S. and State economies by reducing the number of prospective employees. Some commenters argued that businesses would have a difficult time finding people to fill jobs especially as the United States is experiencing a widespread labor shortage. A few commenters provided State unemployment figures and statistics in arguing that the proposal would harm State economies. Other commenters cited national unemployment in making the same argument. An advocacy group reasoned that U.S. businesses may incur opportunity costs by having to choose the next best alternative to immediate labor provided by asylum seekers and have to pay additional workers overtime hours to compensate for labor shortages.

A few commenters warned that the rule fails to evaluate the impact on the economy and provide details on the costs to employers being required to hire new staff, or the disruptive effect of abruptly losing existing employees. Some commenters said the rule creates significant logistical burdens and liability costs due to possibly hiring an unauthorized noncitizen if the employer is unaware that for whatever reason employment is no longer authorized.

A commenter cited studies which show that that noncitizens' lack of access to lawful employment drives down wages and decreases Gross Domestic Product (GDP) for the entire U.S. economy, in large part because lack of employment authorization creates a ''shadow'' class of workers with weak bargaining power, who earn an average of 42% less than employment authorized workers.

Response: DHS reviewed the input, data, and sources cited by the commenters. While DHS agrees that certain industries in certain states or localities disproportionately employ immigrants, DHS reiterates that this rule affects only aliens with pending asylum applications (not all immigrants), which DHS estimates is 290,000 annually. DHS acknowledged in the NPRM, and reaffirms here in this final rule, that ending EADs early for denied/dismissed DHS affirmative asylum applications might cause businesses that have hired such workers to incur involuntary labor turnover costs earlier than without this rule. In addition, DHS also acknowledges that some businesses might be impacted in terms of employment, productivity, and profits. Such possible disruptions to companies would depend on the interaction of a large number of complex variables that are constantly in flux, including national, state, and local labor market conditions, economic and business factors, the types of occupations and skills involved, and the substitutability between the EAD holders and U.S. workers. It is not possible to draw inferences a priori concerning whether, or, to what extent, impacts to employers would be costs (in terms of lost productivity, lost profits, or increased search costs) or transfers of wages from asylum applicants to other available labor.

Nonetheless, DHS expects that asylum seekers will obey the law while in the United States and will not assume otherwise in promulgating its employment authorization policies. DHS does not have an obligation to refrain from promulgating regulation because some aliens may try to ignore the law of the U.S. and put themselves into vulnerable and ill-advised employment situations.

10. Impact on Tax Programs

Approximately 20 submissions provided input on tax program impacts.

Comments: An individual argued that the proposal may actually increase tax revenue by increasing the income of American citizens. However, several commenters stated general opposition on grounds that it would reduce tax revenue. Commenters also stated that the proposed rule would cause millions to be lost in tax contributions to Social Security and Medicare.

A few commenters wrote that the proposal fails to consider State income taxes and asylum seekers' contribution to local economies. A commenter said the significant employment tax losses suggest that annual income tax loss at multiple levels of government could also be significant, and DHS makes no attempt to calculate these annual losses at the state and local levels. The commenter concluded that if (as some have stated) DHS's calculations of lost compensation are too low, and if (as this commenter argued) DHS has not quantified impacts with respect to the full pool of affected asylum seekers, then DHS has also [not] accounted for or considered the full scope of lost tax contributions, including both employment tax losses and income tax losses.

A comment argued that DHS' estimate of $682.9 million in lost tax revenue is too low as the estimate does not account for factors such as long-term increases in wages. A group of commenters contended that the Department's estimate that the federal government would lose up to $682.9 million in tax revenue does not include the losses incurred by barring previously eligible groups from obtaining EADs nor does DHS calculate the substantial losses to the states. Other commenters provided estimates by state of local and state tax losses, and a few warned that the states would also lose revenue as a result of increased wage theft.

Response: DHS agrees with commenters that in circumstances in which a company cannot transfer additional work onto current employees and cannot hire replacement labor for the position the asylum applicant would have filled there would be an impact to state and local tax collection. The NPRM stated at 84 FR 62418, ''There could also be a reduction in income tax transfers from employers and employees that could impact individual states and localities.'' DHS notes the tax rates of the states vary widely, and many states impose no income tax at all.[161] It is also difficult to quantify income tax losses because individual tax situations vary widely. Although DHS is unable to quantify potential lost income taxes, DHS has provided a quantified estimate of lost employment taxes. We were able to estimate potential lost employment taxes since there is a uniform national rate (6.2 percent social security and 1.45 percent Medicare for both the employee and employer, for a total of 15.3 percent tax rate) for certain employment taxes. DHS agrees that even this quantified estimate is not representative of all potential federal employment taxes losses because although it considered the impact of all provisions, as discussed previously, DHS was unable to quantify all impacts. DHS also recognizes that this quantified estimate of federal employment taxes is not representative of all potential tax losses by federal, state, and local governments and we made no claims this quantified estimate included all tax losses. Finally, DHS recognizes that earnings could increase with time (in other words, over the EAD validity period), but has no way to integrate this possibility into the cost methodology. We continue to acknowledge the potential for additional federal, state and local government tax loss in the scenario where a company cannot transfer additional work onto current employees and cannot hire replacement labor for the position the asylum applicant would have filled.

[161] *See generally* Turbotax, ''States with the Highest and Lowest Taxes,'' *https://turbotax.intuit.com/tax-tips/fun-facts/states-with-the-highest-and-lowest-taxes/L6HPAVqSF* (last visited Feb. 24, 2020).

11. Other Impacts on Governments and Communities

Approximately 35 submissions discussed impacts on governments and communities.

Comments: Some commenters argued that the proposal would hurt American workers, as asylum seekers would have to work without authorization and employment law protections, driving down wages and lowering labor standards overall. An individual argued that there is no evidence that asylum employment authorization negatively impacts American worker employment rates. Another cited research that suggests that noncitizens tend to complement native workers rather than to compete with them directly for jobs.

Some commenters warned that the rule introduces new eligibility requirements that would negatively impact USCIS processing times, the quality of asylum adjudications, and other impacts on the U.S. immigration system and federal agencies. One commented that the proposal would increase burdens on USCIS by adding criteria that officers must review before granting work permits. Another claimed the rule would impose additional administrative costs as State motor vehicle agencies would be impacted by delayed adjudications and the USCIS' Ombudsman would have to handle more complaints about the USCIS backlogs.

Multiple commenters argued that asylum seekers contribute to local communities and the United States in various ways, including bringing new businesses and culturally diversity, resettling deserted neighborhoods, filling undesirable or unfilled jobs, and helping to reduce crime. A few commenters wrote that Maine, specifically, benefitted from asylum seekers, especially as it has low unemployment and an aging population. Two submissions stated that in denying asylum seekers the ability to work, the rule would deny hundreds of communities across the United States the opportunity to grow. Another commenter wrote that the United States is generally becoming older and needs more young workers. A few commenters, including a researcher citing multiple studies, stated that allowing immigrants to live and work in the United States boosts innovation and patents and leads individuals to choose jobs that match their skill levels.

Citing multiple studies, a few commenters argued that legal access to work improves refugee integration and improves public safety. One warned that the proposal could cause heightened crime rates and in turn compel local law enforcement to increase expenditures and resources to investigate and prosecute crimes. A few commenters argued that the proposed rule would make it more difficult for states to fulfill their mandates to enforce their own labor and civil rights laws. The commenters explained that these laws are enforced without respect to immigration status, but effective enforcement relies on employees' ability and willingness to report violations. An individual remarked that asylum seekers who witness a crime would refrain from calling the police out of fear of reprisal for not having a work permit and thus valid proof of identification. Citing studies, several commentators said fear of reprisal and deportation would inhibit unauthorized workers from reporting crimes and violations, and that, with the potential for increased violence and crimes, the proposed rule fails to account for costs to local communities, including:

a. Increased resources in public schools to provide counseling and psychological services to traumatized children who have witnessed or suffered violence;

b. Potential societal impacts to U.S. citizens and other community members; and

c. Subsequent financial costs incurred by local communities where asylum applicants live.

A few commenters stressed that the proposed rule stands against everything they represent as a welcoming city and would impede efforts to welcome asylum seekers to their communities.

Response: DHS recognizes that asylum seekers can have important, positive impacts on local communities, including cultural diversity and participation in local labor markets. It also appreciates the commenters' concerns about community security, local law enforcement resources, and preventing exploitation of non-citizen labor. DHS has a strong interest in discouraging criminal behavior to protect communities, which is a significant impetus of promulgating this rule, and protecting the U.S. and non-citizen worker. DHS has and continues to engage in other rulemakings that strengthen protections of U.S. and non-citizen workers and detect and prevent fraud in employment-based immigrant and non-immigrant programs. While DHS has considered all of the commenters' concerns, many of them are outside the purview of DHS. It has weighed the relevant impacts and determined that this final rule is necessary to achieve its stated goals. Further, the U.S. asylum program is in place to vet and provide protections to those aliens who qualify, and is not a jobs, labor, or employment program. DHS believes that achieving the stated goals of this final rule outweigh speculative adverse effects to local labor markets and challenges attracting younger workers among aging populations. Those concerns, while they may be valid, are outside the purview of DHS. Further, it does not appear that it was the intent of Congress to address local labor issues by providing asylum seekers with work authorization.

With regard to comments related to the willingness of aliens to report crimes, while DHS does not dispute that aliens employed unlawfully might be less willing to report a crime, DHS cannot reliably estimate this rule's speculative impact on local policing. Asylum applicants can often remain without employment authorization for over one year under the prior regulatory regime. DHS does not agree that codifying a one calendar-year waiting period will result in a significant amount of crimes going unreported, and a resulting need for social services. Nothing in this regulation prevents any alien from reporting a crime.

As we stated in an earlier response, DHS does not believe that this rule will negatively impact average processing times for asylum applications, the quality of asylum adjudications, and other impacts on the U.S. immigration system and federal agencies. USCIS adjudicators are well-trained and have numerous resources at their disposal for adjudicating cases. Adjudicators already have applications and forms that they have to consider criminality, admissibility, and date and manner of entry. The requirements in this rule are not new to adjudications. In addition, adjudicators have access to attorneys, law libraries, and research material, and country of origin information to help determine eligibility. This rule intends to establish more stringent requirements of eligibility for employment authorization, in order to disincentivize aliens who are not legitimate asylum seekers that, in turn, should result in a decrease of frivolous, fraudulent, or otherwise non-meritorious asylum applications. DHS disagrees that this can further prolong adjudicating EADs or asylum applications. However, DHS acknowledges that the review of biometrics information and complexity of review to determine ineligibility due to the conditions in this rule may require additional time and resources for some EAD applications, especially where the alien fails to provide the requisite information and

documentation required by the (c)(8) EAD application.

While DHS supports the ability of lawfully present aliens, including legitimate asylum seekers, to become economically self-sufficient and contribute to the U.S economy, employment authorization is carefully regulated in the United States in order to protect the U.S. labor market, and also to maintain the integrity of the U.S. immigration system. DHS has identified employment authorization, coupled with the lengthy asylum adjudication process, as a driver of non-meritorious asylum applications. Asylum applicants must currently wait at least 180 days before they may be employment authorized. During this period, they may not have the financial resources to be economically self-sufficient upon arrival into the United States, and it is unreasonable for any asylum seeker to come to the United States with the expectation of immediate economic self-sufficiency and/or the absence of economic and other types of hardship.

12. Benefits

Three submissions addressed the benefits of the proposed rule.

Comments: A couple of commenters argued that DHS' claim that the proposed rule would provide qualitative benefits to asylum seekers, communities, the U.S. government, and society at large is ''absurd'' and without adequate justification. An individual argued that the assertion that the U.S. labor market would benefit is not supported in the proposed rule, as the Department of Labor was not consulted. The commenter argued that this renders the economic arguments at best speculative.

Response: DHS disagrees with the claims that this rule will not provide benefits. As we discussed in detail in the NPRM, and reaffirm in this final rule, it is not possible to quantify and monetize the benefits this rule stands to generate, which are summarized below.

Aliens with bona fide asylum claims will be prioritized because the incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications intended primarily to obtain employment authorization will be reduced. A streamlined system for employment authorizations for asylum seekers will reduce fraud and improve overall integrity and operational efficiency, thereby benefiting the U.S. government and the public.

In addition, the rule removes incentives for aliens to enter the United States illegally for economic reasons and allow bona fide asylum seekers who present themselves at the U.S. ports of entry to have their applications for employment authorization easily granted, provided other criteria are met. DHS believes these administrative reforms will encourage aliens to follow the lawful process to immigrate to the United States, which will reduce injuries and deaths that occur during dangerous illegal entries.

Providing low-threshold employment authorization with nearly limitless renewals to asylum seekers incentivizes such aliens to come to and remain in the United States, and also undermines the Administration's goals of strengthening protections for U.S. workers in the labor market. Several employment-based visa programs require U.S. employers to test the labor market, comply with recruiting standards, agree to pay a certain wage level, and agree to comply with standards for working conditions before they can hire an alien to fill the position. These protections do not exist in the (c)(8) EAD program.

Finally, the biometrics requirement will benefit the U.S. Government by enabling DHS to know with greater certainty the identity of aliens seeking (c)(8) EADs and more easily vet those aliens for benefit eligibility, and will strengthen the ability to limit identity fraud and combat human trafficking and other types of exploitation.

In addition, the assertion that ''the U.S. labor market would benefit is not supported in the proposed rule, as the Department of Labor was not consulted'' is generally out of context. We are not aware of claims in the NPRM that the U.S. labor market would benefit per se, but rather that some U.S. workers might benefit if they are able to acquire jobs that the asylum seekers held sooner, which, as we have conveyed in multiple responses, will depend on a host of factors. Moreover, DHS works closely with inter-agency partners to identify equities that might be impacted in its rulemakings. In this particular rulemaking, the asylum related EAD protocol does not require an agreement or certification from the U.S. Department of Labor.

13. Alternatives

Three submissions discussed alternatives.

Comments: Despite advancing significant changes to longstanding processes and policies, a commenter wrote the rule fails to meaningfully consider alternatives and said that DHS could have considered a pilot program to evaluate and gather data on the need for and effectiveness of one or more of the proposed reforms before proceeding to a rule. Further, the commenter provided examples of initiatives that the agency has already undertaken that have made progress to address the asylum backlog. A commenter concluded that the rule makes only passing efforts to consider other alternatives to the proposed changes. Another commenter argued that since DHS failed to provide an ''adequate explanation of what it hopes to achieve with the proposed rule,'' the public is unable to adequately determine whether there are reasonable alternatives the agency failed to consider for achieving the desired outcome, because the desired outcome is unknown.

Response: DHS has undertaken a range of initiatives to address the asylum adjudication backlog and mitigate its consequences for legitimate asylum seekers, agency operations, and the integrity of the asylum system. DHS has made the determination that the asylum system in its entirety is vulnerable to being EAD-driven—that is, utilized by aliens who may not have a meritorious claim but know they can file an asylum application and become work-authorized for years while their asylum application is processed.

As it relates to the 365-day period, DHS started with the premise that the current 180-day waiting period is insufficient to deter aliens from filing asylum applications that are without merit, and likely driven in part by the intent to become employment authorized while waiting years for the adjudication of the asylum application. DHS made this determination based on record wait times, adjudications, and denials of asylum applications—a trend that continued into Fiscal Year 2019. DHS noted that the 365-day EAD waiting period is based on an average adjudication time that can stretch beyond two years, but did not provide an analysis of why a 365 day waiting period was chosen, as opposed to any other length of time, because it would be unfeasible and unnecessary for DHS to do a comparison of 365 days versus any time period between the current 180 day requirement and 365 days and what the deterrent effect would be. DHS is confident that 365 days is a sufficient wait period to deter aliens from filing non-meritorious, EAD-motivated asylum applications. DHS is also confident that those aliens legitimately fleeing persecution in their home countries will be willing to adapt to the longer wait period for employment authorization, if necessary, in favor of pursuing an asylum application. With a reduction in non-meritorious filings and other changes, such as LIFO processing reinstituted in January 2018, bona fide claims could be adjudicated and granted

in far fewer than 365 days, which would result in immediate employment authorization. In 2018, the average affirmatively-filed asylum application completed by USCIS was decided in 166 days. DHS acknowledges that the longer wait period may result in some additional hardship for some asylum seekers. However, this is a temporary hardship that has been balanced against the need to deter EAD-motivated asylum applications. DHS considered the possibility of not offering employment authorization to aliens with pending asylum applications. DHS determined that a 365 day waiting period would be less restrictive and would better balance the impact on asylum seekers with the goals of DHS. While there might be another waiting period that might have slightly less impact on the asylum seeker, such as 240 days, DHS believes that period would also have less of a deterrent effect on EAD-motivated asylum applications. In selecting the 365 day waiting period, coupled with removing the Asylum EAD Clock, DHS believes it is achieving an appropriate balance between the impact that the rule has on the asylum seeker with the goals of the government. DHS believes that any sort of ''pre-screening'' of asylum seekers to exempt them from the wait period would be inappropriate. The adjudication of an asylum application is a complex and detailed process conducted by specially trained asylum officers or IJ. The process does not lend itself to ''screening'' but instead relies upon an hours-long interview with the asylum applicant or hearings before an IJ to ascertain eligibility and credibility. On the issue of reducing I–589 adjudication times before USCIS, the reduction of adjudication times is an overarching goal of USCIS, and 500 new asylum officers were hired between fiscal years 2019 and 2020 to help achieve this. However, such a significant reduction of asylum adjudication times is not a feasible short term goal for USCIS, nor does DHS have any ability to impact the timelines of those asylum cases being heard by DOJ–EOIR. DHS believes that allowing aliens to become employment authorized concurrent with the filing of their asylum claim is similarly unfeasible, and DHS believes this would lead to an immediate and devastating glut of asylum applications being filed, making it virtually impossible for legitimate asylum seekers to have their claims adjudicated with any semblance of timeliness.

B. Other Comments on Statutory and Regulatory Requirements

1. Unfunded Mandates Reform Act (UMRA)

Comment: A few commenters argued that the Department did not provide the analysis required by the UMRA, as there is no indication that reasonable alternatives were fully considered, nor the most cost-effective and least burdensome option evaluated. Another commenter said the rule does not consider the estimated costs and substantial burdens that this proposed rule will likely create for legal services organizations, social services organizations, and state and local government agencies.

Response: DHS does not agree that this rulemaking violates the Unfunded Mandates Reform Act (UMRA) because this rulemaking does not impose any Federal mandates on State, local, or tribal governments, in the aggregate, or the private sector.

As it relates to alternatives, DHS is committed to finding options to deter baseless asylum claims while protecting the rights of true asylum seekers. DHS has undertaken a range of initiatives to address the asylum adjudication backlog and mitigate its consequences for asylum seekers, agency operations, and the integrity of the asylum system. These efforts include: (1) Revised scheduling priorities including changing from First in First out (''FIFO'') order processing to Last in First Out (''LIFO'') order; (2) staffing increases and retention initiatives; (3) acquiring new asylum division facilities; (4) assigning refugee officers to the Asylum Division; (5) conducting remote screenings; and (6) launching a pilot program for applicants seeking a route to immigration court to request cancellation of removal. These efforts are a top priority for the agency, because DHS recognizes that adjudication backlogs may be a driver in attracting asylum applicants who are knowingly file a weak or baseless asylum application and remain employment authorized in the United States for months or years while that application is adjudicated. DHS has made the determination that the asylum system in its entirety is vulnerable to being EAD-driven—that is, utilized by aliens who may not have a meritorious claim but know they can file an asylum application and become work-authorized for years while their asylum application is processed.

See the preceding section for a discussion on alternatives to the 365-day period and ''pre-screening'' asylum applicants.

As it relates to the concern regarding estimated costs and substantial burdens that this rule will likely create for legal services organizations, social services organizations, and state and local government agencies, DHS explained in the NPRM, and reaffirms here, that the support network for some asylum seekers will be burdened longer than the 180 days that they currently would rely on. Legal and social organizations could embody this network. DHS is confident that with a reduction in non-meritorious filings and other changes, such as LIFO processing, bona fide claims can be adjudicated in less than 365 days. DHS does not know what the specific burdens to states and local governments would be, but does recognize the potential impact to taxes, as discussed elsewhere.

2. Federalism

Comments: A few commenters also stated that the proposed rule failed to conduct an adequate federalism analysis under Executive Order 13132 as the proposed rule did not provide detailed costs to State and local programs nor consult with the states prior to drafting the rule.

Response: DHS disagrees that the regulatory assessment is not in compliance with Executive Order 13132. DHS did consider federalism concerns and determined that the rule would not have a substantial direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government, as it only adjusts regulations pertaining to applications, interviews, and eligibility for employment authorization based on a pending asylum application, which is within the purview and authority of DHS and does not directly affect states.

However, DHS does note that this rule indirectly impacts states. DHS discusses these indirect impacts in the NPRM and in this final rule. For example, DHS noted that if companies are unable to find replacement labor for the work asylum applicants would have performed, there could be a reduction in State taxes.

Additionally, DHS recognizes there may be additional distributional impacts on states, such as for assistance from state-funded agencies and for healthcare from state-funded hospitals.

Comment: A lawyer also argued that the proposed rule failed to account for derivatives on asylum applications, most often children, and failed to properly address Executive Order 13045, Protection of Children from Environmental Health Risks and Safety

Risks, as the proposed rule creates significant risk to the health and safety of children.

Response: With regard to dependent applicants, dependents listed on an applicant's I–589 are accounted for in adjudication in the same manner as the principal applicant. In the majority of cases, dependents would receive the same adjudicative treatment as the principal. Environmental health risks or safety risks refer to risks to health or to safety that are attributable to products or substances that the child is likely to come in contact with or ingest (such as the air we breathe, the food we eat, the water we drink or use for recreation, the soil we live on, and the products we use or are exposed to).[162] When promulgating a rule of this description, DHS must evaluate the effects of the planned regulation on children and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. DHS does not believe the reforms in this rulemaking create significant risk to the health and safety of children with regard to the products or substances a child is likely to come into contact with.

VI. Statutory and Regulatory Requirements

A. 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 a regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as a ''significant regulatory action'' that is economically significant, under section 3(f)(1) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this rule. This final rule is considered an E.O. 13771 regulatory action.

Summary

DHS has considered alternatives and has undertaken a range of initiatives to address the asylum backlog and mitigate its consequences for asylum seekers, agency operations, and the integrity of the asylum system. These efforts include: (1) Revised scheduling priorities including changing from FIFO order processing to LIFO order; (2) staffing increases and retention initiatives; (3) acquiring new asylum division facilities; (4) assigning refugee officers to the Asylum Division; and (5) conducting remote screenings.[163]

a. *Revised Interview Scheduling Priorities:* A significant scheduling change occurred in January 2018 with FIFO scheduling returning to LIFO scheduling order. Previously implemented in 1995, LIFO remained in effect until 2014. Under FIFO scheduling, USCIS generally processed affirmative asylum applications in the order they were filed. The now-operative LIFO scheduling methodology prioritizes newly-filed applications. Some offices already report a 25 percent drop in affirmative asylum filings since implementation of the LIFO scheduling system in January 2018.[164]

b. *Staffing Increases and Retention Initiatives:* Since 2015, USCIS has increased the number of asylum officer positions by more than 50 percent, from 448 officers authorized for FY 2015 to 686 officers authorized for FY 2018. Along with these staffing enhancements, USCIS increased the frequency with which it offered its Combined Training and Asylum Division Officer Training Course. Moreover, to address asylum officer turnover, USCIS has made efforts to increase telework options and expand opportunities for advancement.[165]

c. *New Asylum Division Facilities:* The Asylum Division also expanded its field operations, opening the Asylum Pre-Screening Center in Arlington, VA, and sub-offices in Boston and New Orleans. Its most significant expansion, however, is just getting underway. Currently, the Asylum Division is establishing an asylum vetting center—distinct from the planned DHS-wide National Vetting Center—in Atlanta, Georgia. This center will allow for the initiation of certain security checks from a central location, rather than at individual asylum offices, in an effort to alleviate the administrative burden on asylum officers and to promote vetting and processing efficiency. USCIS has already begun hiring for the center, which will ultimately staff approximately 300 personnel, composed of both asylum and Fraud Detection and National Security Directorate (FDNS) positions. USCIS expects completion of the center's construction in 2020.[166]

d. *Remote Screenings:* Telephonic: In 2016, the Asylum Division established a sub-office of the Arlington Asylum Office dedicated to adjudicating credible and reasonable fear claims. This sub-office performs remote (primarily telephonic) screenings of applicants who are located in detention facilities throughout the country. The Asylum Division states that its practice of performing remote telephonic screenings of credible and reasonable fear claims have enhanced processing efficiency since implementation. These screenings allow asylum offices greater agility and speed in reaching asylum seekers whose arrival patterns in the United States are not always predictable and who may be detained at remote detention facilities.[167]

e. *Refugee Officers Assigned to the Asylum Division:* Throughout 2018, USCIS had approximately 100 refugee officers serving 12-week assignments with the Asylum Division at any given time. These refugee officers are able to interview affirmative asylum cases, conduct credible fear and reasonable fear screenings, and provide operational support. USCIS now assigns refugee officers both to asylum offices and DHS's family residential centers.[168]

A simple regulatory alternative to extending the waiting period to 365 days and strengthening eligibility requirements is rescinding employment authorization for asylum applicants altogether, which is permissible under INA 208(d)(2). This too would reduce pull factors and alleviate the asylum backlog.

However, DHS seeks to balance deterrence of those abusing the asylum process for economic purposes and providing more timely protection to those who merit such protection, which includes immediate and automatic employment authorization when the asylum application is granted. DHS believes the amendments in this rule strike a greater balance between these two goals. The amendments build upon a carefully planned and implemented comprehensive backlog reduction plan and amends the (c)(8) EAD process so that those with bona fide asylum claims can be prioritized and extended the protections, including employment authorization, that the United States offers to aliens seeking refuge from persecution or torture.

[162] See *https://www.epa.gov/laws-regulations/summary-executive-order-13045-protection-children-environmental-health-risks-and* (last accessed 03/02/2020).

[163] *See* Dep't of Homeland Security, 2018 Citizenship & Immigration Services Ombudsman Annual Report at 44.

[164] *Id.* at 45.

[165] *Id.* at 46.

[166] *Id.*

[167] *Id.*

[168] *Id.* at. 46–47.

1. Baseline

The impacts of this rule are measured against a baseline. This baseline is the best assessment of the way the world would look absent this action. The table below explains each of the provisions of this rule, and the baseline against which the change is measured.

TABLE 4—BASELINE BY PROVISION

Description	CFR citation	Change	Baseline
Provisions that affect asylum and employment authorization			
Eliminate the issuance of ''Recommended Approvals'' for a grant of affirmative asylum.	8 CFR 208.7, 8 CFR 274a.12.	USCIS would no longer issue grants of recommended approvals as a preliminary decision for affirmative asylum adjudications. As such, aliens who previously could apply early for an EAD based on a recommended approval now will be required either to wait 365 days before they could apply for an EAD based on a pending application, or wait until they are granted asylum (if the asylum grant occurs earlier than 365 days).	Aliens who have received a notice of recommended approval are able to request employment authorization prior to the end of the waiting period for those with pending asylum applications.
''Complete'' asylum applications	8 CFR 208.3	Removing outdated provision that application for asylum will automatically be deemed ''complete'' if USCIS fails to return the incomplete application to the alien within a 30-day period.	Application for asylum is automatically deemed ''complete'' if USCIS fails to return the incomplete application to the alien within a 30-day period.
Eligibility for Employment Authorization—Applicant-caused delay.	8 CFR 208.4, 8 CFR 208.9.	Applicant-caused delays unresolved by the date the EAD application is filed result in denial of the application for employment authorization. Examples of applicant-caused delays include, but are not limited to the list below: 1. A request to amend a pending application for asylum or to supplement such an application if unresolved on the date the (c)(8) EAD application is adjudicated; 2. An applicant's failure to appear to receive and acknowledge receipt of the decision following an interview and a request for an extension to submit additional evidence, and; 3. Submitting additional documentary evidence fewer than 14 calendar days prior to asylum interview.	Applicant-caused delays toll the 180-day Asylum EAD clock. No regulatory restriction on how close to an asylum interview applicants can submit additional evidence.
Provisions that affect employment authorization only			
365-day wait	8 CFR 208.7	All aliens seeking a (c)(8) EAD based on a pending asylum application wait 365 calendar days from the receipt of their asylum application before they can file an application for employment authorization.	150-day waiting period plus applicant-caused delays that toll the 180-day Asylum EAD Clock.
Revise eligibility for employment authorization—One Year Filing Deadline.	8 CFR 208.7	For aliens who file their asylum application on or after the effective date of this rule, exclude from (c)(8) EAD eligibility aliens who have failed to file for asylum for one year unless and until an asylum officer or IJ determines that an exception to the statutory requirement to file for asylum within one year applies.	No such restriction.
Revise eligibility for employment authorization—Criminal Convictions.	8 CFR 208.7	In addition to aggravated felons, also exclude from (c)(8) eligibility aliens who have committed certain lesser criminal offenses on or after the effective date of this rule.	Aggravated felons are not eligible.

TABLE 4—BASELINE BY PROVISION—Continued

Description	CFR citation	Change	Baseline
Revise eligibility for employment authorization—Illegal Entry.	8 CFR 208.7	Exclude from (c)(8) eligibility aliens who entered or attempted to enter the United States at a place and time other than lawfully through a U.S. port of entry on or after the effective date of this rule, with limited exceptions.	No such restriction.
Termination of EAD after Asylum Denial or Dismissal by USCIS Asylum Officer.	8 CFR 208.7	When a USCIS asylum officer denies or dismisses an alien's request for asylum, the (c)(8) EAD would be terminated effective on the date the asylum application is denied. If a USCIS asylum officer refers the case to an IJ and places the alien in removal proceedings, employment authorization will be available to the alien while the IJ adjudicates the asylum application.	An asylum applicant's EAD terminates within 60 days after a USCIS asylum officer denies the application or on the date of the expiration of the EAD, whichever is longer. When an asylum officer refers an affirmative application to an IJ, the application remains pending and the associated EAD remains valid while the IJ adjudicates the application.
Termination of EAD after Asylum Denial by IJ.	8 CFR 208.7	If the IJ denies the asylum application, employment authorization would continue for 30 days after the date the IJ denies the application to allow for appeal to the BIA. If the alien files a timely appeal of the denied asylum application with the BIA, employment authorization eligibility would continue through the BIA appeal.	8 CFR 208.7(b)(2) provides that when an IJ denies an asylum application, the EAD terminates on the date the EAD expires, unless the asylum applicant seeks administrative or judicial review.
Termination of EAD after Asylum Denial Affirmed by the BIA.	8 CFR 208.7	Employment authorization would not be granted after the BIA affirms a denial of the asylum application and while the case is under review in Federal court, unless the case is remanded to DOJ–EOIR for a new decision.	Asylum applicants are currently allowed to renew their (c)(8) EADs while their cases are under review in Federal court.
Eligibility for Employment Authorization—Failure to appear.	8 CFR 208.10	An applicant's failure to appear for an asylum interview or biometric services appointment may lead to the dismissal or referral of his or her asylum application and may be deemed an applicant-caused delay affecting employment authorization eligibility.	No such restriction.
Limit EAD validity periods	8 CFR 208.7	USCIS will, in its discretion, determine validity periods for initial and renewal EADs but such periods will not exceed two years. USCIS may set shorter validity periods.	No such restriction.
Incorporate biometrics requirements into the employment authorization process for asylum seekers.	8 CFR 208.7	Asylum applicants applying for (c)(8) employment authorization must submit biometrics at a scheduled biometrics services appointment.	No such requirement. However, there is a requirement to submit biometrics with an asylum application.
Eligibility for Employment Authorization—aliens who have been paroled after being found to have a credible fear of persecution or torture.	8 CFR 274a.12	Aliens who have been paroled into the United States after being found to have credible fear or reasonable fear of persecution or torture may not apply for employment authorization under 8 CFR 274a.12(c)(11). They may, however, continue to apply for an EAD under 8 CFR 274a.12(c)(8) if their asylum application has been; pending for more than 365 days and they meet the remaining eligibility requirements.	DHS policy guidance since 2017, consistent with Congressional intent regarding making asylum seekers wait at least 180 days after filing asylum application to obtain employment authorization, instructs that when DHS exercises its discretion to parole such aliens, officers should endorse the Form I–94 with an express condition the employment authorization not be provided under 8 CFR 274a.12(c)(11).
Application for EAD	8 CFR 274a.13	Clarifying that EAD applications must be filed in accordance with the general filing requirements in 8 CFR 103.2(a), 208.3, and 208.4.	N/A.
Application for EAD	8 CFR 274a.13(a)(1) ..	Provides USCIS discretion to grant (c)(8) EAD applications consistent with INA 208(d)(2).	Current regulations do not give the agency discretion to issue (c)(8) EADs. 8 CFR 274a.13(a)(1) currently states: The approval of applications filed under 8 CFR 274a.12(c), *except for 8 CFR 274a.12(c)(8),* are within the discretion of USCIS.

TABLE 4—BASELINE BY PROVISION—Continued

Description	CFR citation	Change	Baseline
Application for EAD—automatic extensions and automatic terminations.	8 CFR 274a.13(d)(3), 8 CFR 208.7(b)(2).	For asylum applications denied, any EAD that was automatically extended pursuant to 8 CFR 274a.13(d)(1) based on a timely filed renewal application will automatically terminate on the date the asylum officer, the IJ, or BIA denies the asylum application, or on the date the automatic extension expires (which is up to 180 days), whichever is earlier.	For asylum applications denied, any EAD that was automatically extended pursuant to 8 CFR 274a.13(d)(1) will terminate at the expiration of the EAD or 60 days after the denial of asylum, whichever is longer.
Cross-reference to any automatic termination provision.	8 CFR 274a.14	Cross-reference to any automatic termination provision elsewhere in DHS regulations, including the automatic termination provision being implemented in this rule.	N/A.
Specify the effective date	.....	EAD applications, including renewals, postmarked or electronically submitted on or after the effective date will be adjudicated under the rule.	N/A.

2. Costs and Benefits

This rule amends the (c)(8) EAD process by extending the period that an asylum applicant must wait in order to be employment authorized, and by disincentivizing asylum applicants from causing delays in the adjudication of their asylum applications. DHS has considered that some asylum applicants may seek unauthorized employment without possessing a valid employment authorization document, but is unable to estimate the size of this effect and does not believe this should preclude the Department from making procedural adjustments to how aliens gain access to employment authorization based on a pending asylum application. The provisions herein seek to reduce the incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications primarily to obtain employment authorization and remain for years in the United States for economic purposes.

The quantified maximum population this rule will apply to is about 290,000 annually. This include aliens filing both meritorious and non-meritorious asylum applications. DHS assessed the potential impacts from this rule overall, as well as the individual provisions, and provided quantitative estimates of such impacts where possible and relevant. For the provisions involving biometrics and the removal of recommended approvals, the quantified analysis covers the entire population. For the change to a 365-day waiting period to file an EAD, the quantified analysis also covers the entire population; however, DHS relies on historical data to estimate the costs for affirmative cases and certain assumptions to provide a maximum potential estimate for the remaining affected population. For the provisions that will potentially end some EADs early, DHS estimated only the portion of the costs attributable to affirmative cases because DHS has no information available to estimate the number of defensive cases.

DHS provides a qualitative analysis of the provisions to terminate EADs earlier for asylum cases denied/dismissed by an IJ (defensive cases), to remove employment eligibility for asylum applicants under the (c)(11) category, and to bar employment authorization for asylum applicants with certain criminal history, who did not enter at a U.S. port of entry, or who, with certain exceptions, did not file for asylum within one year of their last arrival to the United States. As described in more detail in the unquantified impacts section, DHS does not have the data necessary to quantify and monetize the impacts of these provisions.

To take into consideration uncertainty and variation in the wages that EAD holders earn, all of the monetized costs rely on a lower and upper bound, benchmarked to a ''prevailing'' minimum wage and a national average wage, which generates a range. Specific costs related to the provisions are summarized in Table 5. For the provisions in which impacts could be monetized, the single midpoint figure for the range capturing a low and high wage rate is presented.[169]

[169] The populations reported in Table 1 reflect the maximum population that could be covered by each provision. Some of the populations that would incur monetized impacts are slightly different due to technical adjustments. It is noted that the maximum population is smaller than that in the NPRM baseline because in this final rule DHS will not apply any provisions of this rule to applications for employment authorization pending on the effective date. As such, the resulting cost estimates are slightly lower than were developed in the NPRM. In the NPRM the pending pool was 14,451 at the time the data was obtained. The pending population at any point in time can vary due to many factors. In the NPRM, the pending population was not slated to pay the biometrics fee, hence the difference in cost in this final rule only accrue to the time and travel related costs of submitting biometrics. Based on an estimated 12,805 persons in the pending pool who would submit biometrics under the original proposal, the difference in cost for the rule in the first year the rule will take effect at the low and upper wage bounds are $921,389 and $2,078,200, in order. DHS also removed qualitative cost discussion for pending EAD applicants who would not be subject to the criteria proposed on the NPRM.

TABLE 5—SUMMARY OF COSTS AND TRANSFERS

Provision summary	Annual costs and transfers (mid-point)
Quantified:	
365-day EAD filing wait period (for DHS affirmative asylum cases and partial estimates for DHS referrals to DOJ).	a. Population: 39,000. b. Cost: $542.7 million (quantified impacts for 39,000 of the 153,381 total population). c. Reduction in employment tax transfers: $83.2 million (quantified impacts for 39,000 of the 153,381). d. Cost basis: Annualized equivalence cost. e. Summary: Lost compensation for a portion of DHS affirmative asylum cases who will have to wait longer to earn wages under the rule; nets out cost-savings for aliens who will no longer file under the rule; includes partial estimate of DHS referral cases to DOJ–EOIR. It does not include impacts for defensively-filed cases. e. DHS emphasizes that the costs of the rule in terms of lost or deferred labor readings will potentially depend on the extent of surplus labor in the labor market. In the current environment with COVID–19-related layoffs and unemployment, there is the potential that the impacts will be mainly transfers and less in terms of costs.
365-day EAD filing wait period (for the residual population).	a. Population: 114,381. b. Cost: $2.39 billion (quantified impacts for the remaining 114,381 of the 153,381 total population). c. Reduction in employment tax transfers: $366.2 million (quantified impacts for the remaining 114,381 of the 153,381). d. Cost basis: Annualized equivalence cost. e. Summary: Lost compensation for the population of approved annual EADs for which DHS does not have data to make a precise cost estimate. The costs reported are a maximum because the potential impact is based on the maximum impact of 151 days; in reality there will be lower-cost segments to this population and filing-cost savings as well.
Biometrics requirement	a. Population for initial and renewal EADs: 290,094. b. Cost: $36.3 million. c. Reduction in employment tax transfers: None. d. Cost basis: Annualized equivalence cost. e. Summary: For initial and renewal EADs, there will be time-related opportunity costs plus travel costs of submitting biometrics, as well as $85 fee for (c)(8) I–765 initial and renewal populations subject to the biometrics and fee requirements. A small filing time burden to answer additional questions and read associated form instructions in the I–765 is consolidated in this provision's costs.
Eliminate recommended approvals	a. Population: 1,930 annual. b. Cost: $13.9 million. c. Reduction in employment tax transfers: $2.13 million. d. Cost basis: Annualized equivalence cost. e. Summary: Delayed earnings and tax transfers that would have been earned for an average of 52 calendar days earlier with a recommended approval.
Terminate EADs if asylum application denied/dismissed (DHS).	a. Population: 575 (current and future). b. Cost: $31.8 million. c. Reduction in employment tax transfers: $4.9 million. d. Cost basis: Maximum costs of the provision, which would apply to the first year the rule takes effect. e. Summary: Forgone earnings and tax transfers from ending EADs early for denied/dismissed DHS affirmative asylum applications. This change will affect EADs that are currently valid and EADs for affirmative asylum applications in the future that will not be approved. DHS acknowledges that as a result of this change, businesses that have hired such workers will incur labor turnover costs earlier than without this rule.
2. Unquantified:	
Clarify employment eligibility under (c)(11) category for I–765.	a. Population: 13,000. b. Cost: Delayed/foregone earnings. c. Cost basis: N/A. d. Summary: DHS does not know how many of the actual population will apply for an EAD via the (c)(8) I–765, but the population would be zero at a minimum and 13,000 at a maximum, with a mid-point of 6,500. The population would possibly incur delayed earnings and tax transfers by being subject to the 365-day EAD waiting period (it is noted that this population would also incur costs under the biometrics provision, above), or lost earnings if they do not apply for a (c)(8) EAD.
Criminal activity/illegal entry bar	DHS is unable to estimate the number of aliens that would no longer be eligible to receive an EAD while their asylum applications are being adjudicated. Impacts would involve forgone earnings and potentially lost taxes.
One-year filing deadline	Some portion of the 8,326 annual filing bar referrals will no longer be eligible to receive an EAD while their asylum applications are being adjudicated. Impact would comprise deferred/delayed or forgone earnings and potentially lost taxes. DHS does not have data on filing bar cases referred to DOJ–EOIR.

TABLE 5—SUMMARY OF COSTS AND TRANSFERS—Continued

Provision summary	Annual costs and transfers (mid-point)
Terminate EADs if asylum application denied/dismissed (DOJ–EOIR).	DOJ–EOIR has denied an average of almost 15,000 asylum cases annually; [170] however, DHS does not have data on the number of such cases that have an EAD and are employed. Costs would involve forgone earnings and tax transfers for any such EADs that would be terminated earlier than they otherwise would, as well as forgone future earnings and tax transfers. DHS acknowledges that as a result of this change businesses that have hired such workers will incur labor turnover costs earlier than without this rule. Businesses unable to replace these workers will also incur productivity losses.

For those provisions that affect the time an asylum applicant is employed, the impacts of this rule would include both distributional effects (which are transfers) and costs.[171] The distributional impacts would fall on the asylum applicants who would be delayed in entering the U.S. labor force or who would leave the labor force earlier than under current regulations. They would be in the form of lost compensation (wages and benefits). A portion of this lost compensation might be transferred from asylum applicants to others that are currently in the U.S. labor force, or, eligible to work lawfully, possibly in the form of additional work hours or the direct and indirect added costs associated with overtime pay. A portion of the impacts of this rule would also be borne by companies that would have hired the asylum applicants had they been in the labor market earlier or who would have continued to employ asylum applicants had they been in the labor market longer, but were unable to find available replacement labor. These companies will incur a cost, as they will be losing the productivity and potential profits the asylum applicant would have provided. Companies may also incur opportunity costs by having to choose the next best alternative to the immediate labor the asylum applicant would have provided and by having to pay workers to work overtime hours. DHS does not know what this next best alternative may be for those companies. As a result, DHS does not know the portion of overall impacts of this rule that are transfers or costs, but estimates the maximum monetized impact of this rule in terms of delayed/lost labor compensation. If all companies are able to easily find reasonable labor substitutes for the positions the asylum applicant would have filled, they will bear little or no costs, so $4.459 billion (annualized at 7%) will be transferred from asylum applicants to workers currently in the labor force or induced back into the labor force (we assume no tax losses as a labor substitute was found). Conversely, if companies are unable to find reasonable labor substitutes for the position the asylum applicant would have filled then $4.459 billion is the estimated maximum monetized cost of the rule, and $0 is the estimated minimum in monetized transfers from asylum applicants to other workers. In addition, under this scenario, because the jobs would go unfilled there would be a loss of employment taxes to the Federal Government. DHS estimates $682.5 million as the maximum decrease in employment tax transfers from companies and employees to the Federal Government.

Because the biometrics requirement implemented in this rule is a cost to applicants and not a transfer, its minimum value of $27.08 million is the minimum cost of the rule. The range of impacts described by these two scenarios, plus the consideration of the biometrics costs, are summarized in Table 6 below (Table 6A and 6B capture the impacts a 3 and 7 percent rates of discount, respectively).

TABLE 6A—SUMMARY OF RANGE OF MONETIZED ANNUALIZED IMPACTS AT 3%

[Millions $]

Category	Description	Scenario: No replacement labor found for asylum applicants		Scenario: All asylum applicants replaced with other workers		Primary (average of the highest high and the lowest low, for each row)
		Low wage	High wage	Low wage	High wage	
Transfers:						
Transfers—Compensation.	Compensation transferred from asylum applicants to other workers (provisions: 365-day wait + end EADs early + end recommended approvals).	$0.0	$0.0	$1,473.2	$4,459.0	$2,229.5
Transfers—Taxes	Lost employment taxes paid to the Federal Government (provisions: 365-day wait + end EADs early + end recommended approvals).	225.5	682.4	0.0	0.0	341.2
Costs:						
Cost Subtotal—Biometrics.	Biometrics Requirements	27.1	45.5	27.1	45.5	36.3
Cost Subtotal—Lost Productivity.	Lost compensation used as proxy for lost productivity to companies (provisions: 365-day wait + end EADs early + end recommended approvals).	1,473.2	4,459.0	0.0	0.0	2,229.5

[170] See *https://www.justice.gov/eoir/page/file/1248491/download.*

[171] Transfer payments are monetary payments from one group to another that do not affect total resources available to society. *See* OMB Circular A–4 pages 14 and 38 for further discussion of transfer payments and distributional effects. Circular A–4 is available at: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

TABLE 6A—SUMMARY OF RANGE OF MONETIZED ANNUALIZED IMPACTS AT 3%—Continued
[Millions $]

Category	Description	Scenario: No replacement labor found for asylum applicants		Scenario: All asylum applicants replaced with other workers		Primary (average of the highest high and the lowest low, for each row)
		Low wage	High wage	Low wage	High wage	
Total Costs	.....	1,500.2	4,504.5	27.1	45.5	2,265.8

TABLE 6B—SUMMARY OF RANGE OF MONETIZED ANNUALIZED IMPACTS AT 7%

Category	Description	Scenario: No replacement labor found for asylum applicants		Scenario: All asylum applicants replaced with other workers		Primary (average of the highest high and the lowest low, for each row)
		Low wage	High wage	Low wage	High wage	
Transfers:						
Transfers—Compensation.	Compensation transferred from asylum applicants to other workers (provisions: 365-day wait + end EADs early + end recommended approvals).	$0.00	$0.00	$1,473.3	$4,459.5	$2,229.7
Transfers—Taxes	Lost employment taxes paid to the Federal Government (provisions: 365-day wait + end EADs early + end recommended approvals).	225.5	682.5	0	0	341.2
Costs:						
Cost Subtotal—Biometrics.	Biometrics Requirements	27.1	45.5	27.1	45.5	36.3
Cost Subtotal—Lost Productivity.	Lost compensation used as proxy for lost productivity to companies (provisions: 365-day wait + end EADs early + end recommended approvals).	1,473.3	4,459.5	0.0	0.0	2,229.7
Total Costs	.....	1,500.4	4,505.0	27.1	45.5	2,266.1

The two scenarios described above represent the estimated endpoints for the range of monetized impacts resulting from the provisions that affect the amount of time an asylum applicant is employed. However, DHS is aware that the outbreak of COVID–19 will likely impact these estimates in the short run.[172] As discussed above, the analysis presents a range of impacts, depending on if companies are able to find replacement labor for the jobs asylum applicants would have filled. In April 2020, the reported unemployment rate increased by 10.3 percentage points to 14.7 percent.[173] This marks the highest rate and the largest over-the-month increase in the history of the series (seasonally adjusted data are available back to January 1948). By comparison, the unemployment rate for the same month in 2019 was 3.6%.[174] DHS assumes that during the COVID–19 pandemic, with additional available labor nationally, companies are more likely to find replacement labor for the job the asylum applicant would have filled.[175] Thus, in the short-run during the pandemic and the ensuing economic recovery, the lost compensation to asylum applicants as a result of this rule is more likely to take the form of transfer payments from asylum applicants to other available labor, than it is to be costs to companies for lost productivity because they were unable to find replacement labor. DHS notes that although the pandemic is widespread, the severity of its impacts varies by locality. DHS also notes that asylum applicants who have pending employment authorization might become employment authorized during the pandemic. Consequently, it is not clear to what extent the distribution of asylum applicants overlaps with areas of the country that will be more or less impacted by the COVID–19 pandemic. Accordingly, DHS cannot estimate with confidence to what extent the impacts will be transfers instead of costs.

DHS's assumption that all asylum applicants with an EAD are able to obtain employment (discussed in further detail later in the analysis), also does not reflect impacts from the COVID–19 pandemic. It is not clear what level of reductions the pandemic will have on the ability of EAD holders to find jobs (as jobs are less available), or how DHS would estimate such an impact with any precision given available data. Consequently, the ranges projected in this analysis regarding lost compensation are expected to be an overestimate, especially in the short-run.

As required by Office of Management and Budget (OMB) Circular A–4, Table 7 presents the prepared A–4 accounting statement showing the impacts associated with this regulation:

[172] On March 13, 2020, the President declared that the COVID–19 outbreak in the United States constitutes a national emergency. See 'Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak,'' available at *https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.*

[173] Department of Labor, Bureau of Labor Statistics, The Employment Situation—April 2020. Available at: *https://www.bls.gov/news.release/archives/empsit_05082020.pdf.*

[174] Department of Labor, Bureau of Labor Statistics, The Employment Situation—April 2020, Employment Situation Summary Table A. Household data, seasonally adjusted. Available at: *https://www.bls.gov/news.release/archives/empsit_05082020.pdf.*

[175] The Congressional Budget Office estimates the unemployment rate is expected to average close to 14 percent during the second quarter, See: CBO's Current Projections of Output, Employment, and Interest Rates and a Preliminary Look at Federal Deficits for 2020 and 2021, *https://www.cbo.gov/publication/56335*, April 24, 2020.

TABLE 7—OMB A–4 ACCOUNTING STATEMENT
[$ millions, 2019]
[Period of analysis: 2020–2029]

Category	Primary estimate		Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
Benefits:					
Monetized Benefits	(7%) (3%)	N/A N/A	N/A N/A	N/A N/A	RIA.
Annualized quantified, but un-monetized, benefits	N/A		N/A	N/A	RIA.
Unquantified Benefits	The benefits potentially realized by the rule are qualitative and accrue to a streamlined system for employment authorization for asylum seekers that will reduce fraud, improve overall integrity and operational efficiency, and prioritize aliens with bona fide asylum claims. These impacts stand to provide qualitative benefits to asylum seekers, the communities in which they reside and work, the U.S. Government, and society at large. The rule aligns with the Administration's goals of strengthening protections for U.S. workers in the labor market. The biometrics requirement will enhance identity verification and management.				RIA.
COSTS:					
Annualized monetized costs (discount rate in parenthesis)	(7%) (3%)	$2,266.1 $2,265.8	$27.08 $27.08	$4,505.0 $4,504.5	RIA. RIA.
Annualized quantified, but un-monetized, costs	N/A		N/A	N/A	RIA.
Qualitative (unquantified) costs	In cases where companies cannot find reasonable substitutes for the labor the asylum applicants would have provided, affected companies would also lose profits from the lost productivity. In all cases, companies would incur opportunity costs by having to choose the next best alternative to immediately filling the job the pending asylum applicant would have filled. There may be additional opportunity costs to employers such as search costs. Estimates of costs that will involve DOJ–EOIR defensively-filed asylum applications and DHS-referrals could not be made due to lack of data. Potential costs would involve delayed/deferred or forgone earnings. There would also be delayed or forgone labor income for EAD applicants impacted by the criminal and one-year filing deadline provisions, renewal applicants, transfers from the (c)(11) group, and filing bar cases, all of whom would be subject to some of the criteria being implemented in this rule. In addition, such impacts could also affect those who would be eligible currently for an EAD, or have such eligibility terminated earlier, but would be ineligible for an EAD under the rule. Delaying and/or eliminating employment authorization eligibility would have a negative impact on asylum seekers' welfare. The removal or delay of some workers regarding employment could have an adverse effect in terms of their health insurance.				RIA.
TRANSFERS:					
Annualized monetized transfers: ''on budget''	(7%) (3%)	$0 $0	$0 $0	$0 $0	RIA.
From whom to whom?	N/A				N/A.
Annualized monetized transfers: compensation	(7%) (3%)	$2,229.7 $2,229.5	$0.00 $0.00	$4,459.5 $4,459.0	RIA.
From whom to whom?	Compensation transferred from asylum applicants to other workers (provisions: 365-day wait + end EADs early + end recommended approvals). Some of the deferred or forgone earnings could be transferred from asylum applicants to workers in the U.S. labor force or induced into the U.S. labor force. Additional distributional impacts from asylum applicant to the asylum applicant's support network that provides for the asylum applicant while awaiting an EAD; these could involve burdens to asylum applicants' personal private or familial support system, but could also involve public, private, or charitable benefits-granting agencies and non-governmental organizations (NGOs).				RIA.
Annualized monetized transfers: taxes	(7%) (3%)	$341.2 $341.2	$0.00 $0.00	$682.5 $682.4	RIA.
From whom to whom?	A reduction in employment taxes from companies and employees to the Federal Government. There could also be a transfer of Federal, state, and local income tax revenue (provisions: 365-day wait + end EADs early + end recommended approvals) that are not quantified.				

Category	Effects	Source citation (RIA, preamble, etc.)
Effects on state, local, and/or tribal governments	DHS does not know how many workers will be removed from the labor force due to this rule. There may also be a reduction in state and local tax revenue, including state and local income tax revenue. Budgets and assistance networks that provide benefits to asylum seekers could be impacted negatively if asylum applicants request additional support.	RIA.
Effects on small businesses	This rule does not directly regulate small entities, but has indirect costs on small entities. DHS acknowledges that ending EADs linked to denied DHS affirmative asylum claims and EADs linked to denied asylum cases under DOJ–EOIR purview will result in businesses that have hired such workers incurring labor turnover costs earlier than without this rule. Such small businesses may also incur costs related to a difficulty in finding workers that may not have occurred without this rule.	RFA.
Effects on wages	None	RIA.
Effects on growth	None	RIA.

As will be explained in greater detail later, the benefits potentially realized by the rule are qualitative. This rule will reduce the incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications intended primarily to obtain employment authorization or other forms of non-asylum-based relief from removal, thereby allowing aliens with bona fide asylum claims to be prioritized. A streamlined system for employment authorization for asylum seekers will reduce fraud and improve overall integrity and operational efficiency. DHS also believes these administrative reforms will encourage aliens to follow the lawful process to immigrate to the United States.[176] These effects stand to provide qualitative benefits to asylum seekers, communities where they live and work, the U.S. government, and society at large.

The rule also aligns with the Administration's goals of strengthening protections for U.S. workers in the labor market. Several employment-based visa programs require U.S. employers to test the labor market, comply with recruiting standards, agree to pay a certain wage level, and agree to comply with standards for working conditions before they can hire an alien to fill the position. These protections do not exist in the (c)(8) EAD process. While this rule will not implement labor market tests for the (c)(8) EAD process, it will put in place mechanisms to reduce fraud and deter those without bona fide claims for asylum from filing applications for asylum primarily to obtain employment authorization or other, non-asylum-based forms of relief from removal. DHS believes these mechanisms will protect U.S. workers.

The biometrics requirement will provide a benefit to the U.S. government by enabling DHS to know with greater certainty the identity of aliens requesting EADs in connection with an asylum application. The biometrics requirement also will allow DHS to conduct criminal history background checks to confirm the absence of a disqualifying criminal offense, to vet the applicant's biometrics against government databases (for example, FBI databases) to determine if he or she matched any criminal activity on file, to verify the applicant's identity, and to facilitate card production.

Along with the changes summarized above and discussed in detail in the preamble and regulatory impact sections of this rule, DHS will modify and clarify existing regulations dealing with technical and procedural aspects of the asylum interview process, USCIS authority regarding asylum, applicant-caused delays in the process, and the validity period for EADs. DHS discusses these provisions in the unquantified impacts section of the analysis.

A. Background and Purpose of Rule

The purpose of this final rule is to reform, improve, and streamline the asylum process, so that those with bona fide asylum claims can be prioritized and extended protection, including immediate employment authorization based on an approved asylum application. The provisions seek to reduce incentives to file frivolous, fraudulent, or otherwise non-meritorious asylum applications and other forms of non-asylum based relief primarily to obtain employment authorization. As is detailed in the preamble, it has been decades since significant reforms were made to the asylum process, and there have been no major statutory changes to the asylum provisions to address the current aspects of the immigration laws that incentivize illegal immigration to the United States and frivolous asylum filings.

DHS has seen a surge in illegal immigration into the United States, and USCIS currently faces a critical asylum backlog that has crippled the agency's ability to timely screen and vet applicants awaiting a decision.

As a result of regulatory review required by E.O. 13767, Border Security and Immigration Enforcement Improvements, DHS identified the regulations that were inconsistent with this order and is revising them in this rule. While working with Congress on legal reforms to deter frivolous, fraudulent, and non-meritorious filings, DHS is also taking administrative steps to improve the asylum application process, pursuant to the Secretary's authorities over immigration policy and enforcement. The broad goal is to minimize abuse of the system by inadmissible or removable aliens who are not eligible for asylum, but who seek to prolong their stay in the United States. The changes will remove incentives for aliens to cross the border for economic reasons and better allow DHS to process bona fide asylum seekers in an expedited manner. As a result, bona fide asylum applications would be adjudicated timelier, and the significant benefits associated with grants of asylum would be realized sooner.[177]

[176] The rule may also provide less incentive for those pursuing unauthorized employment in the United States to use the asylum application process to move into authorized employment status.

[177] A grant of asylum allows an alien to remain in the United States, creates a path to lawful permanent residence and citizenship, and allows for certain family members to obtain lawful

Continued

Information and data pertinent to the ensuing analysis is provided. A thorough qualitative discussion of the asylum application and related employment authorization application process is available in the preamble. Table 8 provides data concerning DHS affirmative asylum filings via Form I–589 for the five-year span of fiscal years 2014–2018.[178]

TABLE 8—USCIS FORM I–589 AFFIRMATIVE ASYLUM PETITION DATA, FY 2014–2018

FY	Receipts	Approvals	Denials	Admin. close	Referrals-DOJ–EOIR	Pending pool
2014	56,912	10,811	582	2,008	15,537	61,479
2015	84,236	14,344	365	3,107	19,475	108,725
2016	115,888	9,538	131	3,830	16,186	194,986
2017	142,760	13,105	116	5,675	28,928	289,835
2018	106,041	17,537	726	9,436	51,680	319,202
5-year total	505,837	65,335	1,920	24,056	131,806	.....
Average	101,167	13,067	384	4,811	26,361	194,845

DHS administratively closes 4.8 percent of receipts.[179] More significantly, DHS refers a large share of cases to DOJ–EOIR, and the average referral rate is 26.1 percent. Measured against receipts, the average approval and denial rates are 12.9 percent and .4 percent, respectively. However, if the basis is recalibrated to ''adjudicated cases''—the sum of approvals, denials, referrals (interviewed), and filing bar referrals—more salient approval and denial rates of 35.9 and 1.1 percent, respectively, are obtained.[180] These rates are more tractable because they remove the impact of administrative closures, referrals that did not involve an USCIS interview, and most importantly, the effect embodied in the growth of the pending (hence not yet processed cases) pool. Against ''adjudicated cases,'' DHS referred more than three-fifths (63 percent) of asylum cases initially filed ''affirmatively'' to DOJ–EOIR, and this share does not include non-interview referrals. As it relates to the total of referrals, on average the share attributed to interview, filing bar, non-interview cases are 55.4, 31.6, and 13.1percent, respectively.[181]

In Table 8, the average across the five-year period is provided. It is noted that the pending pool of applications has grown substantially, as is evidenced by the fact that the 2017 and 2018 figures for end-of-year pending pool far exceeded the overall five-year average. For receipts, there has also been substantial growth, though filings declined markedly in 2018 from 2017.

Data pertaining to DOJ–EOIR defensively-filed asylum cases was obtained and relevant data are collated in Table 9.[182]

TABLE 9—DOJ–EOIR ASYLUM CASELOAD AND DECISIONS (FY 2014—2018)

FY	USCIS referrals to DOJ–EOIR	Defense filed	Total filed	Cases granted	Cases denied	Other outcome	Admin. closed
2014	16,258	31,196	47,454	8,562	9,292	10,418	9,540
2015	17,289	46,203	63,492	8,113	8,847	11,018	15,420

immigration status. *See* INA sec. 208(b)(3) (allowing derivative asylum for asylee's spouse and unmarried children); INA sec. 208(c)(1) (prohibiting removal or return of an alien granted asylum to alien's country of nationality, or in the case of a person have no nationality, the country of last habitual residence); INA sec. 209(b) (allowing adjustment of status of aliens granted asylum); INA sec. 316(a) (describing requirements for naturalization of lawful permanent residents). An asylee is authorized to work in the United States and may receive financial assistance from the Federal Government. *See* INA sec. 208(c)(1)(B) (authorizing aliens granted asylum to engage in employment in the United States); 8 U.S.C. 1612(a)(2)(A), (b)(2)(A), 1613(b)(1) (describing eligibility for Federal Government assistance).

[178] The data in Table 8 are obtained as follows. For the receipts, approvals, denials, and end of year pending pool counts, the data are provided by the USCIS Office of Performance and Quality (OPQ), and are reported publicly under ''All USCIS Application and Petition Form Types'' for the end of each respective fiscal year, accessibale at: *https://www.uscis.gov/tools/reports-studies/immigration-forms-data?topic_id=23035&field_native_doc_issue_date_value%5Bvalue%5D%5Bmonth%5D=&field_native_doc_issue_date_value_1%5Bvalue%5D%5Byear%5D=&combined=&items_per_page=100&=Apply+Filter.* The other data in Table 8 for FY 2014–2017 are reported publicly at ''Affirmative Asylum Decisions FY09–FY18 Q2,''at *https://www.uscis.gov/sites/default/files/Affirmative_Asylum_Decisions_FY09-FY18_Q2.pdf.* For the full FY 2018, the USCIS RAIO office provided the data from workflow statistics data. The data were good as of April 1, 2019.

[179] USCIS administratively closes I–589s where no decision can be made on the application by USCIS for various reasons, including, but not limited to: (1) Lack of jurisdiction over the I–589 where the applicant is already in removal proceedings before EOIR and not a UAC (in those cases, the case is administratively closed but no NTA is issued since the person is already in proceedings); (2) an application is abandoned, withdrawn, or the applicant fails to show up for the interview or biometric services appointment after rescheduling options are exhausted (in those cases, no decision is made on eligibility but an NTA would be issued if the person is out of status and is still in the U.S.); (3) the applicant has a final administrative removal or ICE has reinstated a prior removal order (in those cases, the I–589 would be administratively closed and the person would be referred for a reasonable fear screening).

[180] It is noted that the rate of administrative closures and total referrals can vary slightly from the percentage reported here. The data is stored and collated in several databases and systems. Some search queries can collate some un-interviewed cases with administrative closures based on specific action codes assigned to some cases, for various reasons.

[181] The adjudicated basis also excludes some other minor categories such as ''dismissals,'' which comprise around a dozen cases each year. It is noted that the definitional basis for adjudicated cases is the same as (or similar to with minor adjustments) the basis that DHS uses in much of its public facing and official reporting on asylum. Relevant calculations are all based on the five-year averages: The FY 2014–2018 average of ''adjudicated'' cases, as defined in the text, is 36,368. Dividing the annual average approvals of 13,067 by 36,368 yields the approval rate of 35.9 percent. Dividing the annual average denials of 384 by 36,368 yields the denial rate of 1.1 percent. The referral rate (excluding non-interviewed cases) is obtained by dividing the sum of annual average filing bar and interview referrals, of 22,972 by 36,268, which yields 63.1 percent. The annual average of total referrals is 26,361. Counts for interview, filing bar, and non-interview cases, in order of, are 14,592, 8,326, and 3,444. Dividing each of the former by the latter yield 55.4, 31.6, and 13.1 percent, respectively.

[182] Data and information on EOIR asylum cases are available publicly from the EOIR ''Workload and Adjudication Statistics'' portal, at the following report, *https://www.justice.gov/eoir/page/file/1248491/download.*

TABLE 9—DOJ–EOIR ASYLUM CASELOAD AND DECISIONS (FY 2014—2018)—Continued

FY	USCIS referrals to DOJ–EOIR	Defense filed	Total filed	Cases granted	Cases denied	Other outcome	Admin. closed
2016	12,718	69,349	82,067	8,684	11,737	12,883	21,623
2017	22,143	121,418	143,561	10,539	17,632	14,745	10,889
2018	49,118	111,887	161,005	13,161	26,594	22,328	2,098
5-year total	117,526	380,053	497,579	49,059	74,102	71,392	117,526
Average	23,505	76,011	99,516	9,812	14,820	14,278	23,505
share of completions	.....	.....	.....	15.7%	23.7%	22.9%	37.7%

The first data column in Table 9 captures DHS referrals to DOJ–EOIR, and generally corresponds with data in the fifth data column of Table 8.[183] As the data indicate, asylum filings at DOJ–EOIR have also increased sharply over the five-year period, noting that the increase in defensive filings over the last three years has been particularly strong. Defensive cases also comprise the bulk of filings, more than tripling affirmative filings on average. Over the entire five-year period there were 312,079 total completions, noting that this tally comprises grants, denials, cases that were administratively closured, and ''others.'' The latter comprises defensively-filed asylum applications that were abandoned, not adjudicated, or withdrawn.

Table 10 provides data on (c)(8) I–765 filings, and DHS notes that these apply to both DHS affirmative filings (including referrals to DOJ–EOIR) and those filings connected to defensively-filed asylum cases.

TABLE 10—DHS I–765(C)(8) FILING DATA FOR DHS AFFIRMATIVE FILINGS (INCLUDING REFERRALS TO DOJ–EOIR), AND DEFENSIVE CASES

[FY 2014–2018]

FY	Initials			Renewals		
	Receipts	Approve	Deny	Receipts	Approve	Deny
2014	62,169	48,555	10,747	47,103	42,917	2,539
2015	106,030	85,501	13,269	72,559	63,548	3,213
2016	169,970	152,269	14,446	128,610	115,536	4,166
2017	261,782	234,053	21,197	212,255	166,186	4,869
2018	262,965	246,525	29,057	62,026	90,974	4,675
5-year total	862,916	766,903	88,716	522,553	479,161	19,462
Average	172,583	153,381	17,743	104,511	95,832	3,892

As Table 10 indicates, the number of employment authorization applications filed under the (c)(8) eligibility category has increased steadily since 2014, although the trend appears to have levelled off in 2018 (it is too early to tell if this will continue) at a historically high level. Over the entire period, 88.9percent of initial filings for employment authorization were approved. There is also a relatively high rate of renewal filings, and 62.5 percent of initial approvals were followed by an approved renewal.[184]

DHS obtained and performed analysis on a data set capturing a portion of (c)(8) Form I–765 information that covers principal applicants and dependents who also filed an I–589 Form with DHS (in other words, DHS affirmative cases, including DOJ–EOIR referrals), from 2014 through 2018.[185] Details and caveats concerning this data set are dealt with in detail in ensuing discussion of the costs of the 365 EAD filing time wait. Based on analysis of this data, several time-centered variables are developed that are relevant to the forthcoming analysis. These indicators are produced and displayed in Table 11.

[183] DHS Asylum cases referred to DOJ–EOIR over the period (Table 8) on average are a higher by about 13 percent on average, than the DOJ–EOIR Affirmative asylum filings. The primary reason is UAC cases. DHS counts them as referrals, but, since they are already in EOIR's caseload as an NTA has been filed in these cases, USCIS does not enter them into CASE–ISS and transfer the application through the usual referral process. EOIR counts them as defensively-filed asylum cases as opposed to affirmative asylum cases that have been referred.

[184] Relevant calculations: for approval rate, 153,381 average approvals/172,583 average receipts = .889, and for renewal rate, 95,832 average renewals/153,381 initial approvals = .625. Both decimals are rounded and multiplied by 100.

[185] The (c)(8) I–765 data was provided by the USCIS Office of Performance and Quality (OPQ) from file tracking data (data accessed on Jan. 19, 2019).

TABLE 11—CALCULATED TIME INTERVALS FOR DHS AFFIRMATIVE FILINGS (INCLUDING DOJ–EOIR REFERRALS)

[Average calendar days, FY 2014–2018]

FY	I–589 affirmative filing to I–765(c)(8) filing interval	I–765(c)(8) process time for affirmative cases	I–589 process time for DHS affirmative cases (excl. DOJ–EOIR referral cases)	Time between I–589 filing with DHS and referral to DOJ–EOIR	I–589 affirmative filing to I–765(c)(8) approval interval
2014	223	83	820	590	307
2015	228	84	812	737	312
2016	231	68	537	476	298
2017	210	67	380	278	277
2018	181	43	190	84	223
5-Yr Average	215	69	*N/A	*N/A	283

*DHS does not show a 5-year average for these time intervals because they are directly affected by the change from FIFO to LIFO processing.

The data presented in Table 11 capture average calendar days.[186] The 'I–589 process time' reflects the filing time to decision for DHS affirmative cases only, as DHS does not have data on I–589 process time for cases referred to DOJ–EOIR. The following column captures the average time interval between when an I–589 was filed with DHS and when it was referred to DOJ–EOIR. The final column captures the average time interval between when an I–589 was filed with DHS and a (c)(8) I–765 was approved. As is readily seen, there have been substantial declines in all of the intervals.

Before developing the general and provision-specific populations that the rule could impact, a final data element is provided. In January 2018, USCIS reinstituted its LIFO scheduling priority for asylum applications. DHS partitioned out LIFO cases starting after January 2018 until the end of January 2019 to capture a full calendar year of time. The mean processing time was 166 days, which is even lower than the 190-day average for DHS adjudicated cases displayed in Table 11 for the fiscal year 2018. Note this means that the average affirmatively filed asylum application completed by USCIS was decided in 166 days in 2018, which is less than the proposed 365-day wait period to apply for employment authorization.

B. Population

In this section, the baseline population estimates are conducted for the rule in general and each specific provision. The term ''baseline'' applies to the maximum population that the rule could involve. However, an important consideration in this regard is that there could be feedback from one provision that affects the baseline population. In the ensuing section on costs, the baseline figures will be tuned and modified to reflect the specific populations that could be impacted by the provisions. These adjusted populations will be the ones incurring specified cost impacts.

The final rule requires aliens who file for an EAD under the (c)(8) asylum category to submit biometrics and pay the $85 biometric services fee. This biometrics requirement is the encompassing provision that captures the largest population under the rule. There will also be a small burden increase associated with the Form I–765. Asylum applicants filing for employment authorization under (c)(8) will be required to attend a biometric services appointment and will also need to answer new, additional questions on the form relating to new eligibility requirements, and read the associated instructions. DHS estimates that the biometric services appointment will add an additional 1 hour and 10 minutes, while reading the instructions and answering the questions will add an estimated 15 minutes to the overall Form I–765 time burden for this category of filers. The encompassing population is the average of 172,583 initial filers (Table 10) would incur the small forms-centered time burden and biometrics requirement. In addition, current EAD holders who file for renewals would also submit biometrics and pay the $85 biometric services fee. Currently, initial (c)(8) I–765 filers do not pay the I–765 filing fee, but renewal filers do, and this rule does not suggest a change to the protocol. The annual average renewal (c)(8) I–765 filing population is 104,511 (Table 10).

The final rule requires all asylum applicants to wait 365 calendar days before filing for, and being granted, an initial EAD. Currently, applicants have a 150-day waiting period before they can file for an initial (c)(8) EAD. However, applicants whose initial EAD applications are denied would not be affected, and renewal EADs would not be affected by the 365-day waiting period. Hence, the baseline population for the 365-calendar-day waiting period provision is the average number of initial (c)(8) I–765 approvals from FY 2014–2018, which is 153,381 (Table 10).

DHS is eliminating the preferential category of recommended approvals for asylum, under which an asylum applicant can file an EAD request upon initial favorable review by an asylum officer, prior to completion of all background, security, and related checks. Currently, aliens who have received a notice of recommended approval are able to request employment authorization ahead of the waiting period for those with pending asylum applications. From FY 2014 to FY 2018, DHS issued 15,359 recommended approvals, or 3,072 on average annually. This population will be subject to the final rule.

The final rule makes any alien who entered or attempted to enter the United States illegally ineligible for a discretionary EAD, absent mitigating circumstances discussed in the preamble. DHS does not know how many persons would have been subject to this provision in the past, and cannot determine this population going forward. This rule will also bar any alien who has been convicted of or charged with a serious crime from eligibility for a discretionary EAD, with

[186] The final data column captures the important ''wait'' time, between the filing date of the I–589 asylum petition and the approval of a (c)(8) I–765. This interval captures the amount of time an individual has between filing for asylum and being able to work and earn labor income. This metric is not exact though, as once a favorable decision is made concerning the EAD application, it takes some time to finalize the adjudication and send the approval notice.

some exceptions, as is discussed in detail in the preamble. DHS does not know how many persons would have been subject to this provision in the past and cannot determine this sub-population going forward. While individual adjudicative and security-related records can capture evidence and factors related to criminal activity, such information is not available in a dataset that can be queried for the requisite type of analysis and estimation needed.

DHS will terminate an alien's employment authorization connected to affirmative asylum applications on the date the asylum application is denied or dismissed by USCIS. Currently, such EADs terminate within 60 days after a USCIS asylum officer denies the application or on the date of the expiration of the EAD, whichever is longer. DHS analysis reveals that about 215 EADs were approved annually on average concomitant to denied DHS affirmative asylum claims; as of the present write-up, 360 such EADs are valid. Eliminating EADs linked to DHS affirmative asylum denials will end the validity of those EADs earlier than they otherwise end.

DHS is revising its regulations prescribing when employment authorization terminates following the denial of an asylum application by an IJ or BIA. DHS cannot determine how many DOJ–EOIR cases (either via DHS referral or defensive) apply to either the annual or existing population because DHS does not have granular data on DOJ–EOIR cases that would facilitate analysis of EADs. The employment authorization will continue for 30 days following the date that an IJ denies an asylum application to allow for a possible appeal of the denial to the BIA. If the alien files a timely appeal of the denied asylum claim with the BIA, employment authorization will continue through the BIA appeal. Currently, such EADs are allowed to naturally expire according to the terms of their EAD, unless the applicant seeks administrative or judicial review.

DHS will bar from eligibility for employment authorization aliens who failed to file for asylum within one year of their last arrival in the United States, as required by law, if an asylum officer or IJ determines that an exception to the one-year filing bar does not apply. This bar would not apply to UACs. From FY 2014 to FY 2018, DHS referred 41,628 cases to DOJ–EOIR based on the one-year filing bar, for an annual average of 8,326.

The final rule seeks to clarify that aliens who are paroled from custody after receiving a positive credible fear or reasonable fear determination are not eligible to seek immediate employment authorization under 8 CFR 274a.12(c)(11), although, historically, USCIS has granted many of these requests. Aliens could still file under the (c)(8) category, if eligible. However, they will be subject to the 365-day wait period. From FY 2014 to FY 2018, an average of 13,000 applications sought employment authorization through the (c)(11) category. However, DHS is unaware how many will apply for an EAD under 8 CFR 274a.12(c)(8) and would meet this rule's eligibility requirements.

Table 12 presents a summary of the populations that could be affected by this rule.

TABLE 12—SUMMARY OF ASYLUM EAD POPULATIONS UNDER THE FINAL RULE

[Annual]

Abbreviated provision (description)	Population estimate
a. I–765(c)(8) initial filers—biometrics	172,583.
b. I–765(c)(8) renewal filers—biometrics	104,511.
c. Enact 365-day EAD filing wait period	153,381.
d. Eliminate recommended approvals	3,072.
e. Bar criminals from obtaining EADs	Unknown.
f. End EADs for denied/dismissed asylum claims	1. DHS affirmative = 215 annually and 360 currently valid. 2. Affirmative referrals to DOJ–EOIR = Unknown. 3. DOJ–EOIR defensive = Unknown.
g. Bar for illegal entry into the U.S	Unknown.
h. One-year asylum filing bar	8,326.
i. Clarify(c)(11) I–765 eligibility	13,000.
Total final rule population (maximum)	290,094.

In order to derive the total population potentially impacted by the rule, we add the annual flow volumes of the encompassing current biometrics (and time burden) population of 172,583 and the renewal filing volume of 104,511, which total to 277,094. To this sub-total, adding the potential 13,000 (c)(11) filers yields 290,094, which is the encompassing population. Since the other sub-populations collated in Table 12 are, by definition, (c)(8) I–765 filers, we do not add them to the flow volume, to safeguard against double-counting. But for the first year, the expected annual population of 290,094 is annotated the 360 existing EADs that are connected to denied affirmative asylum claims that could be ended early. When added to the encompassing population expected annual flow volume, yields a maximum population of 290,454, which could be expected in the first year the rule takes effect. Starting in year two, the population would expectedly revert to the annualized flow volume of 290,094.

Having estimated the general population subject to the rule and the sub-populations germane to the specific provisions, DHS next conducts the economic impact assessment, noting, as was done in the introduction to this section, that the populations reported above are adjusted for technical considerations regarding the effects.[187]

C. Transfers, Costs and Benefits of This Rule

1. Costs

This section will be parsed into three modules. In Module 1, some key assumptions that will apply to multiple provisions are established. Module 2 develops quantitative costs and transfers for relevant provisions, while Module 3

[187] Preliminary data revisions indicate that the (c)(8) I–765 filings and approvals in 2018 and 2017 could be higher than reported herein (Table 10). Finalized adjustments to the populations based on revised and validated data will be made at the appropriate stage of final rule development.

covers costs and transfers that are not amenable to quantification.

Module 1. Data and Assumptions

As was mentioned in the ''Population'' section above, DHS obtained a data set capturing (c)(8) I–765 filing data for initial applicants (this includes EAD filing data for both affirmative and defensive asylum applicants). These data include a large number of variables. DHS also obtained asylum application data for affirmatively-filed asylum applications, and integrated elements of the two data sets to capture information on affirmative asylum applicants who also filed for an EAD. However, DHS does not have a way to match decisions for cases adjudicated by an IJ with EAD data. Our analysis is based on this large scale data set that captured numerous variables important to the analysis. Several key assumptions and foundations apply across multiple provisions, which, in favor of brevity and readability, are introduced up front and only discussed hereafter where necessary.

For the provisions that would delay or prohibit an asylum applicant from earning employment authorization, the impacts of this rule would include both distributional effects (which are transfers) and costs. These distributional impacts would fall to the EAD holders in the form of lost or delayed compensation (wages and benefits). A portion of this lost compensation would be transferred from these aliens to others that are currently in the U.S. labor force, possibly in the form of additional work hours or overtime pay. A portion of the impacts of this rule would also be costs borne by companies that would have hired the asylum applicants had they been in the labor market earlier, but were unable to find available replacement workers. Companies may also incur opportunity costs by having to choose the next best alternative to immediately filling the job the asylum applicant would have filled. As a result, DHS does not know the portion of overall impacts of this rule that are transfers or costs. If companies can find replacement labor for the position the asylum applicant would have filled, this rule would have primarily distributional effects in the form of transfers from asylum applicants to others already in the labor market (or workers induced to return to the labor market). If companies cannot find reasonable substitutes for the labor the asylum applicants would have provided, this rule would primarily be a cost to these companies through lost productivity and profits. DHS uses the lost compensation to asylum applicants as a measure of the overall impact of the provisions that would delay or prohibit an asylum applicant from obtaining employment authorization—either as distributional impacts (transfers) or as a proxy for businesses' cost for lost productivity.

Furthermore, in instances where a company cannot hire replacement labor for the position the asylum applicant would have filled, there may be tax losses to the government. It is difficult to quantify income tax impacts because individual tax situations vary widely, but DHS estimates the potential reduction in employment taxes, namely Medicare and Social Security, which have a combined tax rate of 7.65 percent (6.2 percent and 1.45 percent, respectively).[188] With both the employee and employer not paying their respective portion of Medicare and Social Security taxes, the total estimated reduction in tax transfer payments from employees and employers to Medicare and Social Security is 15.3 percent.[189] We will rely on this total tax rate where applicable. DHS is unable to quantify other tax losses, such as for federal income taxes and state and local taxes.

The assessments of possible distributional impacts rely on the implicit assumption that everyone who received an approved (c)(8) EAD entered the labor force and found work, and thus earned wages of labor. We believe this assumption is justifiable because applicants would generally not have expended the direct and opportunity costs of applying for an EAD if they did not expect to recoup an economic benefit. However, as was stated earlier, DHS recognizes that impacts from COVID–19 have pushed the U.S. national unemployment rate to a much higher level than the historically low rate of 3.6 percent prior to the pandemic.[190]

Because the (c)(8) EAD does not include or require, at the initial or renewal stage, any data on employment, and, since it does not involve an associated labor condition application (LCA), DHS has no information on wages, occupations, industries, or businesses that may employ such workers. In some DHS rulemakings, the estimates of distributional impacts and time-related opportunity costs were linked to the Federal minimum wage for new entrants to the labor force. The Federal minimum wage is $7.25, which, when adjusted for benefits by a multiple of 1.46, is $10.59 per hour, with an annual salary of $15,080.[191] This reliance is grounded in the notion that most of the relevant EAD holders would not have been in the labor force long, and would thus not be expected to earn relatively high wages. In this rulemaking, we rely on a slightly more robust ''prevailing'' minimum wage of $8.25. As is reported by the Economic Policy Institute (EPI, 2016), many states have their own minimum wage, and, even within states, there are multiple tiers.[192] Although the prevailing minimum wage, without accounting for benefits, could be considered a lower-end bound on true earnings, DHS uses a fully loaded wage rate, at $12.05, which is 13.8 percent higher than the Federal minimum wage.[193] While DHS does not rule out the possibility that some portion of the population might earn wages at the average level for all occupations, without solid a priori or empirical information we believe that providing a range with the lower bound relying on the prevailing minimum wage is justifiable. Therefore, for the purpose of this analysis, DHS also uses a national average wage rate of $24.98, to take into consideration the variance

[188] The various employment taxes are discussed in more detail at https://www.irs.gov/businesses/small-businesses-self-employed/understanding-employment-taxes. *See* IRS Publication 15, Circular E, Employer's Tax Guide for specific information on employment tax rates. *https://www.irs.gov/pub/irs-pdf/p15_18.pdf. See* More Than 44 Percent of Americans Pay No Federal Income Tax (September 16, 2018), available at: *https://www.marketwatch.com/story/81-million-americans-wont-pay-any-federal-income-taxes-this-year-heres-why-2018-04-16.*≤

[189] Calculation: (6.2 percent Social Security + 1.45 percent Medicare) × 2 employee and employer losses = 15.3 percent total estimated tax loss to government.

[190] This unemployment rate reflects the Bureau of Labor Statistics (BLS) most recent data, for April 2019. It can be found in the ''Employment Situation Summary'' of the Economic News Release section: *https://www.bls.gov/news.release/empsit.toc.htm.*

[191] The benefits-to-wage multiplier is calculated by the BLS as (Total Employee Compensation per hour)/(Wages and Salaries per hour) = $36.32/$24.91 = 1.458 (1.46 rounded). *See* Economic News Release, Employer Cost for Employee Compensation (March 2019), U.S. Dept. of Labor, BLS, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (March 19, 2019), available at *https://www.bls.gov/news.release/archives/ecec_03192019.pdf.* Calculation for annual Federal minimum salary: Hourly wage of $10.59 × 2,080 annual work hours = $15,080.

[192] The EPI report is available at: *https://www.epi.org/publication/when-it-comes-to-the-minimum-wage-we-cannot-just-leave-it-to-the-states-effective-state-minimum-wages-today-and-projected-for-2020/.* There are multiple tiers of minimum wages across many states that apply to size of business (revenue and employment), occupations, working hours, and other criteria. Some of these variations per state are described at: *https://www.minimum-wage.org.*

[193] Calculations (1) for prevailing minimum wage: $8.25 hourly wage × benefits burden of 1.46 = $12.05; (2) (($12.05 wage-$10.59 wage)/$10.59)) wage = .1378, which rounded and multiplied by 100 = 13.8 percent.

in average wages across states as an upper bound. The fully-loaded average hourly wage is $36.47. All of the quantified estimates of costs and transfer payments in this analysis incorporate lower and upper bounds based on these fully-loaded wages.[194]

In light of the public comments on the Notice of Proposed Rulemaking, we make two additional notes here. In developing the quantified impacts that follow, the reliance on an upper and lower bound for the wages is meant to reflect the potential averages for the asylum EAD population. It by no means precludes the possibility that some may earn more than the average, or, that some earn lower than the prevailing minimum. Second, DHS recognizes that earnings may increase over the course of an EADs validity period; for example, a person who enters a job at the prevailing minimum may earn more by the time their EAD expires. However, this possibility alone does not rule out the reliance on the wage bounds that we have developed, and we see no way of credibly integrating this potential into the ensuing estimates. Nonetheless, DHS relies on a range which does allow for some variation in wages that asylum applicants may earn, including over the period of analysis.

Most of the cost impacts will result from delayed or forgone earnings to asylum applicants. Since the data analysis centers on calendar days, and costs are specifically linked to hours, we apply a scalar developed as follows. Calendar days are transformed into work days to account for the actuality that typically, 5 out of 7, or 71.4 percent, of the calendar week is allotted to work-time, and that a workday is typically 8 hours. Based on the prevailing minimum wage of $12.05, the combined scalar is $68.83, and, based on the average wage it is $208.32.[195] In summary, based on the prevailing minimum wage relied upon, each calendar day generates $68.83 dollars in relevant delayed or forgone earnings. It follows that for the upper wage bound that each calendar day generates $208.32 dollars in relevant delayed or forgone earnings/delayed earnings.

[194] The average wage for all occupations is found BLS Occupational Employment Statistics, May 2018 National Occupational Employment and Wage Estimates, and reflects the 2017 average for all occupations nationally. The data is found at: *https://www.bls.gov/oes/2018/may/oes_nat.htm#00-0000.* Calculation: hourly wage of $24.98 x benefits burden (1.46) = $36.47.

[195] Calculations: .714 × 8 hours per day × $12.05 wage = $68.83, and .714 × 8 hours per day × $36.47 wage = $208.32 (rounded).

Module 2. Quantified Cost Impacts and Transfers

As was mentioned above, DHS will require all asylum applicants to wait 365 calendar days before filing for an initial EAD. Currently, applicants have a 150-day waiting period before they can file for an initial (c)(8) EAD. The baseline population specific to the 365-day wait period is the average annual flow of initial (c)(8) EAD approvals (153,381, Table 10), as there would not be a cost for denied applicants. Of the 153,381 average annual EAD approvals, DHS is able to conduct a detailed analysis of the impacts of the 365-day wait on only 39,000 affirmative asylum applicants, including cases later referred to DOJ–EOIR, below. While DHS does not have the data to estimate the impacts with the same confidence for the remaining residual population, DHS separately quantifies a maximum impact for the residual population later in the analysis.

The analysis of the 365-day EAD filing wait involves the interaction between data germane to the asylum cases and the EAD simultaneously. In this context, we discuss several reasons why the analyzable 39,000 is relatively low, about a quarter of the approval population. Foremost, it captures no defensively-filed asylum cases because DHS does not have data about asylum case decisions for defensively adjudicated cases. Second, it does not capture cases germane to pending asylum cases—it captures cases in which a DHS decision or referral to DOJ–EOIR was made. Third, the data had to be obtained by developing a program to query several disparate data sets at once and match data between them in a structured format, with dozens of data points and indicators for each case. For cases in which one or more of the key data points was missing or not viable, the analysis as required was not possible. DHS parsed and filtered the data to exclude extreme outliers and erroneous data to obtain the most viable and tractable data amenable for the analysis.

For the approximately 39,000 EADs associated with affirmative asylum filings adjudicated by DHS for which data are available, a reasonably detailed estimation of the impacts from changing the wait period to file for employment authorization from the 150-day Asylum EAD Clock to the 365 day waiting period can be conducted. For affirmative cases referred to DOJ–EOIR by DHS for which data are available some estimation can be performed, but not with the same extent of precision and completeness, due to data constraints. This part of the analysis focuses on the DHS affirmative asylum cases for which complete data is available, and for DHS affirmative cases referred to DOJ–EOIR, for which some data is available. DHS does not have complete data for the ''residual'' population, and estimates a maximum potential impact for this population separately.

The analysis of the 365-day wait begins with consideration that some aliens, for whatever reason, did not file for an EAD until after 365 days. Our analysis of the approximately 39,000 I–765(c)(8) initial EAD approvals for affirmative asylum indicate that this group comprises 10.2 percent of the 39,000 approved EADs with available data. Technically, this group, comprising 3,978 EADs, would not be impacted by the 365-day wait, and, adjusting for them yields a ''narrowed'' baseline of 35,022. While the percentage filing for an EAD after 365 days could vary in the future, it is integrated herein for the cost estimates.

As noted above, the impact of the provision depends on the interaction between the asylum decision and the EAD approval, since a granted asylum application provides de facto employment authorization. Therefore, the narrowed baseline can be decomposed into specific cost-segments to more appropriately hone the potential impacts. There has been a substantial reduction in DHS affirmative asylum processing time over the five-year span 2014–2018, and the adoption of LIFO processing has further contributed to the reduction. As noted above, in January 2018, USCIS reinstituted LIFO processing. Although DHS typically relies on 3- or 5-year averages in most cost benchmarks, in this specific case, since LIFO is more likely to be representative of the future than an average of four years of FIFO and one year of LIFO, and, since it appears to have had a significant impact on asylum processing times, the costs are benchmarked to the calendar year of time covering the end of January 2018 to the end of January 2019 for DHS affirmative asylum decisions.

Of the narrowed baseline, DHS referrals to DOJ–EOIR comprise 74.4 percent (26,056 cases) and DHS affirmative adjudication comprises 25.6 percent (8,966 cases) annually. The narrowed baseline for DHS affirmative asylum is parsed into four groups, A–D, that capture different cost segments germane to the potential interaction between approved asylum and the EAD and expected future conditions. Group A comprises DHS affirmative asylum adjudicated prior to 365 days, in which

the EAD was ''binding''. The latter impart that the EAD was approved prior to the asylum decision. For Group A, because the asylum application for these applicants would be adjudicated prior to the 365-day wait period, the cost in terms of the rule is the time interval between the current wait time and asylum approval. To explain this via an example, consider an alien that currently files for an EAD at the 150-day mark and has it approved 40 days later, at 190 days. If the concomitant asylum adjudication is at the 200-day mark, the true benefit the EAD could provide is 10 days (assuming the asylum claim is approved). Table 13 is introduced, which shows that Group A represented 11 percent of the narrowed baseline, or 3,852 aliens annually, and the average impact in terms of the EAD benefit is 53 days (in Table 13 all the shares are provided on the basis of the narrow baseline).

Group B similarly consists of DHS affirmative asylum adjudicated prior to 365 days, but in contradistinction to Group A, under Group B the EAD was ''non-binding''—which means the grant of asylum could provide de facto employment authorization, as it was adjudicated before the EAD. Because of this, Group B would not incur a cost impact in terms of delayed earnings from the provision. For this 9.5 percent of the narrowed baseline, or 3,327 aliens, the EAD benefit was zero (as it was non-binding). Essentially, the EAD approval was inconsequential, and invoked a net cost because the filing costs were sunk. Hence, the cost in terms of this rule is nil, but the forgone filing (sunk) costs can appropriately be credited as cost-savings.

A key takeaway is that Groups A and B would potentially not file for an EAD in the future, since the asylum application was adjudicated in less than the 365-day wait period to apply for employment authorization. Moreover, a key inference is that under LIFO, the majority of DHS affirmative asylum cases were adjudicated in less than one year. Accordingly, forgone filing costs for the 7,180 aliens are accredited a cost-savings. There is currently no filing fee for the initial (c)(8) EAD, and the time burden is currently 4.5 hours, which includes the time associated with submitting two passport-style photos along with the application.[196] The Department of State (DOS) estimates that passport photos cost about $20 per application.[197] At the lower wage bound of $12.05, the time related cost is $54.23, which, when added to the photo cost of $20, yields a per person cost of $74.25 (rounded to $74.3). The cost savings accruing to this group (A and B) would be $533,438 annually. At the high wage bound, cost-savings per person would be $184.10 and cost-savings to the group would be $1,321,748 annually. DHS notes that this cost-savings estimate assumes the full sub-population would not file under the circumstances. However, as was mentioned in the preamble, some aliens might file for an EAD after being granted asylum if they want to have documentation that reflects that they are employment authorized.

Group C involves DHS affirmative asylum adjudicated after 365 days. It is within this context that some assumptions need to be established. We assume that in the future, all EAD filers would file at exactly 365 days and the processing time would be the global average of 69 days (Table 11), noting that the processing time relies on the five-year average because it is not directly impacted by the change to LIFO asylum processing.[198] These assumptions make the analysis tractable and do not impose a loss of generality. Group C comprises those whose asylum claim is decided after 434 days (the sum of the 365 day wait and the average 69 EAD processing days). This group of 981 cases comprises 2.8 percent of the narrowed baseline. For this group, the EAD is binding (*i.e.,* it provides employment benefits prior to an asylum decision), and the impact accrues to the difference between the global average current EAD-wait time of 283 days (Table 11) and 434 days (the estimated new average wait time), which is 151 days.

For Group D, affirmative asylum is currently adjudicated between 365 and 434 days. For Group D, under the baseline the EAD was approved before the asylum decision, and was therefore binding. But under the final rule, retaining the assumptions from above concerning average EAD processing time of 69 days, the EAD would ''switch'' to a non-binding state because it would be granted after the asylum application was adjudicated. As a result, there would be two impacts. First, the distributional effect to Group D is equal to the current EAD benefit (the current EAD benefit would, by definition, be strictly greater than zero). The average calendar-day impact to this 2.3 percent of the narrowed baseline, or 806 aliens, is calculated to be 130 days. Secondly, because under this rule the asylum application will be adjudicated after 365 days but before the EAD approval, the EAD filing costs will become sunk (*i.e.* while the applicant would apply for an EAD, it would not result in any benefit). Based on the population of 806 and the per-person filing cost of $74.30 and $184.10, reflecting the wage bounds, sunk filing costs would be $59,849 and $148,294, respectively. Subtracting this amount from the filing cost savings (Groups A and B) generates ''net cost-savings'' that will range from $473,588 to $1,321,748.[199]

The remainder of the narrowed EAD approval baseline applies to DHS referrals to DOJ–EOIR, which comprise 26,056 cases (Group E). DHS cannot partition these cases into cost segments akin to Groups A–D. While the data does allow DHS to calculate the average wait time in terms of when asylum was filed and when the EAD was approved for DHS referrals to DOJ–EOIR, because we do not have data concerning the decision on the asylum application the interaction between the EAD and asylum decision cannot be calculated. DHS analysis indicates that the impact is 133 days (the difference between the global average current EAD-wait time for Group E and the estimated new average wait time under this rule), and it is requisite to justify why this figure is reported as opposed to the 151-day impact for Group C. In practice, the average wait time and EAD processing times for Group C differ very slightly from the global averages reported in Table 11, but the difference is not statistically significant. However, the current wait for DHS referrals—measured strictly as the time interval between the filing for affirmative asylum and the EAD approval—is larger, at 301 days, and the difference is

[196] DHS is currently drafting a final comprehensive fee rule such that on the effective date of that rule, there may be changes to the burdens and filing costs reported herein.

[197] DOS estimates an average cost of $10 per passport photo in the Paperwork Reduction Act (PRA). Supporting Statement found under OMB control number 1450–0004. A copy of the Supporting Statement is found on *Reginfo.gov* at: *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201102-1405-001* (see question #13 of the Supporting Statement).

[198] The 365-day benchmark is relied upon because makes the ensuing analysis and cost estimation tractable. In reality, some aliens will wait until after 365 days if they need to resolve outstanding applicant-caused delays. However, it is also noted that submitted comments claimed that the 365-day wait period to file for an EAD is too long. As such, it is reasonable to assume that filers would generally file as soon as they can, which will be 365 days.

[199] Conceptually, a fifth group, could be added, under for which asylum was adjudicated after 365 days but before the EAD approval. There would be no earnings impact as a result of this provision, but analysis reveals that no cases would fit this conceptual category.

statistically significant.[200] As a result the difference in day-impact between Group C (151 days) and Group E (133 days) is 18 days, which is exactly the difference in current wait times between the two, at 283 and 301, in order.

TABLE 13—NARROWED BASELINE OF EAD APPROVALS THAT COULD BE ANALYZED

Group	Population	Share (%)	Group description	Average days
Group A ..	3,852	11.0	DHS asylum adjudicated <365 days; EAD binding	53
Group B ..	3,327	9.5	DHS asylum adjudicated <365 days; EAD non-binding	0
Group C	981	2.8	DHS asylum adjudicated >434 days; EAD binding by definition	151
Group D	806	2.3	DHS asylum adjudicated between 365–434 days; EAD currently binding	130
Group E ..	26,056	74.4	DHS referrals to DOJ–EOIR	133

DHS notes that while working with averages makes the analysis tractable and clearer, a caveat is that we rely on the assumption that the (c)(8) I–765 processing time is the same as the average from FY 2014 to FY 2018 (*i.e.* before), and after this rule.[201] In a sense too, we assume that the I–589 processing times, when we benchmark to the LIFO protocol, will be the same as well. If either change, the costs developed in Table 14 could vary. There could be two sources of such variation in the monetized costs. First, the populations of the subgroups could change, and, second, the day impacts could also change.

Table 14 (A and B) breaks out the cost for each group presented in Table 13. The population germane to each group is repeated, as is the day impact. The following three columns translate the information into quantified costs. The data presented are undiscounted, with the low wage estimates provided in Table 14(A) and the upper bound wage estimates provided in Table 14(B).

TABLE 14(A)—365-DAY EAD FILING WAIT COST PROJECTIONS BASED ON THE LOWER WAGE BOUND

[Undiscounted, annual]

Group	Population	Day impact	Costs per person (day impact × $58.83)	Costs (population × costs per person)	Tax impacts (costs × 15.3%)
	3,852	53	$3,648	$14,053,590	$2,150,199
	3,327	0	0	0	0
	981	151	10,393	10,191,866	1,559,355
	806	130	8,948	7,207,587	1,102,761
	26,056	133	9,154	238,530,155	36,495,114
Subtotals				269,983,197	41,307,429
Minus: Net costs-savings =				473,588	
Equals: Grand total =				269,509,609	41,307,429

TABLE 14(B)—365-DAY EAD FILING WAIT COST PROJECTIONS BASED ON THE UPPER BOUND WAGE BOUND

[Undiscounted, annual]

Group	Population	Day impact	Costs per person (day impact × $208.32)	Costs (population × costs per person)	Tax impacts (costs × 15.3%)
A.	3,852	53	$11,041	$42,534,415	$6,507,766
B.	3,327	0	0	0	0
C.	981	151	31,456	30,846,571	4,719,525
D.	806	130	27,082	21,814,391	3,337,602
E.	26,056	133	27,707	721,932,323	110,455,645
Subtotals				817,127,700	125,020,538
Minus: Net costs-savings =				1,173,454	
Equals: Grand total =				815,954,246	125,020,538

[200] The tests of significance for differences in the means for the global population and Group C population report exact probability values (p-values) of .124 and .179, allowing determination that the minute differences are not significant at the 95 percent level of confidence. The p-value for the difference in the mean of 301 for DHS referrals is .042, allowing determination that it is significantly different than the global of 283.

[201] DHS also separately published an NPRM entitled ''*Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I–765 Employment Authorization Applications*,'' DHS Docket No. USCIS–2018–0001. If adopted as a Final Rule, that rule would affect current EAD processing times under the *Rosario* v. *DHS* court order. However, based on USCIS's best estimate of what will occur after the 30-day rule becomes effective (as discussed in that rule), USCIS does not expect average processing times would meaningfully differ from the historical average processing times relied upon in this analysis.

Subtracting the net cost-savings from the subtotals yields the total costs of the rule in terms of lost or delayed earnings from the 365-day wait for 39,000 of the 153,381 EADs affected annually, which DHS estimates could range from $269.5 million to $816.0 million annually, depending on the wage of the asylum worker. Similarly, the reduction in tax transfer payments from employers and employees to the federal government could range from $41.3 million to $125.0 million annually, depending on the wage and if companies cannot find reasonable substitutes for the labor the asylum applicant would have provided.[202] The annual midrange for costs and taxes are $542.7 million and $83.2 million annually, in order. However, DHS notes that the lack of data about DHS referrals precluded our ability to parse out potentially lower cost segments of the 26,056 annual affirmative cases referred to DOJ–EOIR, as we were able to do with DHS-adjudicated asylum applications. This inability likely results in a dual effect. First, for some segments, the day gap would be lower than the average 133 days, thus reducing deferred or lost wages and tax transfers. In addition, there would be cost savings that would accrue to forgone filings as some might not need to file a (c)(8) I–765. As it relates to defensively-filed asylum cases, as was seen in groups A–D of affirmative cases, there could be cost-savings from no longer filing an I–765, and for cases in which the EAD was filed after 365 days, this rule will not have an impact.

In the above section, DHS analyzes 39,000 of the 153,381 affected EAD approvals for which DHS could obtain specific data to assess the impacts of the 365-day EAD filing wait time. In this section, DHS analyzes the remaining 114,381, the ''residual'' population, which contains three groups of EAD cases linked to asylum: (i) What is likely a small number of DHS affirmative cases for which viable data could not be ascertained; (ii) DHS affirmative asylum cases in which the asylum claim was pending; and (iii) defensive cases. Since we have incomplete data on this population, DHS estimates the day-impact as the difference between the future projected 434 days and the global current average of 283 days (EAD wait time), or 151 days.

For the residual population, the cost impact at the low wage bound is $10,393 each (151 days multiplied by $68.83), which, at a population of 114,381, generates $1.189 billion in lost earnings and, if companies cannot find reasonable substitutes for the labor the asylum applicant could have provided, could generate a reduction of $181.9 million in taxes transferred from employers and employees to the federal government annually. The cost impact at the upper wage bound is $31,456 each (151 days multiplied by $208.32), which, at a population of 114,381, generates $3.598 billion in lost earnings and an associated potential $550.5 million reduction in tax transfers annually.

The costs reported above represent a maximum estimate of the potential impact for this residual population. This is because DHS lacks data on the how many days after filing for asylum these applicants apply for an EAD and how many days after filing for an EAD these applicants receive an asylum decision, which would allow DHS to parse the lower cost segments. Specifically, there may be a portion of the residual population that currently waits more than 365-days to apply for an EAD. The estimated 151-day delay would be overstated for this group and would decrease the above estimated impact. Additionally, there may be a portion of the residual population that would receive an asylum decision in less than 434 days. The estimated 151-day impact would also be overstated for this group. Furthermore, aliens who receive an asylum decision in less than 434 days would not have to file for an EAD under this rule, resulting in cost savings for forgone future filings. However, DHS notes that a large number of defensive cases are unlikely to be adjudicated before 434 days. Although DHS does not have the information to map defensive asylum cases to the associated EADs, DHS was able to obtain data on defensive asylum claims that captured the date the asylum case was received, and the completion date. Our analysis reveals that for FY 2014–2018 the average time interval between the two days was 624 days. Since defensive asylum processing times have been on average (over the studied period) greater than 434 days, relying on the 151-day impact period is a reasonable estimate. Nevertheless, because 151 days is by definition the maximum impact allowable in our impact setup, the estimates are still overstated because at least some of the defensive cases (and the DHS affirmative cases not included in the 39,000 batch with analyzable information) would invoke asylum decisions less than 434 days. As a result, the true day-impact for some of the residual population would be strictly less than 151 days.

This rule incorporates a biometrics requirement into the employment authorization process for asylum seekers. Specifically, aliens will be required to appear at an ASC for biometrics collection and pay a biometrics services fee. The biometrics requirement will apply to (c)(8) I–765 filers, for both initial and renewal EAD applications. Biometrics are currently collected for all (both affirmative and defensive) Form I–589 applicants, and they are exempt from paying the $85 biometric services fee. However, biometrics are not currently collected when asylum applicants apply for employment authorization. This rule will not impact the asylum filing biometrics protocol, but would require biometrics collection at the EAD filing stage for (c)(8) I–765 applicants, as well as payment of the biometric services fee, which is currently $85.

To estimate the cost of this biometrics requirement, we begin with the population of 290,094, which, tallied earlier, comprises the initial, renewal, and potential (c)(11) transfer populations. Biometrics are also not currently collected for (c)(11) I–765 filers and thus would also be a new requirement for these 13,000 annual filers. First, as the analysis for the 365-day filing wait period demonstrated, a portion of filers, Groups A and B from above (20.5 percent), would potentially not file under the rule because the asylum decision would precede the EAD approval under this rule (under the LIFO protocol). We scale the population by this percentage to yield an adjusted population of 230,625 ($290{,}094 \times ((1 - 0.205))$). Even under broad current or planned biometrics collection, there are often cases in which some individuals do not submit biometrics or pay the $85 biometric services fee. This section develops proxy metrics to allow for equitable estimations to populations not yet existent, in context. Therefore, the second stages of the population adjustment require a more detailed, technical approach. This approach is developed next.

When an alien appears at a DHS–USCIS ASC for a biometric collection appointment, their biometrics are digitally collected and stored in the Customer Profile Management System (CPMS) database, which is the USCIS data repository for biometrics submissions. DHS obtained biometric submission data from CPMS for the five-

[202] The calculations for the tax impacts are conducted as follows. For the lower wage bound, the aggregated income tax rate of 15.3 percent multiplied by the cost sub-total of low end of $269,983,197 yields $41,307,429. For the upper wage bound, the aggregated income tax rate of 15.3 percent multiplied by the cost sub-total of low end of $817,127,700 yields $125,020,538.

year period 2013–2017. The five-year average across all USCIS immigration forms was 3,619,794. Detailed analysis of the biometrics submissions data reveals that a small group of nine forms accounted for the vast majority, 90.5 percent, of the average biometrics submissions. These forms are: (1) Form N–400, Application for Naturalization; (2) Form I–90, Application to Replace Permanent Resident Card; (3) Form I–765, Application for Employment Authorization; (4) Form I–485, Application to Register Permanent Residence or Adjust Status; (5) Form I–589, Application for Asylum and Withholding of Removal; (6) Form I–821D, Consideration of Deferred Action for Childhood Arrivals; (7) Form I–131, Application for Travel Document; (8) Form I–751, Petition to Remove the Conditions on Residence; and (9) Form I–601A, Application for Provisional Unlawful Presence Waiver (noted here are that two of the forms, I–765 and I–589 are involved in this rule). The remainder majority of forms are characterized by very small populations, very few biometrics submissions (for which many accounted for zero submissions in terms of percentage and number), and unspecified form types. The biometrics volumes for the prevalent group of nine forms (''PREV–9'') are presented in Table 15.

TABLE 15—BIOMETRIC SUBMISSIONS BY FORM GROUPING
[FY 2013–FY 2017]

Form	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	5-Year Avg.	Share
PREV–9							
N–400	778,172	779,221	772,648	961,092	1,013,252	860,877	23.78
I–90	554,918	790,069	780,050	743,589	770,552	727,836	20.11
I–765	421,011	391,650	800,711	489,553	588,008	538,187	14.87
I–485	459,298	506,991	494,664	500,369	547,755	501,815	13.86
I–589	95,938	116,668	173,248	230,900	304,308	184,212	5.09
I–821D	350,339	102,192	242,101	125,489	224,899	209,004	5.77
I–131	89,146	87,012	87,755	88,977	86,299	87,838	2.43
I–751	185,587	172,478	93,359	71,823	83,417	121,333	3.35
I–601A	16,381	37,293	48,978	52,654	67,494	44,560	1.23
PREV–9 (all)	2,950,790	2,983,574	3,493,514	3,264,446	3,685,984	3,275,662	90.5%
Other Forms	241,605	198,537	709,577	328,339	242,604	344,132	9.5%
Total	3,192,395	3,182,111	4,203,091	3,592,785	3,928,588	3,619,794	100%

The remaining 88 percent of forms comprise less than 10 percent of average biometrics submissions. The future population for biometrics submission under this rule does not yet exist, in context. To estimate the future population, a method needs to be developed to extrapolate functional conditions from the existing state of affairs. To accomplish this, a biometrics collection rate (BCR), a formula estimating the proportion of biometric submissions out of the total age-eligible population within a form type, is developed. The BCR formula is below (Formula 1):

Formula 1: Biometrics Collection Rate (BCR)

$$BCR = \frac{BI}{P}$$

Where BCR represents the Biometrics Collection Rate for a specific form type, BI represents ''intensity,'' the average number of aliens who currently submit biometrics by that form type in a fiscal year, and P represents the volume of age-eligible benefit requests associated with a form type by fiscal year. The calculations for the BCR for PREV–9 are shown in Table 16. The average biometrics submissions are repeated from Table 15 as the five-year average, and the average age eligible population is also the five-year average. The results in Table 16 call for explanation.

TABLE 16—BIOMETRICS COLLECTION RATE BY FORM GROUPING
[FY 2013—FY 2017]

	Average biometrics submissions	Average age eligible filing population	BCR
PREV–9 set			
I–765	538,187	1,892,366	0.284
I–131	87,838	409,699	0.214
N–400	860,877	839,601	1.025
I–90	727,836	703,707	0.985
I–485	501,815	612,148	0.820
I–821D	209,004	370,838	0.564
I–589	184,212	127,499	1.445
I–751	121,333	164,441	0.738
I–601A	44,560	45,633	0.976
Two added forms			
I–918	43,235	52,805	.819
I–914	1,907	2004	.952
Raw BCR for regrouped set	.....	.....	.8363

The BCR for different form types varies due to the eligibility categories and age characteristics of the filers and dependents. For the Forms N–400 and I–589, the BCR is higher than unity. The reason is that biometrics are currently routinely collected on all principal applicants for these forms as well as derivative family members who

generally submit biometrics alongside the principal applicant. Two forms, the I–131 and I–765, have low BCRs, even though biometrics are routinely collected for these forms. But these BCRs are ''artificially'' low because of concurrent filings; in many cases biometrics are submitted via a concurrent form. As has been stated earlier, the goal is to broadly collect biometrics from (c)(8) I–765 filers, but there will be exemptions and waivers (that have nothing to do with this rule).[203] Hence, a proxy for BCR estimation should be less than unity, but be positive and relatively high, and while some analyst subjectivity is involved in our methodology, given the unknowns, it is a rational approach. The BCRs for the four forms in PREV–9 not discounted immediately above due to ''artificially'' high/low BCRs are assessed to be reasonable and have a good deal of range, from .564 to .985. Since it is desirable to have as many relevant forms as possible in the proxy collection, we examined the BCRs for the remaining [specific] forms and proceeded to add two, which are the only forms external to PREV–9 that have high BCRs: Form I–914, Application for T Nonimmigrant Status, and Form I–918, Petition for U Nonimmigrant Status. The respective BCRs for these two additional forms, in order, are .952 and .819, as is shown in Table 15. Recalibrating, this rebranded group of 7 forms represent just 9 percent of the form captures under CPMS (including the non-specific types) but nearly half (46 percent) of average biometrics submissions.

For the seven proper forms, we obtain the unweighted average BCR of 83.63 percent. We do not have *a priori* information on which specific forms (or a subgroup of them) would have a BCR closest to the not yet existing, in context, rule population. Similarly, there is no ''target'' or desired BCR that we seek to impugn to this population under this rule. Hence, we use the raw average as opposed to a weighted one, because the former weights each BCR in the group equally. Scaling the adjusted population of 230,625 baseline biometrics by .8363 yields a projected biometrics submitting population (BSP) of 192,871.

Before estimating the costs of the biometrics requirement, another proxy metric is needed, and hence another formula is required. Not all of the biometrics submissions will involve the $85 biometric services fee, as there may be applicable exemptions and waivers (that have nothing to do with this rule). To estimate the fee paying population, DHS uses the total volume of biometric services fee payments and the overall volume of biometric submissions to derive a biometrics fee ratio (BFR), a formula identifying the portion of aliens who pay the $85 biometric services fee out of the total population of those submitting biometrics who may be required to pay the fee (for example, excluding I–589 applicants because they are not required to pay the corresponding biometrics fee).

The formula for the BFR calculation is provided below (Formula 2):

Formula 2: Biometrics Fee Ratio

$$BFR = \frac{F}{BI}$$

Where BFR represents the Biometrics Fee Ratio, F is the estimated number of aliens who pay the biometric services fee in a fiscal year and BI represents the number of biometrics submissions in a given fiscal year, which was initialized above in the BCR setup. The fee-paying volume for biometrics services is available from FY 2015 to FY 2017 only. The BFR is calculated by comparing the biometric fee paying volumes to total biometrics submissions. In FY 2017, for example, a BFR of 0.77 results by dividing a volume of 2.80 million biometric services fee payments by a total of 3.62 million biometrics submissions.[204] Stated somewhat differently, for every known non-exempt benefit request with a biometrics submission, DHS estimates that about 77 percent of aliens pay the biometric services fee while the remaining 23 percent of aliens receive a fee exemption, a biometric services fee waiver, or fall outside of the current age restrictions for submitting the $85 biometric services fee. Table 17 provides the BFR calculations for each fiscal year, including the total and three-year average. The generalized BFR that obtains is .755, which is weighted for the volume size each year, since it is derived from the total that will be used for subsequent calculations.[205]

TABLE 17—BIOMETRIC FEE RATIO, ALL FORMS

[FY 2015–FY 2017]

Fiscal year	Fee-paying volume	Biometric submissions (excludes Form I–589)	Biometrics fee rate (BFR)
FY 2015	2,765,927	4,029,843	0.686
FY 2016	2,746,261	3,361,885	0.817
FY 2017	2,801,648	3,624,280	0.773
Total	8,313,836	11,016,008	.....
Average	2,771,279	3,672,003	0.755

Applying the average BFR of .755 to the BSP biometrics population of 192,871 yields an estimated 145,618 biometric services fee payments (BFP) annually.

Having undertaken several steps to develop the appropriate BSP and ensuing BFP, the costs germane to the biometrics requirement can be developed. The submission of biometrics would require that aliens travel to an ASC for the biometric

[203] Waivers are limited and would apply when there the applicant is unable to provide fingerprints because of a medical condition.

[204] Calculation: 2,801,648 fee-paying volume for FY 2017/(3,928,588 total biometrics collection volume for FY 2017—304,308 Form I–589 biometrics collection volume for FY 2017) = 0.77. The Form I–589 is excluded in the BFR calculations because there is no fee associated with this form.

[205] Calculation: 2,771,279 average Fee-Paying Volume/3,672,003 average biometric collection volume exclusive of Form I–589 biometric submissions = 0.75 (rounded).

services appointment.[206] In past rulemakings, DHS estimated that the average round-trip distance to an ASC is 50 miles, and that the average travel time for the trip is 2.5 hours.[207] The cost of travel also includes a mileage charge based on the estimated 50 mile round trip at the 2019 General Services Administration (GSA) rate of $0.58 per mile.[208] Because an individual alien would spend 1 hour and 10 minutes (1.17 hours) at an ASC to submit biometrics, summing the ASC time and travel time yields 3.67 hours. At this point we will also incorporate the added time burden of 15 minutes (.25 hours), that asylum applicants will spend answering additional Form I–765 questions and reading the associated instructions, in order to consolidate the costs. The total time is therefore 3.92 hours. At the low and high wage bounds, the opportunity costs of time are $47.24 and $142.96. The travel cost is $29, which is the per mileage reimbursement rate of .58 multiplied by 50 mile travel distance. Summing the time-related and travel costs generates a per person biometrics submission cost of $76.24, at the low wage bound and $171.96 at the high wage bound.

The total annual cost for the BSP would be $14,703,739 at the low end and $33,166,617 at the high end. Multiplying the estimated BFP by the $85 fee yields $12,377,518 annual biometric services fee costs.[209] Combining the costs to the BSP and fee payments for the BFP, at the low and high wage, in order, are estimated at $27,081,256 and $45,544,134, annually.

DHS will also eliminate the recommended approvals for asylum, under which an asylum applicant can file an EAD request upon initial favorable review by an asylum officer, prior to completion of all background, security, and related checks. No alien having already benefitted from the preferential treatment would be adversely impacted. However, DHS must treat the earnings from recommended approvals that would have occurred in the future as costs because the final rule would eliminate these earnings. For the average 3,072 annual recommended approvals, not all applied for EADs, and not all of those that applied were granted EADs. The data reveal that the share of recommended approvals that eventually were approved for EADs was 62.8 percent, yielding 1,930 annual cases. The data was organized by fiscal year and the requisite time interval was calculated by subtracting the date of the associated asylum filing from the EAD approval date. The results are presented in Table 18:

TABLE 18—IMPACT OF RECOMMENDED APPROVALS

(FY 2014–2018)

Fiscal year	Average calendar days from asylum filing to EAD approval		Day difference
	No recommended approval	Recommended approval	
2014	330	246	83
2015	317	262	56
2016	305	264	41
2017	310	268	42
2018	234	193	40
2014–2018 average	.....	.....	52

As Table 18 reveals, recommended approvals have benefited by having EADs commence validity an average of 52 days sooner than others. This 52-day raw average day tally translates into a scaled impact of $3,579 per person at the low wage and (52-day impact × $68.83), and $10,833 at the high wage (52-day impact × $208.32). Multiplying these costs by 1,930 annual cases yields a total labor income impact of $6,907,779 and $20,906,995, in order. Similarly, the reduction in tax transfer payments from employers and employees to the government could range from $1,056,890 to $3,198,770 annually, depending on the wage and if companies cannot find reasonable substitutes for the labor the asylum applicant would have provided. The midpoint of the range for costs and taxes are $13,907,387 and $2,127,830, in order.

DHS is revising its regulations prescribing when employment authorization terminates following the denial of an asylum application. Under the baseline, DHS affirmative-asylum denials have concomitant approved EADs terminated within 60 days after the adverse asylum decision or on the date of the expiration of the EAD, whichever is longer. Under this rule employment authorization would be terminated effective on the date the affirmative asylum application is denied. However, if DHS refers the case to DOJ–EOIR, employment authorization will be available to the alien while in removal proceedings. DHS analysis of the data reveals that 360 EADs associated with a denied DHS Affirmative asylum application are currently valid that could be terminated earlier than they otherwise would, when the rule goes into effect. In addition to the costs of potentially terminated EADs in the first year, the analysis reveals about 215 EADs have been issued to concomitant asylum denials annually.

[206] DHS expects the majority of biometrics appointments to occur in the United States at an ASC. However, in certain instances aliens may submit biometrics at an overseas USCIS office or DOS Embassy or consulate. However, because DHS does not currently have data tracking the specific number of biometric appointments that occur overseas, it uses the cost and travel time estimates for submitting biometrics at an ASC as an approximate estimate for all populations submitting biometrics in support of a benefit request.

[207] *See* DHS Final Rule, *Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives,* 78 FR 535 (Jan. 3, 2013).

[208] The General Services Administration mileage rate of $0.58, effective January 1, 2019, available at: *https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates.*

[209] DHS is currently finalizing a comprehensive fee rule. DHS did not incorporate the anticipated costs of providing biometrics services for (c)(8) I–765 applicants into the cost projections for providing biometric services used in the fee rule because this rule was not final at the time DHS developed the USCIS fee schedule. Therefore, DHS was unable to incorporate the cost of biometrics services for the (c)(8) EAD population into the underlying form fee, as it did for most other applications. DHS expects that, as of the effective date of the fee rule, (c)(8) EAD applicants will not pay more than the $85 for the biometrics services fee; thus, the costs related to biometrics reported herein may overstate the actual costs in the future.

For the pool of 360 current EADs, the time remaining between the present date of analysis (a proxy for the rule becoming effective) and the time left on each EAD was calculated. As stated above, under the baseline, the EADs linked to these DHS affirmative-asylum would end within 60 days after the adverse asylum decision, or, on the date of the expiration of the EAD, whichever is longer. For the cases with less than 60 days left, calculating the precise cost of the rule to these cases would require a complex analysis of the interaction between two variables, the asylum decision date and the EAD validity period, as well as the rule proxy date. To make the analysis tractable, we assign these cases the 60-day period, noting that this assignment would likely somewhat overstate the costs to these cases. After the recalibration to 60 days for the cases in with less than 60 days remaining, the average time left on the EADs is 356 days. For the annual flow of 290 EADs, the cost basis is the day-time difference between the adverse asylum decision and the end of the EAD validity. For these cases the average impact is 471 days.

The costs of the provision to end some EADs early can now be tallied, since the appropriate impact metrics have been calculated. For the existing EADs, the cost impact at the low wage bound is $24,503 each (356 days multiplied by $68.83), which is $8,821,253 in lost earnings and generates a potential $1,349,652 reduction in employment taxes transferred from employers and employees to the federal government if companies cannot find reasonable substitutes for the labor the asylum applicant would have provided. The cost impact at the upper wage bound is $74,162 each (356 days multiplied by $208.32), which is $26,698,291 in lost earnings and generates a potential $4,084,839 reduction in tax transfers. These specific costs and tax transfer impacts would be incurred the first year the rule takes effect.

For the annual flow of 215 annual EADs, the cost impact at the low wage bound is $32,149 each (471 days multiplied by 68.83), which is $6,970,070 in lost earnings and generates a potential $1,066,421 reduction in employment taxes transferred from employers and employees to the federal government if companies cannot find reasonable substitutes for the labor the asylum applicant would have provided. For the annual flow of 215 EADs, the cost impact at the upper wage bound is $98,119 each (471 days multiplied by 208.32), which is $21,095,525 in lost earnings and a potential $3,227,616 reduction in tax transfers. These costs and tax transfer impacts would be incurred annually.

Adding up the costs and transfers for both the existing and future EADs that could be impacted the costs would be $15,791,323 at the lower wage bound and $47,793,816 at the upper wage bound for the first year the rule is in effect. Similarly, the potential reduction in employment taxes would range from $2,416,072 to $7,312,454. The midpoint estimate for total costs and taxes, in order, are $31,792,569, and $4,864,263.

Having estimated the costs and tax transfers for the provisions in which costs and transfers could be quantified, we now tally them and present the total quantified costs and transfers of the final rule. There are essentially three quantified modules. First is the flow volume of costs that will be incurred in each of ten years. As was shown above, for the biometrics requirement, costs were allotted to the time-related opportunity costs associated with submitting biometrics, the cost of travel, a form burden increase, and the biometrics service fee payments. For the proposal to eliminate recommended approvals, costs were developed as delayed earnings of labor. For the proposal to end some EADs early, cost flows are attributed to forgone future earnings (for DHS affirmative cases only). For the 365-day EAD filing waiting period, costs were assigned to forgone or delayed earnings as well. For this provision, a robust analysis was offered for the 39,000 DHS affirmative asylum cases that could be analyzed, and a slightly less robust analysis was presented for DHS referrals to DOJ–EOIR, due to data constraints. Lastly, a maximum estimate of forgone earnings was estimated for the residual population under the 365-day filing waiting period. There is also a net cost-savings due to the potential that some current filers may not need to file for an EAD in the future.

Second, with the exception of the biometrics proposal, the other provisions for which quantified cost flows are allocated, above, also incur a reduction in tax transfer payments from employers and employees to the government if companies cannot find reasonable substitutes for the labor the asylum applicant would have provided. As a third module, there could be a first year added cost and also a tax transfer applicable to the existing pool of 360 EADs that could be ended early. Table 19 presents the flow costs for the relevant provisions, undiscounted and in order of the low (A) and high wage (B) bounds relied upon. The cost figures for the 365-day EAD wait include the net cost-savings.

TABLE 19 (A)—ANNUAL FLOW COSTS FOR PROVISIONS OF THE RULE IN WHICH COSTS COULD BE MONETIZED—LOW WAGE BOUND

[Undiscounted, 2020–2029]

Year	365 day EAD filing	Biometrics	End some EADs early	Eliminate recommended approvals	Residual (365 day EAD filing)	Annual total
1	$269,509,609	$27,081,256	$15,791,323	$6,907,779	$1,188,761,733	$1,508,051,700
2	269,509,609	27,081,256	6,970,070	6,907,779	1,188,761,733	1,499,230,447
3	269,509,609	27,081,256	6,970,070	6,907,779	1,188,761,733	1,499,230,447
4	269,509,609	27,081,256	6,970,070	6,907,779	1,188,761,733	1,499,230,447
5	269,509,609	27,081,256	6,970,070	6,907,779	1,188,761,733	1,499,230,447
6	269,509,609	27,081,256	6,970,070	6,907,779	1,188,761,733	1,499,230,447
7	269,509,609	27,081,256	6,970,070	6,907,779	1,188,761,733	1,499,230,447
8	269,509,609	27,081,256	6,970,070	6,907,779	1,188,761,733	1,499,230,447
9	269,509,609	27,081,256	6,970,070	6,907,779	1,188,761,733	1,499,230,447
10	269,509,609	27,081,256	6,970,070	6,907,779	1,188,761,733	1,499,230,447
10-year total	2,695,096,090	270,812,561	78,521,953	69,077,790	11,887,617,330	15,001,125,724

TABLE 19 (B)—ANNUAL FLOW COSTS FOR PROVISIONS OF THE RULE IN WHICH COSTS COULD BE MONETIZED—UPPER WAGE BOUND

[Undiscounted, 2020–2029]

Year	365 day EAD filing	Biometrics	End some EADs early	Eliminate recommended approvals	Residual (365 day EAD filing)	Annual total
1	$815,954,246	$45,544,134	$47,793,816	$20,906,995	$3,597,968,736	$4,528,167,927
2	815,954,246	45,544,134	21,095,525	20,906,995	3,597,968,736	4,501,469,636
3	815,954,246	45,544,134	21,095,525	20,906,995	3,597,968,736	4,501,469,636
4	815,954,246	45,544,134	21,095,525	20,906,995	3,597,968,736	4,501,469,636
5	815,954,246	45,544,134	21,095,525	20,906,995	3,597,968,736	4,501,469,636
6	815,954,246	45,544,134	21,095,525	20,906,995	3,597,968,736	4,501,469,636
7	815,954,246	45,544,134	21,095,525	20,906,995	3,597,968,736	4,501,469,636
8	815,954,246	45,544,134	21,095,525	20,906,995	3,597,968,736	4,501,469,636
9	815,954,246	45,544,134	21,095,525	20,906,995	3,597,968,736	4,501,469,636
10	815,954,246	45,544,134	21,095,525	20,906,995	3,597,968,736	4,501,469,636
10-year total	8,159,542,460	455,441,341	237,653,541	209,069,950	35,979,687,360	45,041,394,652

The data in Table 19 are utilized to attain the discounted costs of the rule. The total ten-year present values at the low wage bound in order of 3 and 7 percent rates of discount, are $12.80 billion and $10.54 billion. Since the first year of the rule's effects will include the additional costs applicable to ending some EADs early, the annual effect is not constant across all ten years is not the same, and therefore, the average annualized equivalence costs are very slightly different across interest rates. At the low end wage the average annualized equivalence cost is $1.50 billion (at both interest rates). At the upper wage bound, the total ten-year present values, in order of 3 and 7 percent rates of discount, are $38.42 billion and $31.64 billion. The average annualized equivalence costs are $4.50 billion and 4.51 billion, in order.

Table 20 reports the total quantified tax transfers for the rule, based on the provisions for which quantification is possible.

TABLE 20—ANNUAL TAX TRANSFERS FOR PROVISIONS UNDER WHICH TAXES COULD BE ESTIMATED AND MONETIZED

[Undiscounted]

Provision	Low wage bound	Upper wage bound
365 day EAD filing wait	$41,307,429	$125,020,538
Biometrics	0	0
End Some EADs early	1,066,421	3,227,615
Eliminate Recommended Approvals	1,056,890	3,198,770
Residual 365-day filing wait	181,880,545	550,489,217
Subtotal annual tax transfers	225,311,285	681,936,140
Plus: First year added tax of ending some EADs early	1,349,652	4,084,839
Equals: Total tax transfers in first year	226,660,937	686,020,979

Finally, this section concludes with Table 21, which collates the monetized impacts of the rule, in terms of both costs (A) and taxes (B), and provides the midrange of them.

TABLE 21(A)—MONETIZED COSTS OF THE RULE

[Discounted, $ billions, 2020–2029]

	Low wage	Upper range	Range midpoint
3 percent discount (ten-year PV)	$12.80	$38.42	$25.61
7 percent discount (ten-year PV)	10.54	31.64	21.09
3 percent discount (average annual equivalence)	1.50	4.50	3.00
7 percent discount (average annual equivalence)	1.50	4.51	3.00

TABLE 21(B)—MONETIZED TAX TRANSFERS OF THE RULE

[$ billions, 2020–2029]

	Low wage	Upper range	Range midpoint
3 percent discount (ten-year)	$1.92	$5.82	$3.87
7 percent discount (ten-year)	1.58	4.79	3.19
3 percent discount (average annual equivalence)	0.23	0.68	0.45

TABLE 21(B)—MONETIZED TAX TRANSFERS OF THE RULE—Continued

[$ billions, 2020–2029]

	Low wage	Upper range	Range midpoint
7 percent discount (average annual equivalence)	0.23	0.68	0.45

In concluding this section, this final rule is considered an E.O. 13771 regulatory action. DHS estimates the total cost of this rule is $1.678 billion, based on the midpoint of the costs annualized using a 7 percent discount rate over an infinite time horizon, in 2016 dollars, and discounted back to 2016 for E.O. 13771 accounting purposes.

Module 3. Unquantified Costs and Transfers

In this section, DHS addresses impacts of the rule that DHS has considered, but is unable to quantify. First, DHS recognizes that there may be costs to asylum applicants, legal organizations that assist asylum applicants, and others for spending time becoming familiar with this rule. In addition, there are several provisions of the rule that will result in costs or distributional impacts, but for which DHS is unable to measure the size of the population and/or the possible costs and transfer payments in a quantitative fashion. For each of the provisions described below that impact asylum applicants' employment authorization, the resulting lost compensation will either represent transfers from asylum applicants to other available labor or serve a proxy for lost productivity, depending on if the business is able to find replacement labor for the job the asylum applicant would have filled. If businesses are unable to find replacement labor, it would both result in a loss of business productivity and also in a reduction in taxes transferred from asylum applicants and employers to Federal, state and local governments. As developed previously, DHS estimates per person per day lost earnings as between $68.83 and $208.32, depending on the wage the asylum applicant would have earned. And, if companies cannot find reasonable substitutes for the labor the asylum applicant would have provided, the lost earnings correspond to a reduction between $10.53 and $31.87 per person per day in taxes transferred from employers and employees to the federal government, depending on the wage. DHS addresses each of the remaining provision below.

DHS will exclude, with certain exceptions, aliens who entered or attempted to enter the United States other than lawfully through a U.S. port of entry on or after the effective date of the rule from eligibility for (c)(8) employment authorization. The rule will also exclude from eligibility for (c)(8) employment authorization aliens who have been convicted of an aggravated felony at any time, or has been convicted on or after the effective date of this final rule of a particularly serious crime or committed a serious non-political crime outside of the United States, or any alien who fails to establish that he or she is not subject to a mandatory denial of asylum due to any regulatory criminal grounds under 8 CFR 208.13(c). DHS is unable to estimate the population of aliens with pending asylum applications that would be impacted by the provisions dealing with illegal entry and criminality. These unknown persons will be precluded from obtaining an EAD until their asylum cases have been adjudicated. The length of time during which they will lose work authorization will depend on a number of factors, including if the asylum case will be affirmatively or defensively adjudicated and if the decision will be appealed.

Under current protocol, asylum applicants are currently allowed to renew their (c)(8) EADs while their cases are under review in Federal court. This rule will allow for Termination of EAD after Asylum Denial Affirmed by the BIA. Employment authorization would not be granted after the BIA affirms a denial of the asylum application and while the case is under review in Federal court, unless the case is remanded to DOJ–EOIR for a new decision. Some aliens may experience lost or deferred income due to this change in protocol. For aliens who file their asylum application on or after the effective date of this rule, DHS will deny (c)(8) EAD applications if such aliens have failed to file for asylum within one year of their last arrival in the United States, as required by law, unless and until an asylum officer or IJ determines that an exception to the one-year filing bar applies. DHS makes about 8,326 such referrals to DOJ–EOIR each year (Table 12). DHS has no data that would enable estimation of these effects as a result of the one-year filing bar provision. Specifically, while DHS does have data on the filing bar referrals and the associated I–765s, we do not have data on the outcome of these filing bar referrals. EADs linked to defensive asylum cases would also be impacted by the filing bar conditions being finalized but DHS does not have data to estimate the number of defensively filed cases affected. DHS recognizes that the one-year filing deadline exception is determined at the time of the asylum adjudication. Thus, aliens granted an exception to the bar by an asylum officer or IJ, would likely face deferred earnings and lost taxes while awaiting the decision. Aliens not granted an exception to the bar would likely not be granted an EAD and would lose earnings altogether. DHS does not have data to determine for how long these applicants may lose earnings.

DHS will apply the changes made by this rule to all initial and renewal applications for employment authorization filed on or after the effective date of the final rule, with limited exceptions. DHS cannot quantify how many of the 104,511 annual renewals would be subject to the criminal provisions when the rule goes into effect or how many would be precluded from obtaining an EAD.

As discussed previously, DHS is also revising its regulations prescribing when employment authorization terminates following the denial of an asylum application. In the above quantified analysis DHS estimates the cost of these changes for asylum cases denied by an asylum officer. DHS discusses here the impacts for asylum cases denied by an IJ. Under the baseline, when an IJ denies an asylum application, the EAD terminates on the date the EAD expires, unless the asylum applicant seeks administrative or judicial review. This rule provides that for cases USCIS refers to DOJ–EOIR and cases defensively filed with DOJ–EOIR, employment authorization would continue for 30 days following the date that the IJ denies the asylum application to account for a possible appeal of the denial to the BIA. If the alien files a timely appeal, employment authorization would continue, and the alien would be able to file a renewal EAD application. As shown in Table 9, from 2014–2018 DOJ–EOIR denied an average of 14,820 asylum applications annually. However, the data available to

DHS does not map DOJ–EOIR case dispositions to DHS employment authorizations, and thus we cannot estimate how many denied or dismissed asylum claims by an IJ or BIA are connected to authorized EADs, either on an annualized flow or current pool basis. For DHS affirmative asylum, the populations (215 and 360, in order) were small. The numbers are likely to be higher for DOJ–EOIR, since DHS makes so many referrals to them, and, since DOJ–EOIR solely handles defensive cases. Aliens with an EAD who are denied asylum would eventually be out of the labor force even without this rule. Therefore, the cost for an employer to replace the employee (turnover cost) is not a cost of this rule. However, this rule would impact the timing of when such workers would be separated, which could vary. This rule would result in employers incurring such turnover costs earlier than without this rule.

This seeks to clarify that aliens with a positive credible fear finding are not eligible to seek immediate employment authorization under 8 CFR 274a.12(c)(11), although, historically USCIS has granted many of these requests, an average of approximately 13,000 annually. Such aliens would still be eligible to apply for a (c)(8) employment authorization to become employment authorized subject to the eligibility changes in this rule, including the 365-day waiting period. Accordingly, applicants that apply for an EAD from the current (c)(11) category may experience a delay in earnings. It is possible that some of the applicants under this scenario would have their asylum decision within 365 days and thus would potentially not file for an EAD. It is recalled that an adjustment was made for this possibility in the development of the biometrics requirement provision costs. It is also possible that some may not file as transfers for other reasons. As a result, the actual affected population would most likely be below 13,000. DHS is unable to develop a cost of lost or delayed earnings for this group because it does not have the related asylum information, so DHS does not have the data necessary to correctly segment the costs.

While the purpose of the rule is to generate disincentives to applicants to prolong the adjudication of their asylum application, it establishes that any delay requested or caused by the applicant that is outstanding or has not been remedied by the time aliens files their initial (c)(8) EAD applications will result in denial of the EAD application. Any delays in receiving an EAD could generate economic hardship to aliens in terms of costs associated with reapplication for the EAD and delayed or lost earnings could be considered a cost. The rule amends existing language to clarify that an applicant's failure to appear to receive and acknowledge receipt of the decision following an interview and a request for an extension to submit additional evidence will be considered applicant-caused delays for purposes of eligibility for employment authorization. Any documentary evidence submitted fewer than 14 calendar days before the asylum interview (with allowance for a brief extension to submit additional evidence as a matter of discretion) may result in an applicant-caused delay if it delays the adjudication of the asylum application. The purpose of this provision is to improve administrative efficiency and aid in the meaningful examination and exploration of evidence in preparation for and during the interview. The purpose of the rule is to generate disincentives to applicants to cause any delays in the adjudication of their asylum application. While DHS has no way of predicting how the disincentives might take effect, in some cases, the changes in protocol could result in applicant-caused delays in receiving an EAD, and therefore could impose costs.

In addition to the major provisions, there are numerous technical changes, clarifications to existing language, and amendments to existing language. This rule clarifies how an asylum applicant's failure to appear for an asylum interview or biometric services appointment will affect his or her eligibility for asylum or employment authorization and provides a new timeframe and standard for rescheduling an asylum interview for the asylum application. In addition, DHS clarifies that USCIS is not obligated to send any notice to the applicant about his or her failure to appear at a scheduled biometric services appointment or an asylum interview as a prerequisite to denying the asylum application or referring it to an IJ. These amendments are intended to facilitate more timely and efficient case processing when applicants fail to appear for essential appointments. Finally, the amendments replace references to fingerprint processing and fingerprint appointment with the presently employed ''biometric services appointment.''

This rule also removes the language providing that an application for asylum will automatically be deemed ''complete'' if USCIS fails to return the incomplete application to the applicant within a 30-day period. There is no impact from this change because USCIS is already returning incomplete applications, and this rule would remove outdated regulatory text that no longer applies.

The rule also codifies certain protocols related to the length of EAD validity and DHS authorities in the asylum process. These amendments and technical codifications outlined above and discussed in more detail in the preamble could impact the specific protocol, timing, and variations in which applicants interact with DHS over the asylum and concomitant EAD process.

Finally, DHS acknowledges a number of additional distributional impacts from provisions that will impact employment authorization for asylum applicants. DHS recognizes that without employment authorization, asylum applicants will depend on support networks such as family, state-funded and other public agencies, and non-profit organizations. The longer an asylum applicant is without employment authorization, the longer the applicant's support network is providing assistance to the applicant. In addition, without employment authorization, potentially, there could also be a reduction in some applicants' decision to seek medical care. Some aliens may be able to obtain health insurance even without an employer and some health care costs related to these effects would potentially be incurred by the support networks and/or public assistance programs.

Any earnings loss or deferment could impact the applicants' support network including, but not limited to, family members, private and public charities and non-profit-organizations, non-governmental organizations (NGOs), attorneys, and state and local governments.

2. Benefits

It is not possible to monetize the benefits of this rule and thus DHS describes them qualitatively. This rule will reduce the incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications intended primarily to obtain employment authorization, allowing aliens with bona fide asylum claims to be prioritized. A streamlined system for employment authorizations for asylum seekers would reduce fraud and improve overall integrity and operational efficiency, thereby benefiting the U.S. Government and the public. For example, USCIS currently reviews an asylum application issued a recommended approval twice: First to

determine if it is initially approvable as a ''recommended approval,'' and then again after a recommended approval notice has been issued to the applicant to ensure that the applicant remains eligible for asylum based on the results of the background and security checks. Eliminating recommended approvals remove duplicative case processing tasks thereby enhancing USCIS efficiency.

These changes will remove incentives for aliens to enter the United States illegally for economic reasons and allow DHS to process bona fide asylum seekers who present themselves at the U.S. ports of entry in an expedited manner. DHS also believes these administrative reforms will encourage aliens to follow the lawful process to immigrate to the United States, which will reduce injuries and deaths that occur during dangerous illegal entries, and reduce expenditures by government agencies that are charged with enforcing the immigration laws of the United States. These impacts stand to provide qualitative benefits to asylum seekers, the communities in which they reside and work, the U.S. Government, and society at large.

The rule is also beneficial in the context that providing employment authorization to inadmissible and removable aliens undermines the removal scheme created by Congress and incentivizes such aliens to come to and remain in the United States.[210] Doing so also undermines the Administration's goals of strengthening protections for U.S. workers in the labor market.[211] Several employment-based visa programs require U.S. employers to test the labor market, comply with recruiting standards, agree to pay a certain wage level, and agree to comply with standards for working conditions before they can hire an alien to fill the position. These protections do not exist in the (c)(8) EAD program.

The biometrics requirement would provide a benefit to the U.S. Government by enabling DHS to know with greater certainty the identity of aliens seeking (c)(8) EADs and more easily vet those aliens for benefit eligibility. This would also provide DHS with the ability to limit identity fraud because biometrics are unique physical characteristics that are difficult to falsify and do not change over time.

3. Impact to Labor Force and Taxes

The rule, when finalized, is not expected to have a significant impact on states or the national labor force. The national civilian labor force is 164,546,000, for which the rule's maximum population of about 290,434 (first year) would represent just 0.18 percent of the labor force. DHS received some public comments expressing that the relative concentration of asylum seekers in certain areas could affect the labor market of those states. DHS obtained the civilian labor force figures by state (including the District of Columbia) for the most recent final data, applicable to February 2020.[212] DHS also obtained data on the number of approved initial and renewal EADs for 2019. DHS then divided the latter by the former to calculate the ratio of EAD holders to the labor force by state. Our analysis shows that there is a high degree of correlation between size of the labor force and number of asylum-related EADs—the Pearson correlation coefficient is .82. Almost three-quarters (73 percent) of States exhibited a ratio lower than the general average of .18, and the raw (unweighted) average for these 37 states was .07%. No state had a ratio above 1 percent, and the raw average of the states above the general ratio was .39. This higher tier can be grouped into three segments. Florida and New York had higher ratios of .94 and .70, in order. Next, seven states grouped in the range of .33 to .42, and the rest fell between .21 and .26. In summary, even though the highest state, Florida, showed a ratio of .94, which is more than five times greater than the general average (.18), it is still does not reach the 1 percent level. As such, we think it is reasonable to determine that impacts accruing to the EAD holders germane to this rule will not impact the national labor force or that of individual states.[213]

This rule will generate costs and distributional impacts in the form of deferred and lost compensation. Additionally, if companies are unable to fill the labor the asylum applicants would have performed, some states and local governments would experience a decrease in tax transfers. DHS estimates that if all companies are unable to fill the labor the asylum applicants would have performed, the total reduction in employment taxes transferred from employers and employees to the Federal Government could range from $225.5 million to $682.5 million annually (annualized at 7%). There could also be a reduction in income tax transfers that could impact individual states and localities.

In addition, DHS recognizes there may be additional distributional impacts on states, such as for assistance from state-funded agencies and for healthcare from state-funded hospitals.

B. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, or governmental jurisdictions with populations of less than 50,000.[214]

This rule makes changes to the process by which aliens seeking asylum in the United States can apply for EADs while their asylum claims are pending either with DHS or DOJ–EOIR. DHS estimates that rule will apply to a maximum population of about 290,000, and with smaller sub-populations applicable to specific, individual provisions (which are encompassed in the maximum). This rule directly regulates individuals who are not, for purposes of the RFA, within the

[210] In a few limited circumstances, Congress has authorized the Secretary to grant employment authorization, as a matter of discretion, to aliens who are inadmissible or deportable and even when they have a final order of removal from the United States. *See, e.g.,* INA sec. 236(a)(3), 8 U.S.C. 1226(a)(3) (discretionary employment authorization for inadmissible or removable aliens with pending removal proceedings); INA sec. 241(a)(7), 8 U.S.C. 1231(a)(7) (discretionary employment authorization for certain aliens with final orders of removal).

[211] Aliens who file adjustment of status applications even if they do not ultimately qualify for adjustment of status to permanent residence and aliens who are temporarily placed in deferred action, are allowed to apply for EADs. If DHS approves the application for employment authorization, these aliens receive ''open market'' EADs—meaning that they may accept employment in any field and may be hired by any U.S. employer without the U.S. employer having to demonstrate that there were no available U.S. workers or guarantee that that it will pay the prevailing wage or maintain certain work conditions. As a result, such aliens are more likely to directly compete with U.S. workers for employment.

[212] Relevant calculations 290,434 for first year/ 164,546,000 = .001765, which is rounded and multiplied by 100 to equal .18 percent. The national labor force figure represents the civilian labor force, seasonally adjusted, for February 2020, and is found in ''Labor Force Statistics from the Current Population Survey,'' at *https://www.bls.gov/cps/cpsatabs.htm.* The statewide figures are obtained from the Local Area Unemployment Statistics,'' at *https://www.bls.gov/lau/#data.*

[213] It is noted that the state relevant to the EADs reflects the address the alien provided on their application. It does not necessarily mean that the EAD holder is actually employed in that same state.

[214] A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

definition of small entities established by 5 U.S.C. 601(6).

As previously explained, several of the provisions being adopted may result in deferred or forgone labor earnings compensation for asylum applicants. In addition, some aliens would not be able to obtain an EAD in the future that otherwise could currently. However, these provisions do not directly regulate employers.

Although this rule does not directly regulate or directly burden small entities, DHS is unable to identify the next best alternative to hiring a pending asylum applicant and is therefore unable to reliably estimate the potential indirect costs to small entities from this rule. A final regulatory flexibility analysis (FRFA) follows.

1. A statement of the need for, and objectives of the rule.

The rule is being finalized in order to reform the asylum application and associated employment authorization application process in order to prioritize bona fide claims and reduce frivolous and non-meritorious asylum filings. The rule is necessary because it has been a long time since significant statutory changes have been made to the asylum provisions that would effectively address the current aspects of the immigration laws that incentivize illegal immigration and frivolous asylum filings. Furthermore, the rule could address several of the ''pull'' factors that encourage aliens to enter the United States without being inspected and admitted or paroled and to file non-meritorious asylum claims to obtain employment authorization or other non-asylum based forms of relief from removal. These ''pull'' factors have led, in part, to a significant increase in illegal immigration and in asylum filings, which has generated a severe backlog of cases and an overwhelming volume of non-meritorious cases.

2. A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

One public comment referenced small entities (businesses).

Comment: A commenter claimed that the provision to end some EADs early makes the rule unworkable and that it poses costs to employers, including small business. The commenter noted that when an EAD is ended early, E-Verify would not be updated at the time of denial, and that there is no other central database in which the employer could check for an update. If the asylum seeker does not divulge information about a denial to an employer, the latter is exposed to liability for hiring an unauthorized noncitizen. If the denial is divulged, automatic termination of an employee creates logistical difficulties and costs on employers whose staffing on a daily basis is integral to output. The resultant financial and logistical burden is not aligned with the DHS determination that there will be no ''direct costs on small entities.'' The commenter says agency should be required to justify all of the above costs and logistical difficulties created by the rule for employers.

Response: DHS appreciates the commenters concerns regarding logistical burdens to employers, including small businesses, due to the provision to end some EADs early. However, this rule making is not imposing new obligations or conditions on employers, so DHS disagrees that this rule directly impacts small entities. Additionally, DHS notes that fewer than 30 percent of asylum seekers are found eligible for asylum, so employers who choose to employ asylum seekers already have to account for the eventual termination of most of these workers when the alien's asylum claim is denied.

3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.

DHS did not receive comments on this rule from Chief Counsel for Advocacy of the Small Business Administration.

4. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

This rule directly regulates pending asylum applicants, or individuals, applying for employment authorization. However, DHS presents this FRFA as the rule may indirectly impact small entities who incur opportunity costs by having to choose the next best alternative to immediately filling the job the asylum applicant would have filled. In addition, some employers, potentially including small entities, might face labor turnover costs earlier than they otherwise would under the rule's provision to end some EADs before their validity date expires. DHS cannot reliably estimate how many small entities may be indirectly impacted as a result of this rule because DHS does not have employment information for asylum applicants who are issued EADs, but DHS believes the number of small entities directly regulated by this rule is zero.

5. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

This rule would not directly impose any reporting, recordkeeping, or other compliance requirements on small entities. Additionally, this rule would not require any additional professional skills.

6. 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 the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

DHS is not aware of any alternatives to the rule that accomplish the stated objectives and that would minimize the economic impact of the rule on small entities, as this rule imposes no direct costs on small entities.

C. Congressional Review Act

This rule is a major rule as defined by 5 U.S.C. 804, also known as the ''Congressional Review Act,'' as enacted in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 868 *et seq.* Accordingly, this rule, if enacted as a final rule, would be effective at least 60 days after the date on which Congress receives a report submitted by DHS under the Congressional Review Act, or 60 days after the final rule's publication, whichever is later.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

The Unfunded Mandates Reform Act of 1995 (UMRA) requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final agency rule that may result in a $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. The value equivalent of $100 million in 1995, adjusted for inflation to 2020 levels by

the Consumer Price Index Inflation Calculator, is $172 million.[215]

Because this rulemaking does not impose any Federal mandates on State, local, or tribal governments, in the aggregate, or the private sector, this rulemaking does not contain such a written statement.

Under this rule, some private sector entities may incur a cost, as they could be losing the productivity and potential profits the asylum applicant could have provided. Entities may also incur opportunity costs by having to choose the next best alternative to immediately filling the job the asylum applicant would have filled. In such instances, DHS does not know if or to what extent this would impact the private sector, but assesses that such impacts would result indirectly from delays in or loss of employment authorization, and would not be a consequence of an enforceable duty. As a result, such costs would not be attributable to a mandate under UMRA. *See* 2 U.S.C. 658(6), (7) (defining a federal private sector mandate as, *inter alia,* a regulation that imposes an enforceable duty upon the private sector except for a duty arising from participation in a voluntary Federal program); 2 U.S.C. 1502(1). Similarly, any costs or transfer effects on state and local governments would not result from a mandate under UMRA. *See* 2 U.S.C. 658 (5), (6) (defining a federal intergovernmental mandate as, *inter alia,* a regulation that imposes an enforceable duty upon State, local, or tribal governments, except for a duty arising from participation in a voluntary Federal program); 2 U.S.C 1502(1).

E. Executive Order 13132 (Federalism)

This rule 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. DHS does not expect that this rule would impose substantial direct compliance costs on State and local governments or preempt State law. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that 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.

G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

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

H. Family Assessment

DHS has assessed this action in accordance with section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277, Div. A. With respect to the criteria specified in section 654(c)(1), DHS has determined that the rule will delay the ability for initial applicants to work and limit or prohibit some from working based on criminal and immigration history, which will decrease disposable income of those applicants with families. A portion of this lost compensation might be transferred from asylum applicants to others that are currently in the U.S. labor force, or, eligible to work lawfully, possibly in the form of additional work hours or the direct and indirect added costs associated with overtime pay. DHS does not know how many applicants contribute to family disposable income. The total lost compensation to the pool of potential asylum applicants could range from about $1.5 billion to $4.5 billion annually, depending on the wages the asylum applicant would have earned. For the reasons stated elsewhere in this preamble, however, DHS has determined that the benefits of the action justify the potential financial impact on the family.

I. National Environmental Policy Act (NEPA)

DHS analyzes actions to determine whether NEPA applies to them and if so what degree of analysis is required. DHS Directive (Dir) 023–01 Rev. 01 and Instruction (Inst.) 023–01–001 rev. 01 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. DHS Instruction 023–01–001 Rev. 01 establishes such Categorical Exclusions that DHS has found to have no such effect. Inst. 023–01–001 Rev. 01 Appendix A Table 1. For an action to be categorically excluded, DHS Inst. 023–01–001 Rev. 01 requires the action to 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. Inst. 023–01–001 Rev. 01 section V.B(1)–(3). This rule amends the administrative procedure for filing an affirmative asylum application in the United States, and strengthen eligibility requirements for employment authorization based on a pending asylum application.

DHS analyzed this action and has concluded that NEPA does not apply due to the excessively speculative nature of any effort to conduct an impact analysis. Nevertheless, if NEPA did apply to this action, the action clearly would come within our categorical exclusion A.3(d) as set forth in DHS Inst. 023–01–001 Rev. 01, Appendix A, Table 1.

This rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, if NEPA were determined to apply, this rule would be categorically excluded from further NEPA review.

J. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standard bodies. This rule

[215] U.S. Bureau of Labor Statistics, *Consumer Price Index Inflation Calculator, https://data.bls.gov/cgi-bin/cpicalc.pl* (last visited Feb. 26, 2020).

does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

K. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This rule will not cause the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

L. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

Executive Order 13045 requires agencies to consider the impacts of environmental health risk or safety risk that may disproportionately affect children. DHS has reviewed this rule and determined that this rule is not a covered regulatory action under Executive Order 13045. Although the rule is economically significant, it would not create an environmental risk to health or risk to safety that might disproportionately affect children. Therefore, DHS has not prepared a statement under this executive order.

M. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

Executive Order 13211 requires agencies to consider the impact of rules that significantly impact the supply, distribution, and use of energy. DHS has reviewed this rule and determined that this rule will not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, this rule does not require a Statement of Energy Effects under Executive Order 13211.

N. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. See Public Law 104–13, 109 Stat. 163 (May 22, 1995). This final rule makes revisions to existing information collections. Table 19 shows a summary of the forms that are part of this rulemaking.

TABLE 19—SUMMARY OF IMPACTS TO USCIS FORMS

Form	Form name	New or updated form	General purpose of form
I–589	Application for Asylum and for Withholding of Removal.	Update—revises and adds instructions for employment authorization while asylum application is pending.	This form is used by applicants to apply for asylum or withholding of removal under the Act or the Convention Against Torture (CAT).
I–765	Application for Employment Authorization	Update—revises and adds instructions and questions for aliens seeking employment authorization under the (c)(8) eligibility category.	This form is used by applicants to request employment authorization from USCIS.

USCIS Form I–589

Overview of Information Collection

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Application for Asylum and for Withholding of Removal

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: Form I–589; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individual aliens and households. The data collected on this form will be used by USCIS to determine if the alien is eligible for asylum or withholding of removal.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection Form I–589 is 114,000 and the estimated hour burden per response is 12 hours; the estimated total number of respondents for the information collection Biometrics is 110,000 and the estimated hour burden per response is 1.17 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 1,496,700 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this information collection is $46,968,000.

USCIS Form I–765

Overview of Information Collection

(1) Type of Information Collection: Revision of a currently approved collection.

(2) Title of the Form/Collection: Application for Employment Authorization.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: Form I–765; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individual aliens and households. USCIS requires an alien seeking employment authorization to file the Form I–765. The data collected on this form will be used by USCIS to determine if the individual seeking employment authorization qualifies under the categories of aliens who may apply for employment authorization under 8 CFR 274a.12.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection Form I–765 is 2,226,026 and the estimated hour burden per response is 4.75 hours; the estimated total number of respondents for the information collection biometrics is 592,286 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection Form I–765WS is 302,000 and the estimated hour burden per response is .50 hours; the estimated total number of respondents for the information collection passport-style photographs is 2,226,026 and the estimated hour burden per response is .50 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 12,530,611 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this information collection is $732,362,554.

O. Signature

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

List of Subjects

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, DHS amends parts 208 and 274a of chapter I, subchapter B, of title 8 of the Code of Federal Regulations as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229; 8 CFR part 2.

■ 2. Amend § 208.3 by revising paragraph (c)(3) to read as follows:

§ 208.3 Form of application.

* * * * *

(c) * * *

(3) An asylum application must be properly filed in accordance with 8 CFR part 103 and the filing instructions. Receipt of a properly filed asylum application will commence the 365-day period after which the applicant may file an application for employment authorization in accordance with § 208.7 and 8 CFR 274a.12 and 274a.13.

* * * * *

■ 3. Amend § 208.4 by revising paragraph (c) to read as follows:

§ 208.4 Filing the application.

* * * * *

(c) *Amending an application after filing.* Upon the request of the alien, and as a matter of discretion, the asylum officer or immigration judge with jurisdiction may permit an asylum applicant to amend or supplement the application. Any delay in adjudication or in proceedings caused by a request to amend or supplement the application will be treated as a delay caused by the applicant for purposes of § 208.7 and 8 CFR 274a.12(c)(8).

■ 4. Revise § 208.7 to read as follows:

§ 208.7 Employment authorization.

(a) *Application and decision*—(1)(i) *In General.* Subject to the restrictions contained in sections 208(d) and 236(a) of the Act, and except as otherwise provided in paragraphs (b) and (c) of this section, an applicant for asylum who is in the United States may apply for employment authorization pursuant to 8 CFR 274a.12(c)(8) and 274a.13(a)(2) of this chapter. The applicant must request employment authorization on the form and in the manner prescribed by USCIS and according to the form instructions, and must submit biometrics at a scheduled biometrics services appointment. USCIS has exclusive jurisdiction over all applications for employment authorization and employment authorization documentation based on a pending application for asylum under 8 CFR 274a.12(c)(8), regardless of whether the asylum application is pending with USCIS or the Executive Office for Immigration Review. Employment authorization is not permitted during any period of judicial review of the asylum application, but may be requested if a Federal court remands the case to the Board of Immigration Appeals. USCIS may grant initial employment authorization under 8 CFR 274a.12(c)(8) for a period that USCIS determines is appropriate at its discretion, not to exceed increments of two years.

(ii) *Period for filing.* An applicant for asylum cannot apply for initial employment authorization earlier than 365 calendar days after the date USCIS or the immigration court receives the asylum application in accordance with 8 CFR part 103 or 8 CFR 1003.31, respectively, and the filing instructions on the application. If an asylum application is denied by USCIS before a decision on an initial or renewal application for employment authorization, the application for employment authorization will be denied.

(iii) *Asylum applicants who are ineligible for employment authorization.* An applicant for asylum is not eligible for employment authorization if:

(A) The applicant was convicted at any time in the United States or abroad of any aggravated felony as described in section 101(a)(43) of the Act;

(B) The applicant was convicted on or after [effective date of final rule] of a particularly serious crime;

(C) There are serious reasons for believing that the applicant on or after August 25, 2020 has committed a serious non-political crime outside the United States;

(D) The applicant fails to establish that he or she is not subject to a mandatory denial of asylum due to any regulatory criminal grounds under 8 CFR 208.13(c);

(E) An asylum officer or an immigration judge has denied the applicant's asylum application within the 365-day period or before the adjudication of the initial request for employment authorization;

(F) The applicant filed his or her asylum application on or after August 25, 2020 and filed the application after the one-year filing deadline, unless and until the asylum officer or immigration judge determines that the applicant meets an exception for late filing as provided in section 208(a)(2)(D) of the Act and 8 CFR 208.4 and 1208.4, or unless the applicant was an unaccompanied alien child on the date the asylum application was first filed.

(G) The applicant is an alien who entered or attempted to enter the United States at a place and time other than lawfully through a U.S. port of entry on or after August 25, 2020, unless the alien demonstrates that he or she:

(*1*) Presented himself or herself without delay but no later than 48 hours after the entry or attempted entry to the Secretary of Homeland Security or his or her delegate;

(*2*) Indicated to the Secretary of Homeland Security or his or her delegate an intention to apply for asylum or expresses a fear of persecution or torture; and

(*3*) Has good cause for the illegal entry or attempted entry, provided such good cause does not include the evasion of U.S. immigration officers, convenience, or for the purpose of circumvention of the orderly processing of asylum seekers at a U.S. port of entry.

(iv) *Delay.* Any delay requested or caused by the applicant in the adjudication of the asylum application that is still outstanding or has not been remedied when the initial application for employment authorization under 8 CFR 274a.12(c)(8) is filed will result in a denial of such application. Examples of applicant-caused delays include, but are not limited to the list below:

(A) A request to amend or supplement an asylum application that causes a delay in its adjudication or in proceedings as described in 8 CFR 208.4(c);

(B) Failure to appear to receive and acknowledge receipt of the decision as specified in 8 CFR 208.9(d);

(C) A request for extension to submit additional evidence fewer than 14-days

prior to the interview date as described by 8 CFR 208.9(e);

(D) Failure to appear for an asylum interview, unless excused by USCIS as described in 8 CFR 208.10(b)(1) for the failure to appear;

(E) Failure to appear for scheduled biometrics collection on the asylum application;

(F) A request to reschedule an interview for a later date;

(G) A request to transfer a case to a new asylum office or interview location, including when the transfer is based on a new address;

(H) A request to provide additional evidence for an interview;

(I) Failure to provide a competent interpreter at an interview; and

(J) Failure to comply with any other request needed to determine asylum eligibility.

(b) *Renewal and termination*—(1) *Renewals.* USCIS may renew employment authorization under 8 CFR 274a.12(c)(8) in increments determined by USCIS in its discretion, but not to exceed increments of two years. Employment authorization is not permitted during any period of judicial review, but may be requested if a Federal court remands the case to the Board of Immigration Appeals. For employment authorization to be renewed under this section, the alien must request employment authorization on the form and in the manner prescribed by USCIS and according to the form instructions. USCIS will require that an alien establish that he or she has continued to pursue an asylum application before USCIS, an immigration judge, or the Board of Immigration Appeals and that he or she continues to meet the eligibility criteria for employment authorization set forth in 8 CFR 208.7(a). For purposes of renewal of employment authorization, pursuit of an asylum application before an immigration judge or the Board of Immigration Appeals is established by submitting a copy of the referral notice or Notice to Appear placing the alien in proceedings, any hearing notices issued by the immigration court, evidence of a timely filed appeal if the alien appealed the denial of the asylum application to the Board of Immigration Appeals, or remand order to the immigration judge or Board of Immigration Appeals.

(i) *Referrals to an immigration judge.* Employment authorization granted after the required 365-day waiting period will continue for the remaining period authorized (unless otherwise terminated or revoked) if the asylum officer refers the alien's asylum application to an immigration judge. In accordance with 8 CFR 208.7(b)(1), the alien may be granted renewals of employment authorization while under such review by the immigration judge.

(ii) *Appeals to the Board of Immigration Appeals.* If the immigration judge denies the alien's asylum application, any remaining period of employment authorization will continue for the period authorized (unless otherwise terminated or revoked) during the period for filing an appeal with the Board of Immigration Appeals under 8 CFR 1003.38(b) or, if an appeal is timely filed within such period, during the pendency of the appeal with the Board of Immigration Appeals. In accordance with 8 CFR 208.7(b)(1), the alien may be granted renewals of employment authorization during these periods while the appeal is under review by the Board of Immigration Appeals and any remand to the immigration judge.

(2) *Terminations.* The alien's employment authorization granted pursuant to 8 CFR 274a.12(c)(8) will automatically terminate effective on the date the asylum officer denies the asylum application, thirty days after an immigration judge denies the asylum application unless timely appealed to the Board of Immigration Appeals, or the Board of Immigration Appeals affirms or upholds a denial, regardless of whether any automatic extension period pursuant to 8 CFR 274a.13(d)(3) is in place.

(c) *Severability.* The provisions in this section are intended to be independent severable parts. In the event that any provision in this section is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

■ 5. Amend § 208.9 by revising paragraphs (d) and (e) to read as follows:

§ 208.9 Procedure for interview before an asylum officer.

* * * * *

(d) *Completion of the interview.* Upon completion of the interview:

(1) The applicant or the applicant's representative will have an opportunity to make a statement or comment on the evidence presented. The asylum officer may, in his or her discretion, limit the length of such statement or comment and may require its submission in writing.

(2) USCIS will inform the applicant that he or she must appear in person to receive and to acknowledge receipt of the decision of the asylum officer and any other accompanying material at a time and place designated by the asylum officer, except as otherwise provided by the asylum officer. An applicant's failure to appear to receive and acknowledge receipt of the decision will be treated as delay caused by the applicant for purposes of 8 CFR 208.7.

(e) *Extensions.* The asylum officer will consider evidence submitted by the applicant together with his or her asylum application. The applicant must submit any documentary evidence at least 14 calendar days in advance of the interview date. As a matter of discretion, the asylum officer may consider evidence submitted within the 14-day period prior to the interview date or may grant the applicant a brief extension of time during which the applicant may submit additional evidence. Any such extension will be treated as a delay caused by the applicant for purposes of § 208.7.

* * * * *

■ 6. Revise § 208.10 to read as follows:

§ 208.10 Failure to appear for an interview before an asylum officer or for a biometric services appointment for the asylum application.

(a) *Failure to appear for asylum interview or for a biometric services appointment.* (1) The failure to appear for an interview or biometric services appointment may result in:

(i) Waiver of the right to an interview or adjudication by an asylum officer;

(ii) Dismissal of the application for asylum;

(iii) Referral of the applicant to the immigration court; or,

(iv) Denial of employment authorization.

(2) There is no requirement for USCIS to send a notice to an applicant that he or she failed to appear for his or her asylum interview or biometrics services appointment prior to issuing a decision on the application. Any rescheduling request for the asylum interview that has not yet been fulfilled on the date the application for employment authorization is filed under 8 CFR 274a.12(c)(8) will be treated as an applicant-caused delay for purposes of 8 CFR 208.7.

(b) *Rescheduling missed appointments.* USCIS, in its sole discretion, may excuse the failure to appear for an interview or biometrics services appointment and reschedule the missed appointment as follows:

(1) *Asylum Interview.* If the applicant demonstrates that he or she was unable to make the appointment due to exceptional circumstances.

(2) *Biometrics services appointment.* USCIS may reschedule the biometrics services appointment as provided in 8 CFR part 103.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 7. The authority citation for part 274a is revised 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.

■ 8. Amend § 274a.12 by:

■ a. In paragraph (c) introductory text, adding the phrase '', unless otherwise provided in this chapter'' after the phrase ''petition is pending''; and

■ b. Revising paragraphs (c)(8) and (11).

The revisions read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(8) An alien who has filed a complete application for asylum or withholding of deportation or removal pursuant to 8 CFR parts 103 and 208, whose application has not been decided, and who is eligible to apply for employment authorization under 8 CFR 208.7 because the 365-day period set forth in that section has expired. Employment authorization may be granted according to the provisions of 8 CFR 208.7 of this chapter in increments to be determined by USCIS but not to exceed increments of two years.

* * * * *

(11) Except as provided in paragraphs (b)(37) and (c)(34) of this section, 8 CFR 212.19(h)(4), and except for aliens paroled from custody after having established a credible fear or reasonable fear of persecution or torture under 8 CFR 208.30, an alien paroled into the United States temporarily for urgent humanitarian reasons or significant public benefit pursuant to section 212(d)(5) of the Act.

* * * * *

■ 9. Amend § 274a.13 by revising paragraphs (a)(1) and (2) and (d)(3) to read as follows:

§ 274a.13 Application for employment authorization.

(a) * * *

(1) Aliens seeking initial or renewed employment authorization under 8 CFR 274a.12(c) must apply on the form designated by USCIS with prescribed fee(s) and in accordance with the form instructions. The approval of applications filed under 8 CFR 274a.12(c) is within the discretion of USCIS. Where economic necessity has been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses.

(2) An initial employment authorization request for asylum applicants or for renewal or replacement of employment authorization submitted in relation to a pending claim for asylum, in accordance with 8 CFR 208.7 and 8 CFR 274a.12(c)(8), must be filed on the form designated by USCIS in accordance with the form instructions with prescribed fee(s).

* * * * *

(d) * * *

(3) *Termination.* Employment authorization automatically extended pursuant to paragraph (d)(1) of this section will automatically terminate the earlier of up to 180 days after the expiration date of the Employment Authorization Document (Form I–766), or on the date USCIS denies the request for renewal. Employment authorization granted under 8 CFR 274a.12(c)(8) and automatically extended pursuant to paragraph (d)(1) of this section is further subject to the termination provisions of 8 CFR 208.7(b)(2).

* * * * *

■ 10. Amend § 274a.14 by:

■ (a) Removing ''or'' at the end of paragraph (a)(1)(ii);

■ (b) Removing the period and adding in its place ''; or'' at the end of paragraph (a)(1)(iii); and

■ (c) Adding paragraph (a)(1)(iv).

The addition reads as follows:

§ 274a.14 Termination of employment authorization.

(a) * * *

(1) * * *

(iv) Automatic termination is provided elsewhere in this chapter.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020–13544 Filed 6–22–20; 4:15 pm]

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Part III

Federal Communications Commission

47 CFR Parts 1, 2, 15, et al.
WRC–15 Order; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 15, 18, 27 and 95

[ET Docket No. 19–289; DA 19–1326; FRS 16510]

WRC–15 Order

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document makes non-substantive, editorial revisions to the Table of Frequency Allocations (Allocation Table) and to various other Commission rules. The purpose of this action is to update the International Table of Frequency Allocations (International Table) to reflect the decisions made at an international conference, to update the Federal Table of Frequency Allocations (Federal Table) within the Commission's rules in those frequency bands where such an action would have no substantive effect on non-Federal licensees, to remove outdated provisions from the Commission's rules, and to ensure that the Allocation Table and related rules are consistent with the Commission's decisions in recent rulemaking proceedings.

DATES: Effective July 27, 2020.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, 202–418–2450, *Tom.Mooring@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in ET Docket No. 19–289, DA 19–1326, which was adopted and released on December 23, 2019. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW, Washington, DC 20554. The full text may also be downloaded at: *https://apps.fcc.gov/edocs_public/attachmatch/DA-19-1326A1.pdf.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

ORDER

1. By this action, the Commission amends parts 1, 2, 15, 18, 27, and 95 of its rules to make non-substantive, editorial revisions to the Allocation Table and to revise various other rules. This action is not intended to modify or otherwise change any party's underlying rights and/or responsibilities. In particular, the Commission updates the International Table within the Allocation Table to reflect, for informational purposes only, the decisions made at the World Radiocommunication Conference 2015 (WRC–15). In addition, the Commission makes certain amendments to the Federal Table, for informational purposes only, based on the recommendations of the National Telecommunications and Information Administration (NTIA), which pertain solely to spectrum allocated exclusively for Federal use or where non-Federal use is limited to secondary services. WRC–15 implementation matters of a substantive nature will be addressed in a separate notice of proposed rulemaking.

DISCUSSION

A. Reflecting WRC–15 Revisions in the International Table

2. The Commission updates the International Table within section 2.106 of the rules to reflect Article 5, Section IV of the Radio Regulations (Edition of 2016), except where minor corrections or updates have been made. The International Table is included within the Commission's Allocation Table for informational purposes only.

B. Reflecting WRC–15 Revisions in the U.S. Table

References to International Footnotes in the U.S. Table

3. The United States Table of Frequency Allocations (U.S. Table) includes references to ten international footnotes (5.134, 5.223, 5.260, 5.268, 5.287, 5.327A, 5.443B, 5.396, 5.501A, and 5.511C), which WRC–15 revised or deleted. Because these footnotes are included in the U.S. Table, the Commission reviewed these footnotes and finds that the WRC–15 revisions will have no substantive effect on non-Federal operations. Specifically, the Commission:

- Removes the references to international footnotes 5.223 and 5.260 from the U.S. Table because WRC–15 removed these international footnotes and the underlying primary radionavigation-satellite service allocation from the 149.9–150.05 MHz and 399.9–400.05 MHz bands from the Radio Regulations, making the references to these international footnotes in the U.S. Table no longer necessary.
- Revises international footnotes 5.327A and 5.443B by updating the cross references from Resolution 417 (Rev.WRC–12) and Resolution 741 (Rev.WRC–12), respectively, to the version of these resolutions that are currently shown in the Radio Regulations, *i.e.,* ''(Rev.WRC–15).'' As noted above, the Commission is also updating cross references to Resolution 517 (Rev.WRC–07) and Resolution 33 (Rev.WRC–03) contained in footnotes 5.134 and 5.396, respectively. WRC–15 made editorial changes to the text of these resolutions. The revised text of these international footnotes can be used in the U.S. Table since the changes do not have a substantive impact on non-Federal operations.
- Revises international footnote 5.268 by removing the extra-vehicular activity (EVA) and five-kilometer restrictions from Federal space research service (SRS) operations in the 410–420 MHz band. Because non-Federal stations in the 410–420 MHz band don't have a co-primary status, they ''cannot claim protection from harmful interference from stations of a primary service to which frequencies are already assigned or may be assigned at a later date,'' and thus, applying the text that WRC–15 adopted for footnote 5.268 is a non-substantive, editorial action.
- Updates the text of international footnote 5.287 to reflect the changes adopted by WRC–15, noting that this footnote was revised to specify the frequency bands that are available for on-board communication stations in the maritime mobile service and to state that the ''characteristics of the equipment and the channelling arrangement shall be in accordance with Recommendation ITU–R M.1174–3.'' These changes increase the number of available frequencies from the existing ten to 34 and also could be misinterpreted as requiring the use of a channeling plan different from that currently used in U.S. territorial waters, which is shown in footnote US288. As a result, because footnote 5.287 appears in the 456–470 MHz range in the U.S. Table, the Commission moves the pre-WRC–15 text of footnote 5.287 into placeholder footnote US287 so that these changes to the international footnote can be considered by the Commission in its planned WRC–15 implementation notice of proposed rulemaking. Consequently, the Commission also amends the respective frequency bands in the U.S. Table by replacing the reference to footnote 5.287 with that of footnote US287.

Revisions to the Federal Table

4. In this section, the Commission addresses the modifications NTIA made to certain Federal allocations for

purposes of implementing the *WRC–15 Final Acts,* which were submitted to the Commission on September 10, 2018. In line with NTIA's changes, the Commission revises the Federal Table in its rules to reflect, for informational purposes only, changes to the following bands that are allocated exclusively for Federal use: 7190–7250 MHz, 7300–7750 MHz and 14.5–14.8 GHz; and the following bands with primary Federal allocations that contain only secondary non-Federal allocations: 1215–1240 MHz and 13.4–13.75 GHz. Specifically, the Commission:

- Adds to the Federal Table a primary allocation for the Earth exploration-satellite service (EESS) (Earth-to-space) in the 7190–7250 MHz band and two international footnotes (5.460A, 5.460B) that limit the use of this EESS uplink allocation. Footnote 5.460A limits the EESS uplink allocation to tracking, telemetry and command for the operation of spacecraft, and, *e.g.,* specifies that space stations operating under this allocation in the 7190–7250 MHz band may not claim protection from stations in the fixed and mobile services. Footnote 5.460B states that EESS geostationary satellites receiving in the 7190–7235 MHz band may not claim protection from existing and future stations of the space research service. The Commission also replaces footnote G133 with international footnote 5.460.
- Adds to the Federal Table a primary allocation for the maritime mobile-satellite service (MMSS) (space-to-Earth) in the 7375–7750 MHz bands and two international footnotes (5.461AA, 5.461AB) that limit the use of this MMSS downlink allocation. Footnote 5.461AA limits MMSS use of the band to geostationary-satellite orbit (GSO) networks and footnote 5.461AB specifies that MMSS earth stations receiving in the band may not claim protection from, nor constrain the use and development of, stations in the fixed and mobile, except aeronautical mobile, services. In addition, the Commission replaces the existing secondary mobile-satellite service (space-to-Earth) allocation entry in the 7375–7750 MHz band with a secondary mobile-satellite ''except maritime mobile-satellite'' service (space-to-Earth) allocation entry, and in the 7375–7450 MHz band, the Commission also adds a primary mobile except aeronautical mobile service allocation.
- Adds to the Federal Table international footnote 5.509G to the right of the existing secondary space research service (SRS) allocation entry in the 14.5–14.8 GHz band. Footnote 5.509G states that the 14.5–14.8 GHz band is also allocated to SRS on a primary basis, limited to satellite systems operating in the Earth-to-space (uplink) direction to relay data to space stations in the geostationary-satellite orbit (GSO) from associated earth stations; that primary stations in the SRS may not cause harmful interference to, or claim protection from, stations operating under the fixed, mobile, and fixed-satellite services; and that other uses of this frequency band by the SRS are on a secondary basis.
- Updates footnote G132, which applies to the 1215–1240 MHz band, to cross reference the revised Resolution 608, replacing ''(WRC–03)'' with ''(Rev.WRC–15).'' WRC–15 revised Resolution 608 (WRC–03) by noting that Recommendation ITU–R M.1902 and Report ITU–R M.2284 apply to radionavigation-satellite service (space-to-Earth) use of the 1215–1300 MHz band.
- Subjects the use of the existing primary Federal space research service (SRS) allocation in the 13.4–13.75 GHz band to new international footnotes 5.499C and 5.499D as well as modified footnote 5.501A. Because footnote 5.501B limits the impact of the space research service (active) in the band on the radiolocation service and the only non-Federal licensee in the band is in the radiolocation service, the Commission finds that this action is non-substantial.

Other Revisions to the U.S. Table

5. The Commission makes the following non-substantive, editorial changes to the U.S. Table and to FCC Rule part cross references within section 2.106 of the rules:

- Update footnote NG159 to remove the reference to part 74, subpart E, because the aural broadcast auxiliary stations are no longer licensed to operate on frequencies in the 698–806 MHz band, which has been reallocated and licensed for mobile broadband use.
- Add footnote US84 to the 941–944 MHz band in the Federal Table, which was inadvertently omitted when the Commission revised footnote US84 by adding the 941.5–944 MHz band.
- Add footnote NG527A to the 10.7–11.7 GHz band, which was inadvertently omitted from the non-Federal Table of Frequency Allocations (non-Federal Table) when the footnote was adopted in the *ESIMs Report and Order and Further Notice of Proposed Rulemaking*.
- Delete the entries for EESS (passive), SRS (passive), and footnotes 5.562B, 5.562F, and 5.562G from the 155.5–158.5 GHz band. The transition period concluded in 2018, and these two allocations and three footnotes are no longer needed.
- Update the contact information for the National Science Foundation in footnotes US99 and US385 and sections 27.1321(b) and 95.2309(f)(3) of the Commission's Rules.
- Revise the FCC Rule Part(s) column of the Allocation Table by adding a part 15 cross reference (*i.e.,* ''RF Devices (15)'') to the 902–928 MHz, 2400–2483.5 MHz, 5850–5925 MHz, 28.35–29.1 GHz, and 84–86 GHz bands; by removing the part 15 cross reference from the 29.1–29.25 GHz and 45.5–46.9 GHz bands; and by adding a part 101 cross reference (*i.e.,* ''Fixed Microwave (101)'') to the 84–86 GHz band.

C. Other Conforming Rule Revisions

6. The Commission makes the following non-substantive, editorial updates to the Commission's rules:

- Correct sections 1.1307(b)(2)(ii), 2.1091(c)(2), and 2.1093(c)(1) of the rules by revising the cross reference to section 15.255 from paragraph ''(g)'' to ''(f).'' This action reflects the paragraph re-designation adopted in the *Spectrum Frontiers 1st R&O.*
- Revise section 2.100 to note that the International Table has been updated to reflect the 2016 edition of the Radio Regulations.
- Revise section 2.101 to reflect Section I of Article 2 of the Radio Regulations. Specifically, the Commission deletes the column titled ''Metric abbreviations for the bands'' from the table in section 2.101, and also delete the duplicate table from that section.
- Revise sections 2.102 and 2.105 by replacing the archaic term ''band(s) of frequencies'' with ''frequency band(s).''
- Revise section 2.104 to state that the international footnotes shown in the International Table are applicable only to the relationships between the United States and other countries (unless a reference to an international footnote has been added to the U.S. Table).
- Revise the text in section 2.105(d)(2) without changing its underlying meaning or implication. Also revise the factual description in section 2.105(e) of the informational cross references that appear in column 6 of the Table of Allocations set out in section 2.106. The revision would recognize that the column 6 cross references sometimes include a reference to an FCC Rule subpart instead of an FCC Rule part and that an FCC Rule part or subpart may apply to only a portion of a frequency band. Finally, the Commission adds the following clarifying note: The radio frequency devices authorized pursuant

to 47 CFR part 15 are not based on allocated radio services. In the Allocation Table, the cross references to part 15 are used to note those frequency bands that are most typically associated with unlicensed use.

• Revise section 2.107 to cross reference the international notification requirements of radio astronomy stations, specified in No. 11.12 of Article 11 and Annex 2 of Appendix 4 of the Radio Regulations.

• Correct a typographical error in the heading of section 15.510 to provide consistency with paragraphs (b) and (c).

• Revise section 18.301 by replacing ''allocated'' with ''designated'' in the second sentence, simplifying the display of three ISM frequencies (*i.e.,* remove unnecessary commas from 2,450 MHz and 5,800 MHz and change 24,125 MHz to 24.125 GHz) in the table, and by deleting the note below the table. The Commission takes these actions to make this rule more consistent with international footnote 5.150 and to remove an unneeded and outdated cross reference.

Paperwork Reduction Act Analysis

7. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified 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).

Congressional Review Act

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

Administrative Procedure Act Requirements

9. The Commission amends parts 1, 2, 15, 18, 27, and 95 of the Commission's rules herein by incorporating non-substantive, editorial revisions only. Therefore, there is good cause for not employing the notice and comment procedure in this case. Specifically, the Commission finds that the normal procedures for notice and comment and for publication as required under section 553 of the Administrative Procedure Act would be impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(3)(B); *Kessler* v. *FCC,* 326 F.2d 673 (D.C. Cir. 1963).

Ordering Clause

10. *It is ordered* that parts 1, 2, 15, 18, 27, and 95 of the Commission's rules, 47 CFR parts 1, 2, 15, 18, 27, and 95, *are amended* as set forth in the Appendix of the Order, effective 30 days after publication in the **Federal Register**. This action is taken pursuant to authority found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and in sections 0.11, 0.31, 0.231(b) and 0.241(i) of the Commission's Rules, 47 CFR 0.11, 0.31, 0.231(b) and 0.241(i).

11. Petitions for reconsideration under 47 CFR 1.429 or applications for review by the Commission under 47 CFR 1.115 may be filed within 30 days after publication in the **Federal Register**. Should no petitions for reconsideration or applications for review be timely filed, this proceeding shall be terminated, and its docket closed.

List of Subjects in 47 CFR Part 1, 2, 15, 18, 27, and 95

Radio.

Federal Communications Commission.

Ronald Repasi,

Acting Chief, Office of Engineering and Technology.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 15, 18, 27, and 95 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Section 1.1307 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(2) * * *

(ii) Unlicensed PCS, unlicensed NII, and millimeter-wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 15.255(f), 15.257(g), 15.319(i), and 15.407(f) of this chapter.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 4. Section 2.100 is revised to read as follows:

§ 2.100 International regulations in force.

The Radio Regulations of the International Telecommunication Union (Radio Regulations) (Edition of 2012) have been incorporated to the extent practicable in this part, except that the International Table within § 2.106 has been updated to reflect the Radio Regulations (Edition of 2016).

■ 5. Section 2.101 is amended by revising the table in paragraph (b) and by removing the table in paragraph (c).

The revision reads as follows:

§ 2.101 Frequency and wavelength bands.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

Band No.	Symbols	Frequency range (lower limit exclusive, upper limit inclusive)	Corresponding metric subdivision
4	VLF	3 to 30 kHz	Myriametric waves.
5	LF	30 to 300 kHz	Kilometric waves.
6	MF	300 to 3 000 kHz	Hectometric waves.
7	HF	3 to 30 MHz	Decametric waves.
8	VHF	30 to 300 MHz	Metric waves.
9	UHF	300 to 3 000 MHz	Decimetric waves.
10	SHF	3 to 30 GHz	Centimetric waves.

TABLE 1 TO PARAGRAPH (b)—Continued

Band No.	Symbols	Frequency range (lower limit exclusive, upper limit inclusive)	Corresponding metric subdivision
11	EHF	30 to 300 GHz	Millimetric waves.
12		300 to 3 000 GHz	Decimillimetric waves.

Note 1: "Band N" (N = band number) extends from 0.3×10^N Hz to 3×10^N Hz.
Note 2: Prefix: k = kilo (10^3), M = mega (10^6), G = giga (10^9).

* * * * *

■ 6. Section 2.102 is amended by revising paragraph (a) to read as follows:

§ 2.102 Assignment of frequencies.

(a) Except as otherwise provided in this section, the assignment of frequencies and frequency bands to all stations and classes of stations and the licensing and authorizing of the use of all such frequencies between 8.3 kHz and 275 GHz, and the actual use of such frequencies for radiocommunication or for any other purpose, including the transfer of energy by radio, shall be in accordance with the Table of Frequency Allocations in § 2.106.

* * * * *

■ 7. Section 2.104 is amended by adding paragraph (h)(8) to read as follows:

§ 2.104 International Table of Frequency Allocations.

* * * * *

(h) * * *

(8) The international footnotes shown in the International Table are applicable only to the relationships between the United States and other countries (unless a reference to an international footnote has been added to the United States Table of Frequency Allocations).

* * * * *

■ 8. Section 2.105 is amended by revising paragraphs (d)(1) and (2) and (e) to read as follows:

§ 2.105 United States Table of Frequency Allocations.

* * * * *

(d) * * *

(1) The frequency band referred to in each allocation, column 4 for Federal operations and column 5 for non-Federal operations, is indicated in the left-hand top corner of the column. If there is no service or footnote indicated for a frequency band in column 4, then the Federal sector has no access to that band except as provided for by § 2.103. If there is no service or footnote indicated for a frequency band in column 5, then the non-Federal sector has no access to that band except as provided for by § 2.102.

(2) When the type of service(s) permitted and any applicable footnote(s) are the same for a frequency band in the Federal Table and the non-Federal Table, columns 4 and 5 are merged, indicating that the frequency band is shared between the Federal and non-Federal sectors under the same conditions.

* * * * *

(e) *Rule part cross-references.* If a frequency or frequency band has been allocated to a radiocommunication service in the non-Federal Table, then a cross reference may be added to the pertinent FCC Rule part (column 6 of § 2.106) or, where greater specificity would be useful, to the pertinent subpart. For example, the band 849–851 MHz is allocated to the aeronautical mobile service for non-Federal use, rules for the use of the 849–851 MHz band have been added to part 22—Public Mobile Services (47 CFR part 22), and a cross reference, Public Mobile (22), has been added in column 6 of § 2.106. The exact use that can be made of any given frequency or frequency band (*e.g.,* channeling plans, allowable emissions, etc.) is given in the FCC Rule part(s) so indicated. The FCC Rule parts in this column are not allocations, may apply to only a portion of a band, and are provided for informational purposes only. This column also may contain explanatory notes for informational purposes only.

Note 1 to paragraph (e): The radio frequency devices authorized pursuant to 47 CFR part 15 are not based on allocated radio services. In the Allocation Table, the cross references to part 15 are used to note those frequency bands that are most typically associated with unlicensed use.

* * * * *

■ 9. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Revise pages 7 through 9, 19, 22 through 27, 29 through 34, and 38 through 68.

■ b. In the list of International Footnotes:

■ i. Revise footnotes 5.54B, 5.55, 5.68, 5.93, 5.96, 5.98, 5.102, 5.119, 5.122, 5.132B, 5.133A, 5.134, 5.140, 5.141B, 5.145B, 5.149A, 5.158, 5.159, 5.161B, 5.164, 5.167, 5.167A, 5.170, 5.172, 5.173, 5.185, 5.201, 5.202, 5.208B, 5.211, 5.220, 5.221, 5.256A, 5.268, 5.275, 5.276, 5.279A, 5.286AA, 5.287, 5.288, 5.291A, 5.292, 5.293, 5.294, 5.296, 5.297, 5.300, 5.309, 5.312, 5.312A, 5.313A, 5.316B, 5.317, 5.317A, 5.325A, 5.327A, 5.329, 5.338A, 5.342, 5.345, 5.351A, 5.352A, 5.359, 5.382, 5.384A, 5.386, 5.388, 5.391, 5.393, 5.396, 5.401, 5.418, 5.428, 5.429, 5.430, 5.430A, 5.431, 5.431A, 5.432B, 5.433A, 5.438, 5.442, 5.443B, 5.444, 5.444A, 5.444B, 5.446, 5.446C, 5.447E, 5.447F, 5.450A, 5.457A, 5.457B, 5.457C, 5.459, 5.460, 5.462A, 5.468, 5.471, 5.477, 5.480, 5.481, 5.486, 5.494, 5.495, 5.500, 5.504B, 5.504C, 5.505, 5.506B, 5.508A, 5.509A, 5.510, 5.511A, 5.511C, 5.512, 5.514, 5.521, 5.524, 5.530A, 5.530D, 5.536B, 5.543A, 5.551H, and 5.562D;

■ ii. Add footnotes 5.133B, 5.228AA, 5.265, 5.295, 5.296A, 5.308, 5.308A, 5.328AA, 5.341A, 5.341B, 5.341C, 5.346, 5.346A, 5.429A, 5.429B, 5.429C, 5.429D, 5.429E, 5.429F, 5.431B, 5.434, 5.436, 5.437, 5.441A, 5.441B, 5.460A, 5.460B, 5.461AA, 5.461AB, 5.474A, 5.474B, 5.474C, 5.474D, 5.499A, 5.499B, 5.499C, 5.499D, 5.499E, 5.501A, 5.509B, 5.509C, 5.509D, 5.509E, 5.509F, and 5.509G; and

■ iii. Remove footnotes 5.166, 5.222, 5.223, 5.224A, 5.224B, 5.232, 5.234, 5.260, 5.313B, 5.314, 5.315, 5.316, 5.316A, 5.362B, 5.362C, 5.417A, 5.417B, 5.417C, 5.417D, 5.456, 5.458C, 5.511D, and 5.530C.

■ c. In the list of United States (US) footnotes, revise footnote US99, add footnote US287, and revise footnote US385;

■ d. In the list of Non-Federal Government (NG) footnotes, revise footnote NG159; and

■ e. In the list of Federal Government (G) footnotes, revise footnote G132 and remove footnote G133.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

Table of Frequency Allocations — 3.23-5.73 MHz (HF)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
3.23-3.4 FIXED MOBILE except aeronautical mobile BROADCASTING 5.113 5.116 5.118			3.23-3.4 FIXED MOBILE except aeronautical mobile Radiolocation US340		Maritime (80) Aviation (87) Private Land Mobile (90)
3.4-3.5 AERONAUTICAL MOBILE (R)			3.4-3.5 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
3.5-3.8 AMATEUR FIXED MOBILE except aeronautical mobile 5.92	3.5-3.75 AMATEUR 5.119	3.5-3.9 AMATEUR FIXED MOBILE	3.5-4	3.5-4 AMATEUR	Amateur Radio (97)
3.8-3.9 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	3.75-4 AMATEUR FIXED MOBILE except aeronautical mobile (R)				
3.9-3.95 AERONAUTICAL MOBILE (OR) 5.123		3.9-3.95 AERONAUTICAL MOBILE BROADCASTING			
3.95-4 FIXED	5.122 5.125	3.95-4 FIXED	US340	US340	

BROADCASTING		BROADCASTING 5.126			
4-4.063 FIXED MARITIME MOBILE 5.127 5.126			4-4.063 FIXED MARITIME MOBILE US340		Maritime (80)
4.063-4.438 MARITIME MOBILE 5.79A 5.109 5.110 5.130 5.131 5.132 5.128			4.063-4.438 MARITIME MOBILE 5.79A 5.109 5.110 5.130 5.131 5.132 US82 US296 US340		Maritime (80) Aviation (87)
4.438-4.488 FIXED MOBILE except aeronautical mobile (R) Radiolocation 5.132A 5.132B	4.438-4.488 FIXED MOBILE except aeronautical mobile (R) RADIOLOCATION 5.132A	4.438-4.488 FIXED MOBILE except aeronautical mobile Radiolocation 5.132A	4.438-4.488 FIXED MOBILE except aeronautical mobile (R) RADIOLOCATION 5.132A US340		Maritime (80) Private Land Mobile (90)
4.488-4.65 FIXED MOBILE except aeronautical mobile (R)		4.488-4.65 FIXED MOBILE except aeronautical mobile	4.488-4.65 FIXED MOBILE except aeronautical mobile (R) US22 US340		Maritime (80) Aviation (87) Private Land Mobile (90)
4.65-4.7 AERONAUTICAL MOBILE (R)			4.65-4.7 AERONAUTICAL MOBILE (R) US282 US283 US340		Aviation (87)
4.7-4.75 AERONAUTICAL MOBILE (OR)			4.7-4.75 AERONAUTICAL MOBILE (OR) US340		

4.75-4.85 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE BROADCASTING 5.113	4.75-4.85 FIXED MOBILE except aeronautical mobile (R) BROADCASTING 5.113	4.75-4.85 FIXED BROADCASTING 5.113 Land mobile	4.75-4.85 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Private Land Mobile (90)
4.85-4.995 FIXED LAND MOBILE BROADCASTING 5.113			4.85-4.995 FIXED MOBILE US340	4.85-4.995 FIXED US340	Aviation (87) Private Land Mobile (90)
4.995-5.003 STANDARD FREQUENCY AND TIME SIGNAL (5 MHz)			4.995-5.005 STANDARD FREQUENCY AND TIME SIGNAL (5 MHz)		
5.003-5.005 STANDARD FREQUENCY AND TIME SIGNAL Space research			US1 US340		
5.005-5.06 FIXED BROADCASTING 5.113			5.005-5.06 FIXED US22 US340		Aviation (87) Private Land Mobile (90)
5.06-5.25 FIXED Mobile except aeronautical mobile 5.133			5.06-5.25 FIXED US22 Mobile except aeronautical mobile US212 US340		Maritime (80) Aviation (87) Private Land Mobile (90)
5.25-5.275 FIXED MOBILE except aeronautical mobile	5.25-5.275 FIXED MOBILE except aeronautical mobile	5.25-5.275 FIXED MOBILE except aeronautical mobile	5.25-5.275 FIXED MOBILE except aeronautical mobile		Maritime (80) Private Land Mobile (90)

Radiolocation 5.132A 5.133A	RADIOLOCATION 5.132A	Radiolocation 5.132A	RADIOLOCATION 5.132A US340	
5.275-5.3515 FIXED MOBILE except aeronautical mobile			5.275-5.45 FIXED US22 Mobile except aeronautical mobile	Maritime (80) Aviation (87) Private Land Mobile (90) Amateur Radio (97)
5.3515-5.3665 FIXED MOBILE except aeronautical mobile Amateur 5.133B			US23 US340	
5.3665-5.45 FIXED MOBILE except aeronautical mobile				
5.45-5.48 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5.45-5.48 AERONAUTICAL MOBILE (R)	5.45-5.48 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5.45-5.68 AERONAUTICAL MOBILE (R) 5.111 5.115 US283 US340	Aviation (87)
5.48-5.68 AERONAUTICAL MOBILE (R) 5.111 5.115				
5.68-5.73 AERONAUTICAL MOBILE (OR) 5.111 5.115			5.68-5.73 AERONAUTICAL MOBILE (OR) 5.111 5.115 US340	

Table of Frequency Allocations			5.73-11.175 MHz (HF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
5.73-5.9 FIXED LAND MOBILE	5.73-5.9 FIXED MOBILE except aeronautical mobile (R)	5.73-5.9 FIXED Mobile except aeronautical mobile (R)	5.73-5.9 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Aviation (87) Private Land Mobile (90)
5.9-5.95 BROADCASTING 5.134 5.136			5.9-6.2 BROADCASTING 5.134		International Broadcast Stations (73F)
5.95-6.2 BROADCASTING			US136 US340		
6.2-6.525 MARITIME MOBILE 5.109 5.110 5.130 5.132 5.137			6.2-6.525 MARITIME MOBILE 5.109 5.110 5.130 5.132 US82 US296 US340		Maritime (80)
6.525-6.685 AERONAUTICAL MOBILE (R)			6.525-6.685 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
6.685-6.765 AERONAUTICAL MOBILE (OR)			6.685-6.765 AERONAUTICAL MOBILE (OR) US340		
6.765-7 FIXED MOBILE except aeronautical mobile (R)			6.765-7 FIXED US22 MOBILE except aeronautical mobile (R)		ISM Equipment (18) Private Land Mobile (90)

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5.138			5.138 US340		
7-7.1 AMATEUR AMATEUR-SATELLITE 5.140 5.141 5.141A			7-7.2	7-7.1 AMATEUR AMATEUR-SATELLITE US340	Amateur Radio (97)
7.1-7.2 AMATEUR 5.142 5.141A 5.141B			US340	7.1-7.2 AMATEUR US340	
7.2-7.3 BROADCASTING	7.2-7.3 AMATEUR 5.142	7.2-7.3 BROADCASTING	7.2-7.3 US142 US340	7.2-7.3 AMATEUR US142 US340	International Broadcast Stations (73F) Amateur Radio (97)
7.3-7.4 BROADCASTING 5.134 5.143 5.143A 5.143B 5.143C 5.143D			7.3-7.4 BROADCASTING 5.134 US136 US340		International Broadcast Stations (73F) Maritime (80)
7.4-7.45 BROADCASTING 5.143B 5.143C	7.4-7.45 FIXED MOBILE except aeronautical mobile (R)	7.4-7.45 BROADCASTING 5.143A 5.143C	7.4-7.45 FIXED MOBILE except aeronautical mobile (R) US142 US340		Private Land Mobile (90)
7.45-8.1 FIXED MOBILE except aeronautical mobile (R) 5.144			7.45-8.1 FIXED US22 MOBILE except aeronautical mobile (R) US340		Maritime (80) Aviation (87) Private Land Mobile (90)

Table of Frequency Allocations			41.015-117.975 MHz (VHF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
40.98-41.015 FIXED MOBILE Space research 5.160 5.161			(See previous page)		
41.015-42 FIXED MOBILE 5.160 5.161 5.161A			41.015-41.665 FIXED MOBILE RADIOLOCATION US132A US220	41.015-41.665 RADIOLOCATION US132A US220	Private Land Mobile (90)
			41.665-42 FIXED MOBILE US220	41.665-42 US220	
42-42.5 FIXED MOBILE Radiolocation 5.132A 5.160 5.161B	42-42.5 FIXED MOBILE 5.161		42-43.35	42-43.35 FIXED LAND MOBILE NG124 NG141	Public Mobile (22) Private Land Mobile (90)
42.5-44 FIXED			43.35-44 RADIOLOCATION US132A	43.35-43.69 FIXED	

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MOBILE 5.160 5.161 5.161A				LAND MOBILE RADIOLOCATION US132A NG124	
				43.69-44 LAND MOBILE RADIOLOCATION US132A NG124	Private Land Mobile (90)
44-47 FIXED MOBILE 5.162 5.162A			44-46.6	44-46.6 LAND MOBILE NG124 NG141	
			46.6-47 FIXED MOBILE	46.6-47	
47-68 BROADCASTING	47-50 FIXED MOBILE	47-50 FIXED MOBILE BROADCASTING 5.162A	47-49.6	47-49.6 LAND MOBILE NG124	Private Land Mobile (90)
			49.6-50 FIXED MOBILE	49.6-50	
	50-54 AMATEUR 5.162A 5.167 5.167A 5.168 5.170		50-73	50-54 AMATEUR	Amateur Radio (97)

137.825-138 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Fixed Mobile-satellite (space-to-Earth) 5.208A 5.208B 5.209 Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208			137.825-138 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Mobile-satellite (space-to-Earth) US319 US320 5.208		
138-143.6 AERONAUTICAL MOBILE (OR) 5.210 5.211 5.212 5.214	138-143.6 FIXED MOBILE RADIOLOCATION Space research (space-to-Earth)	138-143.6 FIXED MOBILE Space research (space-to-Earth) 5.207 5.213	138-144 FIXED MOBILE	138-144	
143.6-143.65 AERONAUTICAL MOBILE (OR) SPACE RESEARCH (space-to-Earth) 5.211 5.212 5.214	143.6-143.65 FIXED MOBILE RADIOLOCATION SPACE RESEARCH (space-to-Earth)	143.6-143.65 FIXED MOBILE SPACE RESEARCH (space-to-Earth) 5.207 5.213			
143.65-144 AERONAUTICAL MOBILE (OR) 5.210 5.211 5.212 5.214	143.65-144 FIXED MOBILE RADIOLOCATION Space research (space-to-Earth)	143.65-144 FIXED MOBILE Space research (space-to-Earth) 5.207 5.213	G30		
144-146 AMATEUR			144-148	144-146 AMATEUR	Amateur Radio (97)

AMATEUR-SATELLITE				AMATEUR-SATELLITE		
5.216						
146-148	146-148	146-148		146-148		
FIXED	AMATEUR	AMATEUR		AMATEUR		
MOBILE except aeronautical mobile (R)		FIXED				
		MOBILE				
	5.217	5.217				
148-149.9	148-149.9			148-149.9	148-149.9	Satellite Communications (25)
FIXED	FIXED			FIXED	MOBILE-SATELLITE	
MOBILE except aeronautical mobile (R)	MOBILE			MOBILE	(Earth-to-space) US320	
MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space) 5.209			MOBILE-SATELLITE	US323 US325	
5.209				(Earth-to-space) US319		
				US320 US323 US325		
5.218 5.219 5.221	5.218 5.219 5.221			5.218 5.219 G30	5.218 5.219 US319	
149.9-150.05				149.9-150.05		
MOBILE-SATELLITE (Earth-to-space) 5.209 5.220				MOBILE-SATELLITE (Earth-to-space) US319 US320		
				RADIONAVIGATION-SATELLITE		
150.05-153	150.05-154			150.05-150.8	150.05-150.8	
FIXED	FIXED			FIXED		
MOBILE except aeronautical mobile	MOBILE			MOBILE		
RADIO ASTRONOMY						
				US73 G30	US73	
5.149						
	5.225					

Table of Frequency Allocations — 150.8-174 MHz (VHF)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
(See previous page)	(See previous page)		150.8-152.855	150.8-152.855 FIXED LAND MOBILE NG4 NG51 NG112	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
			US73	US73 NG124	
153-154 FIXED MOBILE except aeronautical mobile (R) Meteorological aids			152.855-156.2475	152.855-154 LAND MOBILE NG4 NG124	Remote Pickup (74D) Private Land Mobile (90)
154-156.4875 FIXED MOBILE except aeronautical mobile (R)	154-156.4875 FIXED MOBILE	154-156.4875 FIXED MOBILE		154-156.2475 FIXED LAND MOBILE NG112	Maritime (80) Private Land Mobile (90) Personal Radio (95)
5.225A 5.226	5.226	5.225A 5.226		5.226 NG22 NG124 NG148	
			156.2475-156.5125	156.2475-156.5125 MARITIME MOBILE NG22	Maritime (80) Aviation (87)
156.4875-156.5625 MARITIME MOBILE (distress and calling via DSC)			5.226 US52 US227 US266	5.226 US52 US227 US266 NG124	
			156.5125-156.5375 MARITIME MOBILE (distress, urgency, safety and calling via DSC) 5.111 5.226 US266		
5.111 5.226 5.227			156.5375-156.7625 5.226 US52 US227 US266	156.5375-156.7625 MARITIME MOBILE	

156.5625-156.7625 FIXED MOBILE except aeronautical mobile (R) 5.226	156.5625-156.7625 FIXED MOBILE 5.226			5.226 US52 US227 US266	
156.7625-156.7875 MARITIME MOBILE Mobile-satellite (Earth-to-space) 5.111 5.226 5.228	156.7625-156.7875 MARITIME MOBILE MOBILE-SATELLITE (Earth-to-space) 5.111 5.226 5.228	156.7625-156.7875 MARITIME MOBILE Mobile-satellite (Earth-to-space) 5.111 5.226 5.228	156.7625-156.7875 MOBILE-SATELLITE (Earth-to-space) (AIS 3) 5.226 US52 US266		Satellite Communications (25) Maritime (80)
156.7875-156.8125 MARITIME MOBILE (distress and calling) 5.111 5.226			156.7875-156.8125 MARITIME MOBILE (distress, urgency, safety and calling) 5.111 5.226 US266		Maritime (80) Aviation (87)
156.8125-156.8375 MARITIME MOBILE Mobile-satellite (Earth-to-space) 5.111 5.226 5.228	156.8125-156.8375 MARITIME MOBILE MOBILE-SATELLITE (Earth-to-space) 5.111 5.226 5.228	156.8125-156.8375 MARITIME MOBILE Mobile-satellite (Earth-to-space) 5.111 5.226 5.228	156.8125-156.8375 MOBILE-SATELLITE (Earth-to-space) (AIS 4) 5.226 US52 US266		Satellite Communications (25) Maritime (80)
156.8375-161.9375 FIXED MOBILE except aeronautical mobile	156.8375-161.9375 FIXED MOBILE		156.8375-157.0375 5.226 US52 US266	156.8375-157.0375 MARITIME MOBILE 5.226 US52 US266	Maritime (80) Aviation (87)
			157.0375-157.1875 MARITIME MOBILE US214 5.226 US266 G109	157.0375-157.1875 5.226 US214 US266	Maritime (80)
			157.1875-161.575	157.1875-157.45 MOBILE except aeronautical mobile US266	Maritime (80) Aviation (87)

				5.226 NG111	Private Land Mobile (90)
				157.45-161.575 FIXED LAND MOBILE NG28 NG111 NG112 5.226 NG6 NG70 NG124 NG148 NG155	Public Mobile (22) Remote Pickup (74D) Maritime (80) Private Land Mobile (90)
			161.575-161.625 5.226 US52	161.575-161.625 MARITIME MOBILE 5.226 US52 NG6 NG17	Public Mobile (22) Maritime (80)
			161.625-161.9625	161.625-161.775 LAND MOBILE NG6 5.226	Public Mobile (22) Remote Pickup (74D) Low Power Auxiliary (74H)
5.226	5.226			161.775-161.9625 MOBILE except aeronautical mobile US266 NG6	Maritime (80) Private Land Mobile (90)
161.9375-161.9625 FIXED MOBILE except aeronautical mobile Maritime mobile-satellite (Earth-to-space) 5.228AA 5.226	161.9375-161.9625 FIXED MOBILE Maritime mobile-satellite (Earth-to-space) 5.228AA 5.226		US266	5.226	
161.9625-161.9875 FIXED MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space)	161.9625-161.9875 AERONAUTICAL MOBILE (OR) MARITIME MOBILE MOBILE-SATELLITE (Earth-to-space)	161.9625-161.9875 MARITIME MOBILE Aeronautical mobile (OR) 5.228E Mobile-satellite (Earth-to-space) 5.228F	161.9625-161.9875 AERONAUTICAL MOBILE (OR) (AIS 1) MARITIME MOBILE (AIS 1) MOBILE-SATELLITE (Earth-to-space) (AIS 1)		Satellite Communications (25) Maritime (80)

5.228F 5.226 5.228A 5.228B	5.228C 5.228D	5.226	5.228C US52		
161.9875-162.0125 FIXED MOBILE except aeronautical mobile Maritime mobile-satellite (Earth-to-space) 5.228AA 5.226 5.229	161.9875-162.0125 FIXED MOBILE Maritime mobile-satellite (Earth-to-space) 5.228AA 5.226		161.9875-162.0125	161.9875-162.0125 MOBILE except aeronautical mobile 5.226	Maritime (80)
162.0125-162.0375 FIXED MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.228F 5.226 5.228A 5.228B 5.229	162.0125-162.0375 AERONAUTICAL MOBILE (OR) MARITIME MOBILE MOBILE-SATELLITE (Earth-to-space) 5.228C 5.228D	162.0125-162.0375 MARITIME MOBILE Aeronautical mobile (OR) 5.228E Mobile-satellite (Earth-to-space) 5.228F 5.226	162.0125-162.0375 AERONAUTICAL MOBILE (OR) (AIS 2) MARITIME MOBILE (AIS 2) MOBILE-SATELLITE (Earth-to-space) (AIS 2) 5.228C US52		Satellite Communications (25) Maritime (80)
162.0375-174 FIXED MOBILE except aeronautical mobile 5.226 5.229	162.0375-174 FIXED MOBILE 5.226 5.230 5.231		162.0375-173.2 FIXED MOBILE US8 US11 US13 US55 US73 US300 US312 G5	162.0375-173.2 US8 US11 US13 US55 US73 US300 US312	Remote Pickup (74D) Private Land Mobile (90)
			173.2-173.4	173.2-173.4 FIXED Land mobile	Private Land Mobile (90)
			173.4-174 FIXED MOBILE G5	173.4-174	

Table of Frequency Allocations — 174-400.15 MHz (VHF/UHF)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
174-223 BROADCASTING	174-216 BROADCASTING Fixed Mobile	174-223 FIXED MOBILE BROADCASTING	174-216	174-216 BROADCASTING NG5 NG14 NG115 NG149	Broadcast Radio (TV)(73) LPTV, TV Translator/ Booster (74G) Low Power Auxiliary (74H)
	216-220 FIXED MARITIME MOBILE Radiolocation 5.241 5.242		216-217 Fixed Land mobile US210 US241 G2	216-219 FIXED MOBILE except aeronautical mobile US210 US241 NG173	Maritime (80) Private Land Mobile (90) Personal Radio (95)
			217-220 Fixed Mobile US210 US241	219-220 FIXED MOBILE except aeronautical mobile Amateur NG152 US210 US241 NG173	Maritime (80) Private Land Mobile (90) Amateur Radio (97)
	220-225 AMATEUR FIXED MOBILE Radiolocation 5.241		220-222 FIXED LAND MOBILE US241 US242		Private Land Mobile (90)
5.235 5.237 5.243		5.233 5.238 5.240 5.245	222-225	222-225 AMATEUR	Amateur Radio (97)
223-230 BROADCASTING		223-230 FIXED			

Fixed Mobile 5.243 5.246 5.247	225-235 FIXED MOBILE	MOBILE BROADCASTING AERONAUTICAL RADIONAVIGATION Radiolocation 5.250	225-235 FIXED MOBILE G27	225-235	
230-235 FIXED MOBILE 5.247 5.251 5.252		230-235 FIXED MOBILE AERONAUTICAL RADIONAVIGATION 5.250			
235-267 FIXED MOBILE 5.111 5.252 5.254 5.256 5.256A			235-267 FIXED MOBILE 5.111 5.256 G27 G100	235-267 5.111 5.256	
267-272 FIXED MOBILE Space operation (space-to-Earth) 5.254 5.257			267-322 FIXED MOBILE	267-322	

272-273 SPACE OPERATION (space-to-Earth) FIXED MOBILE 5.254			
273-312 FIXED MOBILE 5.254			
312-315 FIXED MOBILE Mobile-satellite (Earth-to-space) 5.254 5.255			
315-322 FIXED MOBILE 5.254	G27 G100		
322-328.6 FIXED MOBILE RADIO ASTRONOMY 5.149	322-328.6 FIXED MOBILE US342 G27	322-328.6 US342	
328.6-335.4	328.6-335.4		

AERONAUTICAL RADIONAVIGATION 5.258 5.259	AERONAUTICAL RADIONAVIGATION 5.258		Aviation (87)
335.4-387 FIXED MOBILE 5.254	335.4-399.9 FIXED MOBILE	335.4-399.9	
387-390 FIXED MOBILE Mobile-satellite (space-to-Earth) 5.208A 5.208B 5.254 5.255			
390-399.9 FIXED MOBILE 5.254	G27 G100		
399.9-400.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.220	399.9-400.05 MOBILE-SATELLITE (Earth-to-space) US319 US320 RADIONAVIGATION-SATELLITE		Satellite Communications (25)
400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261 5.262	400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261		

Table of Frequency Allocations			400.15-456 MHz (UHF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
400.15-401 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.208B 5.209 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth) 5.262 5.264			400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US319 US320 US324 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth) 5.264	400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 MOBILE-SATELLITE (space-to-Earth) US319 US320 US324 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth) 5.264	Satellite Communications (25)
401-402 METEOROLOGICAL AIDS SPACE OPERATION (space-to-Earth) EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile			401-402 METEOROLOGICAL AIDS (radiosonde) US70 SPACE OPERATION (space-to-Earth) EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) US64 US384	401-402 METEOROLOGICAL AIDS (radiosonde) US70 SPACE OPERATION (space-to-Earth) Earth exploration-satellite (Earth-to-space) Meteorological-satellite (Earth-to-space) US64 US384	MedRadio (95I)
402-403 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (Earth-to-space)			402-403 METEOROLOGICAL AIDS (radiosonde) US70	402-403 METEOROLOGICAL AIDS (radiosonde) US70	

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METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) US64 US384	Earth exploration-satellite (Earth-to-space) Meteorological-satellite (Earth-to-space) US64 US384	
403-406 METEOROLOGICAL AIDS Fixed Mobile except aeronautical mobile 5.265	403-406 METEOROLOGICAL AIDS (radiosonde) US70 US64 G6	403-406 METEOROLOGICAL AIDS (radiosonde) US70 US64	
406-406.1 MOBILE-SATELLITE (Earth-to-space) 5.265 5.266 5.267	406-406.1 MOBILE-SATELLITE (Earth-to-space) 5.266 5.267		Maritime (EPIRBs) (80V) Aviation (ELTs) (87F) Personal Radio (95)
406.1-410 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149 5.265	406.1-410 FIXED MOBILE RADIO ASTRONOMY US74 US13 US55 US117 G5 G6	406.1-410 RADIO ASTRONOMY US74 US13 US55 US117	Private Land Mobile (90)
410-420 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-space) 5.268	410-420 FIXED MOBILE SPACE RESEARCH (space-to-space) 5.268 US13 US55 US64 G5	410-420 US13 US55 US64	Private Land Mobile (90) MedRadio (95I)

Table of Frequency Allocations			456-894 MHz (UHF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
456-459 FIXED MOBILE 5.286AA 5.271 5.287 5.288			456-459 US287 US64 US288	456-460 FIXED LAND MOBILE	Public Mobile (22) Maritime (80) Private Land Mobile (90) MedRadio (95I)
459-460 FIXED MOBILE 5.286AA 5.209 5.271 5.286A 5.286B 5.286C 5.286E	459-460 FIXED MOBILE 5.286AA MOBILE-SATELLITE (Earth-to-space) 5.286A 5.286B 5.286C 5.209	459-460 FIXED MOBILE 5.286AA 5.209 5.271 5.286A 5.286B 5.286C 5.286E	459-460	US64 US287 US288 NG32 NG112 NG124 NG148	
460-470 FIXED MOBILE 5.286AA Meteorological-satellite (space-to-Earth)			460-470 Meteorological-satellite (space-to-Earth)	460-462.5375 FIXED LAND MOBILE US209 US289 NG124	Private Land Mobile (90)
				462.5375-462.7375 LAND MOBILE US289	Personal Radio (95)
				462.7375-467.5375 FIXED LAND MOBILE US73 US209 US287 US288 US289 NG124	Maritime (80) Private Land Mobile (90)

				467.5375-467.7375	
				LAND MOBILE	Maritime (80)
					Personal Radio (95)
				US287 US288 US289	
				467.7375-470	
				FIXED	Maritime (80)
				LAND MOBILE	Private Land Mobile (90)
			US73 US209 US287 US288		
5.287 5.288 5.289 5.290			US289	US73 US288 US289 NG124	
470-694	470-512	470-585	470-608	470-512	
BROADCASTING	BROADCASTING	FIXED		FIXED	Public Mobile (22)
	Fixed	MOBILE 5.296A		LAND MOBILE	Broadcast Radio (TV)(73)
	Mobile	BROADCASTING		BROADCASTING	LPTV, TV Translator/Booster (74G)
					Low Power Auxiliary (74H)
	5.292 5.293 5.295			NG5 NG14 NG66 NG115 NG149	Private Land Mobile (90)
	512-608	5.291 5.298		512-608	
	BROADCASTING	585-610		BROADCASTING	Broadcast Radio (TV)(73)
		FIXED			LPTV, TV Translator/Booster (74G)
		MOBILE 5.296A			Low Power Auxiliary (74H)
	5.295 5.297	BROADCASTING		NG5 NG14 NG115 NG149	
	608-614	RADIONAVIGATION	608-614		
	RADIO ASTRONOMY		LAND MOBILE (medical telemetry and medical telecommand)		Personal Radio (95)
	Mobile-satellite except aeronautical		RADIO ASTRONOMY US74		
	mobile-satellite (Earth-to-space)	5.149 5.305 5.306 5.307			
		610-890			
		FIXED			
		MOBILE 5.296A 5.313A 5.317A			
		BROADCASTING		US246	

5.149 5.291A 5.294 5.296 5.300 5.304 5.306 5.311A 5.312	614-698 BROADCASTING Fixed Mobile 5.293 5.308 5.308A 5.309 5.311A	
694-790 MOBILE except aeronautical mobile 5.312A 5.317A BROADCASTING	698-806 MOBILE 5.317A BROADCASTING Fixed	
5.300 5.311A 5.312		
790-862 FIXED	5.293 5.309 5.311A	
614-890	614-698 FIXED MOBILE NG5 NG14 NG33 NG115 NG149	RF Devices (15) Wireless Communications (27) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H)
	698-758 FIXED MOBILE BROADCASTING NG159	Wireless Communications (27) LPTV and TV Translator (74G)
	758-775 FIXED MOBILE NG34 NG159	Public Safety Land Mobile (90R)
	775-788 FIXED MOBILE BROADCASTING NG159	Wireless Communications (27) LPTV and TV Translator (74G)
	788-805 FIXED MOBILE	Public Safety Land Mobile (90R)

MOBILE except aeronautical mobile 5.316B 5.317A BROADCASTING			NG34 NG159
			805-806 FIXED MOBILE BROADCASTING NG159
			Wireless Communications (27) LPTV and TV Translator (74G)
	806-890 FIXED MOBILE 5.317A BROADCASTING		806-809 LAND MOBILE
			Public Safety Land Mobile (90S)
			809-849 FIXED LAND MOBILE
			Public Mobile (22) Private Land Mobile (90)
			849-851 AERONAUTICAL MOBILE
			Public Mobile (22)
			851-854 LAND MOBILE
			Public Safety Land Mobile (90S)
5.312 5.319			854-894 FIXED LAND MOBILE
			Public Mobile (22) Private Land Mobile (90)
862-890 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322		5.149 5.305 5.306 5.307	
5.319 5.323	5.317 5.318	5.311A 5.320	US116 US268

Table of Frequency Allocations			894-1400 MHz (UHF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
890-942 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 Radiolocation	890-902 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation 5.318 5.325	890-942 FIXED MOBILE 5.317A BROADCASTING Radiolocation	890-902 US116 US268 G2	(See previous page)	
				894-896 AERONAUTICAL MOBILE US116 US268	Public Mobile (22)
				896-901 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
				901-902 FIXED MOBILE US116 US268	Personal Communications (24)
	902-928 FIXED Amateur Mobile except aeronautical mobile 5.325A Radiolocation 5.150 5.325 5.326		902-928 RADIOLOCATION G59 5.150 US218 US267 US275 G11	902-928 5.150 US218 US267 US275	RF Devices (15) ISM Equipment (18) Private Land Mobile (90) Amateur Radio (97)
	928-942 FIXED MOBILE except aeronautical		928-932	928-929 FIXED US116 US268 NG35	Public Mobile (22) Private Land Mobile (90) Fixed Microwave (101)

	mobile 5.317A Radiolocation			929-930 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
				930-931 FIXED MOBILE US116 US268	Personal Communications (24)
			US116 US268 G2	931-932 FIXED LAND MOBILE US116 US268	Public Mobile (22)
			932-935 FIXED US268 G2	932-935 FIXED US268 NG35	Public Mobile (22) Fixed Microwave (101)
			935-941	935-940 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
5.323	5.325	5.327	US116 US268 G2	940-941 FIXED MOBILE US116 US268	Personal Communications (24)

942-960 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 5.323	942-960 FIXED MOBILE 5.317A	942-960 FIXED MOBILE 5.317A BROADCASTING 5.320	941-944 FIXED US84 US268 US301 G2 944-960	941-944 FIXED US84 US268 US301 NG30 NG35 944-960 FIXED NG35	Public Mobile (22) Aural Broadcast Auxiliary (74E) Low Power Auxiliary (74H) Fixed Microwave (101)
960-1164 AERONAUTICAL MOBILE (R) 5.327A AERONAUTICAL RADIONAVIGATION 5.328 5.328AA			960-1164 AERONAUTICAL MOBILE (R) 5.327A AERONAUTICAL RADIONAVIGATION 5.328 US224		Aviation (87)
1164-1215 AERONAUTICAL RADIONAVIGATION 5.328 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.328A			1164-1215 AERONAUTICAL RADIONAVIGATION 5.328 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328A US224		
1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329 5.329A SPACE RESEARCH (active) 5.330 5.331 5.332			1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) G132 SPACE RESEARCH (active) 5.332	1215-1240 Earth exploration-satellite (active) Space research (active)	
1240-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329 5.329A			1240-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 SPACE RESEARCH (active)	1240-1300 AERONAUTICAL RADIONAVIGATION Amateur Earth exploration-satellite (active)	Amateur Radio (97)

SPACE RESEARCH (active) Amateur 5.282 5.330 5.331 5.332 5.335 5.335A		AERONAUTICAL RADIONAVIGATION 5.332 5.335	Space research (active) 5.282	
1300-1350 RADIOLOCATION AERONAUTICAL RADIONAVIGATION 5.337 RADIONAVIGATION-SATELLITE (Earth-to-space) 5.149 5.337A		1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation G2 US342	1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 US342	Aviation (87)
1350-1400 FIXED MOBILE RADIOLOCATION	1350-1400 RADIOLOCATION 5.338A	1350-1390 FIXED MOBILE RADIOLOCATION G2 5.334 5.339 US342 US385 G27 G114	1350-1390 5.334 5.339 US342 US385	
		1390-1395 5.339 US79 US342 US385	1390-1395 FIXED MOBILE except aeronautical mobile 5.339 US79 US342 US385 NG338A	Wireless Communications (27)
		1395-1400 LAND MOBILE (medical telemetry and medical telecommand) 5.339 US79 US342 US385		Personal Radio (95)
5.149 5.338 5.338A 5.339	5.149 5.334 5.339			

Table of Frequency Allocations — 1400-1626.5 MHz (UHF)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341			1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246		
1427-1429 SPACE OPERATION (Earth-to-space) FIXED MOBILE except aeronautical mobile 5.341A 5.341B 5.341C 5.338A 5.341			1427-1429.5 LAND MOBILE (medical telemetry and medical telecommand) US350 5.341 US79	1427-1429.5 LAND MOBILE (telemetry and telecommand) Fixed (telemetry) 5.341 US79 US350 NG338A	Private Land Mobile (90) Personal Radio (95)
1429-1452 FIXED MOBILE except aeronautical mobile 5.341A 5.338A 5.341 5.342	1429-1452 FIXED MOBILE 5.341B 5.341C 5.343 5.338A 5.341		1429.5-1432 5.341 US79 US350	1429.5-1432 FIXED (telemetry and telecommand) LAND MOBILE (telemetry and telecommand) 5.341 US79 US350 NG338A	
			1432-1435 5.341 US83	1432-1435 FIXED MOBILE except aeronautical mobile 5.341 US83 NG338A	Wireless Communications (27)

1452-1492 FIXED MOBILE except aeronautical mobile 5.346 BROADCASTING BROADCASTING-SATELLITE 5.208B 5.341 5.342 5.345	1452-1492 FIXED MOBILE 5.341B 5.343 5.346A BROADCASTING BROADCASTING-SATELLITE 5.208B 5.341 5.344 5.345		1435-1525 MOBILE (aeronautical telemetry) US338A 5.341 US84 US343	Aviation (87)
1492-1518 FIXED MOBILE except aeronautical mobile 5.341A 5.341 5.342	1492-1518 FIXED MOBILE 5.341B 5.343 5.341 5.344	1492-1518 FIXED MOBILE 5.341C 5.341		
1518-1525 FIXED MOBILE except aeronautical mobile MOBILE-SATELLITE (space-to-Earth) 5.348 5.348A 5.348B 5.351A 5.341 5.342	1518-1525 FIXED MOBILE 5.343 MOBILE-SATELLITE (space-to-Earth) 5.348 5.348A 5.348B 5.351A 5.341 5.344	1518-1525 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.348 5.348A 5.348B 5.351A 5.341		

1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.208B 5.351A Earth exploration-satellite Mobile except aeronautical mobile 5.349 5.341 5.342 5.350 5.351 5.352A 5.354	1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208B 5.351A Earth exploration-satellite Fixed Mobile 5.343 5.341 5.351 5.354	1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.208B 5.351A Earth exploration-satellite Mobile 5.349 5.341 5.351 5.352A 5.354	1525-1535 MOBILE-SATELLITE (space-to-Earth) US315 US380 5.341 5.351	Satellite Communications (25) Maritime (80)
1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208B 5.351A 5.353A Earth exploration-satellite Fixed Mobile except aeronautical mobile 5.341 5.342 5.351 5.354	1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208B 5.351A 5.353A Earth exploration-satellite Fixed Mobile 5.343 5.341 5.351 5.354			
1535-1559 MOBILE-SATELLITE (space-to-Earth) 5.208B 5.351A 5.341 5.351 5.353A 5.354 5.355 5.356 5.357 5.357A 5.359 5.362A			1535-1559 MOBILE-SATELLITE (space-to-Earth) US308 US309 US315 US380 5.341 5.351 5.356	Satellite Communications (25) Maritime (80) Aviation (87)
1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.208B 5.328B 5.329A 5.341			1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth)(space-to-space) 5.341 US85 US208 US260	Aviation (87)

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1610-1610.6	1610-1610.6	1610-1610.6	1610-1610.6	
MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space) US319 US380	Satellite
5.351A	5.351A	5.351A	AERONAUTICAL RADIONAVIGATION US260	Communications (25)
AERONAUTICAL RADIONAVIGATION	AERONAUTICAL RADIONAVIGATION	AERONAUTICAL RADIONAVIGATION	RADIODETERMINATION-SATELLITE (Earth-to-space)	Aviation (87)
	RADIODETERMINATION-SATELLITE (Earth-to-space)	Radiodetermination-satellite (Earth-to-space)		
5.341 5.355 5.359 5.364 5.366	5.341 5.364 5.366 5.367 5.368	5.341 5.355 5.359 5.364 5.366	5.341 5.364 5.366 5.367 5.368 5.372 US208	
5.367 5.368 5.369 5.371 5.372	5.370 5.372	5.367 5.368 5.369 5.372		
1610.6-1613.8	1610.6-1613.8	1610.6-1613.8	1610.6-1613.8	
MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space) US319 US380	
5.351A	5.351A	5.351A	RADIO ASTRONOMY	
RADIO ASTRONOMY	RADIO ASTRONOMY	RADIO ASTRONOMY	AERONAUTICAL RADIONAVIGATION US260	
AERONAUTICAL RADIONAVIGATION	AERONAUTICAL RADIONAVIGATION	AERONAUTICAL RADIONAVIGATION	RADIODETERMINATION-SATELLITE (Earth-to-space)	
	RADIODETERMINATION-SATELLITE (Earth-to-space)	Radiodetermination-satellite (Earth-to-space)		
5.149 5.341 5.355 5.359 5.364 5.366	5.149 5.341 5.364 5.366 5.367 5.368	5.149 5.341 5.355 5.359 5.364 5.366		
5.367 5.368 5.369 5.371 5.372	5.370 5.372	5.367 5.368 5.369 5.372	5.341 5.364 5.366 5.367 5.368 5.372 US208 US342	
1613.8-1626.5	1613.8-1626.5	1613.8-1626.5	1613.8-1626.5	
MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space) US319 US380	
5.351A	5.351A	5.351A	AERONAUTICAL RADIONAVIGATION US260	
AERONAUTICAL RADIONAVIGATION	AERONAUTICAL RADIONAVIGATION	AERONAUTICAL RADIONAVIGATION	RADIODETERMINATION-SATELLITE (Earth-to-space)	
Mobile-satellite (space-to-Earth)	RADIODETERMINATION-SATELLITE (Earth-to-space)	Mobile-satellite (space-to-Earth) 5.208B	Mobile-satellite (space-to-Earth)	
5.208B	Mobile-satellite (space-to-Earth) 5.208B	Radiodetermination-satellite (Earth-to-space)		
5.341 5.355 5.359 5.364 5.365 5.366	5.341 5.364 5.365 5.366 5.367 5.368	5.341 5.355 5.359 5.364 5.365 5.366		
5.367 5.368 5.369 5.371 5.372	5.370 5.372	5.367 5.368 5.369 5.372	5.341 5.364 5.365 5.366 5.367 5.368 5.372 US208	

2310-2320	2310-2320	Wireless
Fixed	FIXED	Communications (27)
Mobile US100	MOBILE	
Radiolocation G2	BROADCASTING-SATELLITE	
	RADIOLOCATION	
US97 US327	5.396 US97 US100 US327	
2320-2345	2320-2345	Satellite
Fixed	BROADCASTING-SATELLITE	Communications (25)
Radiolocation G2	RADIOLOCATION	
US327	5.396 US327	
2345-2360	2345-2360	Wireless
Fixed	FIXED	Communications (27)
Mobile US100	MOBILE US100	
Radiolocation G2	BROADCASTING-SATELLITE	
	RADIOLOCATION	
US327	5.396 US327	
2360-2390	2360-2390	Aviation (87)
MOBILE US276	MOBILE US276	Personal Radio (95)
RADIOLOCATION G2 G120		
Fixed		
US101	US101	
2390-2395	2390-2395	Aviation (87)
MOBILE US276	AMATEUR	

5.150 5.282 5.395 5.150 5.282 5.393 5.394 5.396

						MOBILE US276	Personal Radio (95)
							Amateur Radio (97)
					US101	US101	
					2395-2400	2395-2400	
						AMATEUR	Personal Radio (95)
							Amateur Radio (97)
					US101 G122	US101	
					2400-2417	2400-2417	
						AMATEUR	RF Devices (15)
							ISM Equipment (18)
					5.150 G122	5.150 5.282	Amateur Radio (97)
					2417-2450	2417-2450	
					Radiolocation G2	Amateur	
						5.150 5.282	
					5.150		
2450-2483.5	2450-2483.5				2450-2483.5	2450-2483.5	RF Devices (15)
FIXED	FIXED					FIXED	ISM Equipment (18)
MOBILE	MOBILE					MOBILE	TV Auxiliary
Radiolocation	RADIOLOCATION					Radiolocation	Broadcasting (74F)
							Private Land Mobile (90)
							Fixed Microwave (101)
5.150	5.150				5.150 US41	5.150 US41	

Table of Frequency Allocations		2483.5-3500 MHz (UHF/SHF)			
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 Radiolocation 5.398A	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 US391 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398	2483.5-2495 MOBILE-SATELLITE (space-to-Earth) US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 US319 NG147	ISM Equipment (18) Satellite Communications (25)
				2495-2500 FIXED MOBILE except aeronautical mobile MOBILE-SATELLITE (space-to-Earth) US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 US319 US391	ISM Equipment (18) Satellite Communications (25) Wireless Communications (27)
5.150 5.399 5.401 5.402	5.150 5.402	5.150 5.401 5.402	5.150 5.402 US41	NG147	
2500-2520 FIXED 5.410 MOBILE except aeronautical mobile 5.384A 5.412	2500-2520 FIXED 5.410 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A 5.404	2500-2520 FIXED 5.410 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.351A 5.407 5.414 5.414A 5.404 5.415A	2500-2655	2500-2655 FIXED US205 MOBILE except aeronautical mobile	Wireless Communications (27)

2520-2655	2520-2655	2520-2535			
FIXED 5.410	FIXED 5.410	FIXED 5.410			
MOBILE except aeronautical	FIXED-SATELLITE (space-to-	FIXED-SATELLITE (space-to-Earth) 5.415			
mobile 5.384A	Earth) 5.415	MOBILE except aeronautical mobile 5.384A			
BROADCASTING-SATELLITE	MOBILE except aeronautical	BROADCASTING-SATELLITE 5.413 5.416			
5.413 5.416	mobile 5.384A				
	BROADCASTING-SATELLITE	5.403 5.414A 5.415A			
	5.413 5.416	2535-2655			
		FIXED 5.410			
		MOBILE except aeronautical mobile 5.384A			
		BROADCASTING-SATELLITE 5.413 5.416			
5.339 5.412 5.418B 5.418C	5.339 5.418B 5.418C	5.339 5.418 5.418A 5.418B 5.418C	5.339 US205	5.339	
2655-2670	2655-2670	2655-2670	2655-2690	2655-2690	
FIXED 5.410	FIXED 5.410	FIXED 5.410	Earth exploration-satellite (passive)	FIXED US205	
MOBILE except aeronautical	FIXED-SATELLITE (Earth-to-space)	FIXED-SATELLITE (Earth-to-space) 5.415	Radio astronomy US385	MOBILE except aeronautical mobile	
mobile 5.384A	(space-to-Earth) 5.415	MOBILE except aeronautical mobile 5.384A	Space research (passive)	Earth exploration-satellite (passive)	
BROADCASTING-SATELLITE	MOBILE except aeronautical mobile	BROADCASTING-SATELLITE 5.413 5.416		Radio astronomy	
5.208B 5.413 5.416	5.384A	Earth exploration-satellite (passive)		Space research (passive)	
Earth exploration-satellite	BROADCASTING-SATELLITE	Radio astronomy			
(passive)	5.413 5.416	Space research (passive)			
Radio astronomy	Earth exploration-satellite (passive)				
Space research (passive)	Radio astronomy				
	Space research (passive)				
5.149 5.412	5.149 5.208B	5.149 5.208B 5.420			

2670-2690 FIXED 5.410 MOBILE except aeronautical mobile 5.384A Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.412	2670-2690 FIXED 5.410 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.208B 5.415 MOBILE except aeronautical mobile 5.384A Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149	2670-2690 FIXED 5.410 FIXED-SATELLITE (Earth-to-space) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) 5.351A 5.419 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149	US205	US385	
2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.422			2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
2700-2900 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation 5.423 5.424			2700-2900 METEOROLOGICAL AIDS AERONAUTICAL RADIONAVIGATION 5.337 US18 Radiolocation G2 5.423 G15	2700-2900 5.423 US18	Aviation (87)
2900-3100 RADIOLOCATION 5.424A RADIONAVIGATION 5.426			2900-3100 RADIOLOCATION 5.424A G56 MARITIME RADIONAVIGATION	2900-3100 MARITIME RADIONAVIGATION Radiolocation US44	Maritime (80) Private Land Mobile (90)

5.425 5.427			5.427 US44 US316	5.427 US316	
3100-3300 RADIOLOCATION Earth exploration-satellite (active) Space research (active) 5.149 5.428			3100-3300 RADIOLOCATION G59 Earth exploration-satellite (active) Space research (active) US342	3100-3300 Earth exploration-satellite (active) Space research (active) Radiolocation US342	Private Land Mobile (90)
3300-3400 RADIOLOCATION 5.149 5.429 5.429A 5.429B 5.430	3300-3400 RADIOLOCATION Amateur Fixed Mobile 5.149 5.429C 5.429D	3300-3400 RADIOLOCATION Amateur 5.149 5.429 5.429E 5.429F	3300-3500 RADIOLOCATION US108 G2	3300-3500 Amateur Radiolocation US108	Private Land Mobile (90) Amateur Radio (97)
3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.430A Radiolocation 5.431	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.431A 5.431B Amateur Radiolocation 5.433 5.282	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile 5.432 5.432B Radiolocation 5.433 5.282 5.432A	US342	5.282 US342	

Table of Frequency Allocations	3500-5460 MHz (SHF)				
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
(See previous page)	3500-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.431B Radiolocation 5.433	3500-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.433A Radiolocation 5.433	3500-3550 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110	3500-3550 Radiolocation	Private Land Mobile (90)
			3550-3650 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 US105 US107 US245 US433	3550-3600 FIXED MOBILE except aeronautical mobile US105 US433	Citizens Broadband (96)
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile	3600-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.434 Radiolocation 5.433	3600-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.435		3600-3650 FIXED FIXED-SATELLITE (space-to-Earth) US107 US245 MOBILE except aeronautical mobile US105 US433	Satellite Communications (25) Citizens Broadband (96)
			3650-3700 US109 US349	3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 NG185 MOBILE except aeronautical mobile US109 US349	
	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4000 FIXED MOBILE except aeronautical mobile NG182 NG457A	Wireless Communications (27)
				4000-4200	

			FIXED FIXED-SATELLITE (space-to-Earth) NG457A NG182	Satellite Communications (25)
4200-4400 AERONAUTICAL MOBILE (R) 5.436 AERONAUTICAL RADIONAVIGATION 5.438 5.437 5.439 5.440		4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261		Aviation (87)
4400-4500 FIXED MOBILE 5.440A		4400-4940 FIXED MOBILE	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE 5.440A			4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245	
4800-4990 FIXED MOBILE 5.440A 5.441A 5.441B 5.442 Radio astronomy 5.149 5.339 5.443		US113 US245 US342	4800-4940 US113 US342	
		4940-4990 5.339 US342 US385 G122	4940-4990 FIXED MOBILE except aeronautical mobile 5.339 US342 US385	Public Safety Land Mobile (90Y)
4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive) 5.149		4990-5000 RADIO ASTRONOMY US74 Space research (passive) US246		

5000-5010 AERONAUTICAL MOBILE-SATELLITE (R) 5.443AA AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (Earth-to-space)	5000-5010 AERONAUTICAL MOBILE (R) US115 AERONAUTICAL MOBILE-SATELLITE (R) 5.443AA AERONAUTICAL RADIONAVIGATION US260 RADIONAVIGATION-SATELLITE (Earth-to-space) US211		Aviation (87)
5010-5030 AERONAUTICAL MOBILE-SATELLITE (R) 5.443AA AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.443B	5010-5030 AERONAUTICAL MOBILE-SATELLITE (R) 5.443AA AERONAUTICAL RADIONAVIGATION US260 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.443B US115 US211		
5030-5091 AERONAUTICAL MOBILE (R) 5.443C AERONAUTICAL MOBILE-SATELLITE (R) 5.443D AERONAUTICAL RADIONAVIGATION 5.444	5030-5091 AERONAUTICAL MOBILE (R) 5.443C AERONAUTICAL MOBILE-SATELLITE (R) 5.443D AERONAUTICAL RADIONAVIGATION US260 US211 US444		
5091-5150 FIXED-SATELLITE (Earth-to-space) 5.444A AERONAUTICAL MOBILE 5.444B AERONAUTICAL MOBILE-SATELLITE (R) 5.443AA AERONAUTICAL RADIONAVIGATION 5.444	5091-5150 AERONAUTICAL MOBILE US111 US444B AERONAUTICAL MOBILE-SATELLITE (R) 5.443AA AERONAUTICAL RADIONAVIGATION US260 US211 US344 US444 US444A		Satellite Communications (25) Aviation (87)
5150-5250 FIXED-SATELLITE (Earth-to-space) 5.447A	5150-5250 AERONAUTICAL RADIONAVIGATION	5150-5250 FIXED-SATELLITE (Earth-to-space) 5.447A	RF Devices (15)

MOBILE except aeronautical mobile 5.446A 5.446B AERONAUTICAL RADIONAVIGATION 5.446 5.446C 5.447 5.447B 5.447C	US260 US211 US307 US344	US344 AERONAUTICAL RADIONAVIGATION US260 5.447C US211 US307	Satellite Communications (25) Aviation (87)
5250-5255 EARTH EXPLORATION-SATELLITE (active) MOBILE except aeronautical mobile 5.446A 5.447F RADIOLOCATION SPACE RESEARCH 5.447D 5.447E 5.448 5.448A	5250-5255 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active) 5.447D 5.448A	5250-5255 Earth exploration-satellite (active) Radiolocation Space research	RF Devices (15) Private Land Mobile (90)
5255-5350 EARTH EXPLORATION-SATELLITE (active) MOBILE except aeronautical mobile 5.446A 5.447F RADIOLOCATION SPACE RESEARCH (active) 5.447E 5.448 5.448A	5255-5350 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active) 5.448A	5255-5350 Earth exploration-satellite (active) Radiolocation Space research (active) 5.448A	
5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B RADIOLOCATION 5.448D AERONAUTICAL RADIONAVIGATION 5.449 SPACE RESEARCH (active) 5.448C	5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B RADIOLOCATION G56 AERONAUTICAL RADIONAVIGATION 5.449 SPACE RESEARCH (active) US390 G130	5350-5460 AERONAUTICAL RADIONAVIGATION 5.449 Earth exploration-satellite (active) 5.448B Radiolocation Space research (active) US390	Aviation (87) Private Land Mobile (90)

Table of Frequency Allocations			5460-7145 MHz (SHF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
5460-5470 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION 5.448D RADIONAVIGATION 5.449 SPACE RESEARCH (active) 5.448B			5460-5470 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 RADIONAVIGATION 5.449 US65 SPACE RESEARCH (active) 5.448B US49 G130	5460-5470 RADIONAVIGATION 5.449 US65 Earth exploration-satellite (active) Radiolocation Space research (active) 5.448B US49	Maritime (80) Aviation (87) Private Land Mobile (90)
5470-5570 EARTH EXPLORATION-SATELLITE (active) MOBILE except aeronautical mobile 5.446A 5.450A RADIOLOCATION 5.450B MARITIME RADIONAVIGATION SPACE RESEARCH (active) 5.448B 5.450 5.451			5470-5570 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 MARITIME RADIONAVIGATION US65 SPACE RESEARCH (active) 5.448B US50 G131	5470-5570 RADIOLOCATION MARITIME RADIONAVIGATION US65 Earth exploration-satellite (active) Space research (active) US50	RF Devices (15) Maritime (80) Private Land Mobile (90)
5570-5650 MOBILE except aeronautical mobile 5.446A 5.450A RADIOLOCATION 5.450B MARITIME RADIONAVIGATION 5.450 5.451 5.452			5570-5600 RADIOLOCATION G56 MARITIME RADIONAVIGATION US65 US50 G131 5600-5650 METEOROLOGICAL AIDS RADIOLOCATION G56 MARITIME RADIONAVIGATION US65	5570-5600 RADIOLOCATION MARITIME RADIONAVIGATION US65 US50 5600-5650 METEOROLOGICAL AIDS RADIOLOCATION MARITIME RADIONAVIGATION US65	

			5.452 US50 G131	5.452 US50	
5650-5725 MOBILE except aeronautical mobile 5.446A 5.450A RADIOLOCATION Amateur Space research (deep space) 5.282 5.451 5.453 5.454 5.455			5650-5925 RADIOLOCATION G2 5.150 US245	5650-5830 Amateur 5.150 5.282	RF Devices (15) ISM Equipment (18) Amateur Radio (97)
5725-5830 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur 5.150 5.451 5.453 5.455	5725-5830 RADIOLOCATION Amateur 5.150 5.453 5.455				
5830-5850 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur Amateur-satellite (space-to-Earth) 5.150 5.451 5.453 5.455	5830-5850 RADIOLOCATION Amateur Amateur-satellite (space-to-Earth) 5.150 5.453 5.455			5830-5850 Amateur Amateur-satellite (space-to-Earth) 5.150	
5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE		5850-5925 FIXED-SATELLITE (Earth-to-space) US245 MOBILE NG160 Amateur	RF Devices (15) ISM Equipment (18) Private Land Mobile (90) Personal Radio (95)

5.150	Amateur Radiolocation 5.150	Radiolocation 5.150		5.150	Amateur Radio (97)
5925-6700 FIXED 5.457 FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B MOBILE 5.457C			5925-6425	5925-6425 FIXED FIXED-SATELLITE (Earth-to-space) NG457A	RF Devices (15) Satellite Communications (25) Fixed Microwave (101)
			6425-6525 5.440 5.458	6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE 5.440 5.458	RF Devices (15) Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
5.149 5.440 5.458			6525-6700 5.458 US342	6525-6700 FIXED FIXED-SATELLITE (Earth-to-space) 5.458 US342	RF Devices (15) Satellite Communications (25) Fixed Microwave (101)
6700-7075 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE			6700-7125	6700-6875 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 5.458 5.458A 5.458B	

6875-7025		RF Devices (15)
FIXED NG118		Satellite Communications (25)
FIXED-SATELLITE (Earth-to-space)		TV Broadcast Auxiliary (74F)
(space-to-Earth) 5.441		Cable TV Relay (78)
MOBILE NG171		
5.458 5.458A 5.458B		
7025-7075		RF Devices (15)
FIXED NG118		TV Broadcast Auxiliary (74F)
FIXED-SATELLITE (Earth-to-space) NG172		Cable TV Relay (78)
MOBILE NG171		
5.458 5.458A 5.458B		
7075-7125		
FIXED NG118		
MOBILE NG171		
5.458		
7125-7145		RF Devices (15)
FIXED		
5.458 G116		
5.458		
5.458 5.458A 5.458B		
7075-7145		
FIXED		
MOBILE		
5.458 5.459		

Table of Frequency Allocations			7145-8650 MHz (SHF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
7145-7190 FIXED MOBILE SPACE RESEARCH (deep space) (Earth-to-space) 5.458 5.459			7145-7190 FIXED SPACE RESEARCH (deep space)(Earth-to-space) US262 5.458 G116	7145-7235 	 RF Devices (15)
7190-7235 EARTH EXPLORATION-SATELLITE (Earth-to-space) 5.460A 5.460B FIXED MOBILE SPACE RESEARCH (Earth-to-space) 5.460 5.458 5.459			7190-7235 EARTH EXPLORATION-SATELLITE (Earth-to-space) 5.460A 5.460B FIXED SPACE RESEARCH (Earth-to-space) 5.460 5.458 G134	 5.458 US262	
7235-7250 EARTH EXPLORATION-SATELLITE (Earth-to-space) 5.460A FIXED MOBILE 5.458			7235-7250 EARTH EXPLORATION-SATELLITE (Earth-to-space) 5.460A FIXED 5.458	7235-7250 5.458	
7250-7300 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 5.461			7250-7300 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Fixed G117	7250-8025	

7300-7375	7300-7375
FIXED	FIXED
FIXED-SATELLITE (space-to-Earth)	FIXED-SATELLITE (space-to-Earth)
MOBILE except aeronautical mobile	Mobile-satellite (space-to-Earth)
5.461	G117
7375-7450	7375-7450
FIXED	FIXED
FIXED-SATELLITE (space-to-Earth)	FIXED-SATELLITE (space-to-Earth)
MOBILE except aeronautical mobile	MOBILE except aeronautical mobile
MARITIME MOBILE-SATELLITE (space-to-Earth) 5.461AA 5.461AB	MARITIME MOBILE-SATELLITE (space-to-Earth) 5.461AA 5.461AB
	Mobile-satellite except maritime mobile-satellite (space-to-Earth)
5.461A	G117
7450-7550	7450-7550
FIXED	FIXED
FIXED-SATELLITE (space-to-Earth)	FIXED-SATELLITE (space-to-Earth)
METEOROLOGICAL-SATELLITE (space-to-Earth)	METEOROLOGICAL-SATELLITE (space-to-Earth)
MOBILE except aeronautical mobile	MARITIME MOBILE-SATELLITE (space-to-Earth) 5.461AA
MARITIME MOBILE-SATELLITE (space-to-Earth) 5.461AA 5.461AB	5.461AB
	Mobile-satellite except maritime mobile-satellite (space-to-Earth)
5.461A	G104 G117
7550-7750	7550-7750
FIXED	FIXED
FIXED-SATELLITE (space-to-Earth)	FIXED-SATELLITE (space-to-Earth)

MOBILE except aeronautical mobile MARITIME MOBILE-SATELLITE (space-to-Earth) 5.461AA 5.461AB	MARITIME MOBILE-SATELLITE (space-to-Earth) 5.461AA 5.461AB Mobile-satellite except maritime mobile-satellite (space-to-Earth) G117		
7750-7900 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) 5.461B MOBILE except aeronautical mobile	7750-7900 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) 5.461B		
7900-8025 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.461	7900-8025 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Fixed G117		
8025-8175 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.463 5.462A	8025-8175 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space)(no airborne transmissions) US258 G117	8025-8400	
8175-8215 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) MOBILE 5.463	8175-8215 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space)(no airborne transmissions)		

5.462A	US258 G104 G117		
8215-8400 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.463 5.462A	8215-8400 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space)(no airborne transmissions) US258 G117	US258	
8400-8500 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-Earth) 5.465 5.466	8400-8450 FIXED SPACE RESEARCH (deep space)(space-to-Earth)	8400-8450 Space research (deep space) (space-to-Earth)	
	8450-8500 FIXED SPACE RESEARCH (space-to-Earth)	8450-8500 SPACE RESEARCH (space-to-Earth)	
8500-8550 RADIOLOCATION 5.468 5.469	8500-8550 RADIOLOCATION G59	8500-8550 Radiolocation	Private Land Mobile (90)
8550-8650 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.468 5.469 5.469A	8550-8650 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	8550-8650 Earth exploration-satellite (active) Radiolocation Space research (active)	

Table of Frequency Allocations			8.65-11.7 GHz (SHF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
8.65-8.75 RADIOLOCATION 5.468 5.469			8.65-9 RADIOLOCATION G59	8.65-9 Radiolocation	Aviation (87) Private Land Mobile (90)
8.75-8.85 RADIOLOCATION AERONAUTICAL RADIONAVIGATION 5.470 5.471					
8.85-9 RADIOLOCATION MARITIME RADIONAVIGATION 5.472 5.473			US53	US53	
9-9.2 AERONAUTICAL RADIONAVIGATION 5.337 RADIOLOCATION 5.471 5.473A			9-9.2 AERONAUTICAL RADIONAVIGATION 5.337 RADIOLOCATION G2 5.473A G19	9-9.2 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation	
9.2-9.3 EARTH EXPLORATION-SATELLITE (active) 5.474A 5.474B 5.474C RADIOLOCATION MARITIME RADIONAVIGATION 5.472 5.473 5.474 5.474D			9.2-9.3 MARITIME RADIONAVIGATION 5.472 Radiolocation US110 G59 5.474	9.2-9.3 MARITIME RADIONAVIGATION 5.472 Radiolocation US110 5.474	Maritime (80) Private Land Mobile (90)

9.3-9.5 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION 5.475 SPACE RESEARCH (active) 5.427 5.474 5.475A 5.475B 5.476A	9.3-9.5 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 RADIONAVIGATION US475 SPACE RESEARCH (active) Meteorological aids 5.427 5.474 5.475A 5.475B US67 US71 US476A	9.3-9.5 RADIONAVIGATION US475 Meteorological aids Earth exploration-satellite (active) Radiolocation Space research (active) 5.427 5.474 US67 US71 US476A	Maritime (80) Aviation (87) Private Land Mobile (90)
9.5-9.8 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION SPACE RESEARCH (active) 5.476A	9.5-9.8 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active)	9.5-9.9 Earth exploration-satellite (active) Radiolocation Space research (active)	Private Land Mobile (90)
9.8-9.9 RADIOLOCATION Earth exploration-satellite (active) Fixed Space research (active) 5.477 5.478 5.478A 5.478B	9.8-9.9 RADIOLOCATION Earth exploration-satellite (active) Space research (active)		
9.9-10 EARTH EXPLORATION-SATELLITE (active) 5.474A 5.474B 5.474C RADIOLOCATION Fixed	9.9-10 RADIOLOCATION	9.9-10 Radiolocation	

5.474D 5.477 5.478 5.479			5.479	5.479	
10-10.4 EARTH EXPLORATION-SATELLITE (active) 5.474A 5.474B 5.474C FIXED MOBILE RADIOLOCATION Amateur 5.474D 5.479	10-10.4 EARTH EXPLORATION-SATELLITE (active) 5.474A 5.474B 5.474C RADIOLOCATION Amateur 5.474D 5.479 5.480	10-10.4 EARTH EXPLORATION-SATELLITE (active) 5.474A 5.474B 5.474C FIXED MOBILE RADIOLOCATION Amateur 5.474D 5.479	10-10.5 RADIOLOCATION US108 G32	10-10.45 Amateur Radiolocation US108 5.479 US128 NG50	Private Land Mobile (90) Amateur Radio (97)
10.4-10.45 FIXED MOBILE RADIOLOCATION Amateur	10.4-10.45 RADIOLOCATION Amateur 5.480	10.4-10.45 FIXED MOBILE RADIOLOCATION Amateur			
10.45-10.5 RADIOLOCATION Amateur Amateur-satellite 5.481			5.479 US128	10.45-10.5 Amateur Amateur-satellite Radiolocation US108 US128 NG50	
10.5-10.55 FIXED MOBILE Radiolocation	10.5-10.55 FIXED MOBILE RADIOLOCATION		10.5-10.55 RADIOLOCATION US59		Private Land Mobile (90)
10.55-10.6 FIXED			10.55-10.6	10.55-10.6 FIXED	Fixed Microwave (101)

MOBILE except aeronautical mobile Radiolocation				
10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482 5.482A		10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US130 US131 US482	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED US482 SPACE RESEARCH (passive) US130 US131	
10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.483		10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US131 US246		
10.7-10.95 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 (Earth-to-space) 5.484 MOBILE except aeronautical mobile	10.7-10.95 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE except aeronautical mobile	10.7-11.7	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 US131 US211 NG52	Satellite Communications (25) Fixed Microwave (101)
10.95-11.2 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B (Earth-to-space) 5.484 MOBILE except aeronautical mobile	10.95-11.2 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B MOBILE except aeronautical mobile			

			US131 US211	NG527A	

Table of Frequency Allocations		11.7-14.47 GHz (SHF)			
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
11.2-11.45 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 (Earth-to-space) 5.484 MOBILE except aeronautical mobile	11.2-11.45 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE except aeronautical mobile		(See previous page)		
11.45-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B (Earth-to-space) 5.484 MOBILE except aeronautical mobile	11.45-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B MOBILE except aeronautical mobile				
11.7-12.5 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492	11.7-12.1 FIXED 5.486 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.488 Mobile except aeronautical mobile 5.485 12.1-12.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.488	11.7-12.2 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492 5.487 5.487A	11.7-12.2	11.7-12.2 FIXED-SATELLITE (space-to-Earth) 5.485 5.488 NG143 NG527A	Satellite Communications (25)

	5.485 5.489				
5.487 5.487A	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492 5.487A 5.488 5.490	12.2-12.5 FIXED FIXED-SATELLITE (space-to-Earth) 5.484B MOBILE except aeronautical mobile BROADCASTING 5.484A 5.487	12.2-12.75	12.2-12.7 FIXED BROADCASTING-SATELLITE 5.487A 5.488 5.490	Satellite Communications (25) Fixed Microwave (101)
12.5-12.75 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B (Earth-to-space) 5.494 5.495 5.496	12.7-12.75 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile	12.5-12.75 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.493		12.7-12.75 FIXED NG118 FIXED-SATELLITE (Earth-to-space) MOBILE	TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
12.75-13.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.441 MOBILE Space research (deep space) (space-to-Earth)			12.75-13.25 US251	12.75-13.25 FIXED NG118 FIXED-SATELLITE (Earth-to-space) 5.441 NG52 NG57 MOBILE US251 NG53	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active)			13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active)	13.25-13.4 AERONAUTICAL RADIONAVIGATION 5.497 Earth exploration-satellite (active) Space research (active)	Aviation (87)

5.498A 5.499		5.498A		
13.4-13.65 EARTH EXPLORATION-SATELLITE (active) FIXED-SATELLITE (space-to-Earth) 5.499A 5.499B RADIOLOCATION SPACE RESEARCH 5.499C 5.499D Standard frequency and time signal-satellite (Earth-to-space) 5.499 5.499E 5.500 5.501 5.501B	13.4-13.65 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.499C 5.499D Standard frequency and time signal-satellite (Earth-to-space) 5.499 5.500 5.501 5.501B	13.4-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH 5.499C 5.499D 5.501A Standard frequency and time signal-satellite (Earth-to-space)	13.4-13.75 Earth exploration-satellite (active) Radiolocation Space research Standard frequency and time signal-satellite (Earth-to-space)	Private Land Mobile (90)
13.65-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.501A Standard frequency and time signal-satellite (Earth-to-space) 5.499 5.500 5.501 5.501B		5.501B		
13.75-14 FIXED-SATELLITE (Earth-to-space) 5.484A RADIOLOCATION Earth exploration-satellite Standard frequency and time signal-satellite (Earth-to-space) Space research 5.499 5.500 5.501 5.502 5.503		13.75-14 RADIOLOCATION G59 Standard frequency and time signal-satellite (Earth-to-space) Space research US337 US356 US357	13.75-14 FIXED-SATELLITE (Earth-to-space) US337 Standard frequency and time signal-satellite (Earth-to-space) Space research Radiolocation US356 US357	Satellite Communications (25) Private Land Mobile (90)

14-14.25 FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.484B 5.506 5.506B RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.504B 5.504C 5.506A Space research 5.504A 5.505			14-14.2 Space research US133	14-14.2 FIXED-SATELLITE (Earth-to-space) NG527A Mobile-satellite (Earth-to-space) Space research US133	Satellite Communications (25)
14.25-14.3 FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.484B 5.506 5.506B RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.504B 5.506A 5.508A Space research 5.504A 5.505 5.508			14.2-14.4	14.2-14.47 FIXED-SATELLITE (Earth-to-space) NG527A Mobile-satellite (Earth-to-space)	
14.3-14.4 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.484B 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.504B 5.506A 5.509A Radionavigation-satellite 5.504A	14.3-14.4 FIXED-SATELLITE (Earth-to-space) 5.457A 5.484A 5.484B 5.506 5.506B Mobile-satellite (Earth-to-space) 5.506A Radionavigation-satellite 5.504A	14.3-14.4 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.484A 5.484B 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.504B 5.506A 5.509A Radionavigation-satellite 5.504A			
14.4-14.47 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.484B 5.506 5.506B MOBILE except aeronautical mobile			14.4-14.47 Fixed Mobile		

Mobile-satellite (Earth-to-space) 5.504B 5.506A 5.509A Space research (space-to-Earth) 5.504A					
Table of Frequency Allocations		14.47-18.6 GHz (SHF)			
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
14.47-14.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.504B 5.506A 5.509A Radio astronomy 5.149 5.504A			14.47-14.5 Fixed Mobile US113 US133 US342	14.47-14.5 FIXED-SATELLITE (Earth-to-space) NG527A Mobile-satellite (Earth-to-space) US113 US133 US342	Satellite Communications (25)
14.5-14.75 FIXED FIXED-SATELLITE (Earth-to-space) 5.509B 5.509C 5.509D 5.509E 5.509F 5.510 MOBILE Space research 5.509G			14.5-14.7145 FIXED Mobile Space research 5.509G 14.7145-14.8 MOBILE Fixed Space research 5.509G	14.5-14.8	
14.75-14.8 FIXED FIXED-SATELLITE (Earth-to-space) 5.510 MOBILE Space research 5.509G		14.75-14.8 FIXED FIXED-SATELLITE (Earth-to-space) 5.509B 5.509C 5.509D 5.509E 5.509F 5.510 MOBILE Space research 5.509G			
14.8-15.35 FIXED			14.8-15.1365 MOBILE SPACE RESEARCH	14.8-15.1365	

MOBILE Space research 5.339	Fixed US310 15.1365-15.35 FIXED SPACE RESEARCH Mobile 5.339 US211	US310 15.1365-15.35 5.339 US211	
15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.511	15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
15.4-15.43 RADIOLOCATION 5.511E 5.511F AERONAUTICAL RADIONAVIGATION	15.4-15.43 RADIOLOCATION 5.511E 5.511F US511E AERONAUTICAL RADIONAVIGATION US260 US211	15.4-15.43 AERONAUTICAL RADIONAVIGATION US260 US211 US511E	Aviation (87)
15.43-15.63 FIXED-SATELLITE (Earth-to-space) 5.511A RADIOLOCATION 5.511E 5.511F AERONAUTICAL RADIONAVIGATION 5.511C	15.43-15.63 RADIOLOCATION 5.511E 5.511F US511E AERONAUTICAL RADIONAVIGATION US260 5.511C US211 US359	15.43-15.63 FIXED-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION US260 5.511C US211 US359 US511E	Satellite Communications (25) Aviation (87)

15.63-15.7 RADIOLOCATION 5.511E 5.511F AERONAUTICAL RADIONAVIGATION			15.63-15.7 RADIOLOCATION 5.511E 5.511F US511E AERONAUTICAL RADIONAVIGATION US260 US211	15.63-15.7 AERONAUTICAL RADIONAVIGATION US260 US211 US511E	Aviation (87)
15.7-16.6 RADIOLOCATION 5.512 5.513			15.7-16.6 RADIOLOCATION G59	15.7-17.2 Radiolocation	Private Land Mobile (90)
16.6-17.1 RADIOLOCATION Space research (deep space) (Earth-to-space) 5.512 5.513			16.6-17.1 RADIOLOCATION G59 Space research (deep space) (Earth-to-space)		
17.1-17.2 RADIOLOCATION 5.512 5.513			17.1-17.2 RADIOLOCATION G59		
17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.512 5.513 5.513A			17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	17.2-17.3 Earth exploration-satellite (active) Radiolocation Space research (active)	
17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 (space-to-Earth) 5.516A 5.516B	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516	17.3-17.7 Radiolocation US259 G59	17.3-17.7 FIXED-SATELLITE (Earth-to-space) US271	Satellite Communications (25)

Radiolocation 5.514	BROADCASTING-SATELLITE Radiolocation 5.514 5.515	Radiolocation 5.514	US402 G117	BROADCASTING-SATELLITE US402 NG163 US259	
17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 FIXED FIXED-SATELLITE (space-to-Earth) 5.517 (Earth-to-space) 5.516 BROADCASTING-SATELLITE Mobile 5.515	17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 US334 G117	17.7-17.8 FIXED FIXED-SATELLITE (Earth-to-space) US271 US334	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
	17.8-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE 5.519		17.8-18.3 FIXED-SATELLITE (space-to-Earth) US334 G117 US519	17.8-18.3 FIXED Fixed-satellite (space-to-Earth) US334 US519	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
18.1-18.4 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B (Earth-to-space) 5.520 MOBILE 5.519 5.521			18.3-18.6 FIXED-SATELLITE (space-to-Earth) US334 G117 US139	18.3-18.6 FIXED-SATELLITE (space-to-Earth) NG164 NG527A US139 US334	Satellite Communications (25)
18.4-18.6 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE					

Table of Frequency Allocations — 18.6-24.45 GHz (SHF)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A 5.522C	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 US334 G117 SPACE RESEARCH (passive) US139 US254	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 NG164 NG527A SPACE RESEARCH (passive) US139 US254 US334	Satellite Communications (25)
18.8-19.3 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.523A MOBILE			18.8-20.2 FIXED-SATELLITE (space-to-Earth) US334 G117	18.8-19.3 FIXED-SATELLITE (space-to-Earth) NG165 US139 US334	
19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 5.523B 5.523C 5.523D 5.523E MOBILE				19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) NG166 US334	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.516B 5.527A Mobile-satellite (space-to-Earth)	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.516B 5.527A MOBILE-SATELLITE (space-to-Earth)	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.516B 5.527A Mobile-satellite (space-to-Earth)		19.7-20.2 FIXED-SATELLITE (space-to-Earth) NG527A MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25)

5.524	5.524 5.525 5.526 5.527 5.528 5.529	5.524			
20.1-20.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.516B 5.527A MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528			US139	5.525 5.526 5.527 5.528 5.529 US334	
20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) 5.524			20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) G117	20.2-21.2 Standard frequency and time signal-satellite (space-to-Earth)	
21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive)			21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US532		Fixed Microwave (101)
21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.208B 5.530A 5.530B 5.530D	21.4-22 FIXED MOBILE 5.530A	21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.208B 5.530A 5.530B 5.530D 5.531	21.4-22 FIXED MOBILE		

22-22.21 FIXED MOBILE except aeronautical mobile 5.149	22-22.21 FIXED MOBILE except aeronautical mobile US342	
22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) 5.149 5.532	22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) US342 US532	
22.5-22.55 FIXED MOBILE 	22.5-22.55 FIXED MOBILE US211	
22.55-23.15 FIXED INTER-SATELLITE 5.338A MOBILE SPACE RESEARCH (Earth-to-space) 5.532A 5.149	22.55-23.15 FIXED INTER-SATELLITE US145 US278 MOBILE SPACE RESEARCH (Earth-to-space) 5.532A US342	Satellite Communications (25) Fixed Microwave (101)
23.15-23.55 FIXED INTER-SATELLITE 5.338A	23.15-23.55 FIXED INTER-SATELLITE US145 US278	

MOBILE			MOBILE		
23.55-23.6 FIXED MOBILE			23.55-23.6 FIXED MOBILE		Fixed Microwave (101)
23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
24-24.05 AMATEUR AMATEUR-SATELLITE 5.150			24-24.05 5.150 US211	24-24.05 AMATEUR AMATEUR-SATELLITE 5.150 US211	ISM Equipment (18) Amateur Radio (97)
24.05-24.25 RADIOLOCATION Amateur Earth exploration-satellite (active) 5.150			24.05-24.25 RADIOLOCATION G59 Earth exploration-satellite (active) 5.150	24.05-24.25 Amateur Earth exploration-satellite (active) Radiolocation 5.150	RF Devices (15) ISM Equipment (18) Private Land Mobile (90) Amateur Radio (97)
24.25-24.45 FIXED	24.25-24.45 RADIONAVIGATION	24.25-24.45 FIXED MOBILE RADIONAVIGATION	24.25-24.45	24.25-24.45 FIXED MOBILE	RF Devices (15) Upper Microwave Flexible Use (30)

Table of Frequency Allocations — 24.45-31.8 GHz (SHF/EHF)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
24.45-24.65 FIXED INTER-SATELLITE	24.45-24.65 INTER-SATELLITE RADIONAVIGATION 5.533	24.45-24.65 FIXED INTER-SATELLITE MOBILE RADIONAVIGATION 5.533	24.45-24.65 INTER-SATELLITE RADIONAVIGATION 5.533		RF Devices (15) Satellite Communications (25)
24.65-24.75 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B INTER-SATELLITE	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)	24.65-24.75 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B INTER-SATELLITE MOBILE 5.533	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)		
24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B	24.75-25.25 FIXED-SATELLITE (Earth-to-space) 5.535	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.535 MOBILE	24.75-25.25	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) NG65 MOBILE	RF Devices (15) Satellite Communications (25) Upper Microwave Flexible Use (30)
25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)			25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time	25.25-25.5 Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space)	RF Devices (15)

		signal-satellite (Earth-to-space)		
25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) 5.536B FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) 5.536C Standard frequency and time signal-satellite (Earth-to-space) 5.536A		25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258	25.5-27 SPACE RESEARCH (space-to-Earth) Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258	
27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE	27-27.5 FIXED FIXED-SATELLITE (Earth-to-space) INTER-SATELLITE 5.536 5.537 MOBILE	27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE	27-27.5 Inter-satellite 5.536	
27.5-28.5 FIXED 5.537A FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE 5.538 5.540		27.5-30	27.5-28.35 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	RF Devices (15) Satellite Communications (25) Upper Microwave Flexible Use (30) Fixed Microwave (101)
			28.35-29.1 FIXED-SATELLITE (Earth-to-space) NG165 NG527A	RF Devices (15) Satellite Communications (25)

28.5-29.1 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.523A 5.539 MOBILE Earth exploration-satellite (Earth-to-space) 5.541 5.540				NG62	
29.1-29.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.516B 5.523C 5.523E 5.535A 5.539 5.541A MOBILE Earth exploration-satellite (Earth-to-space) 5.541 5.540				29.1-29.25 FIXED FIXED-SATELLITE (Earth-to-space) NG166 MOBILE 29.25-29.5 FIXED-SATELLITE (Earth-to-space) NG527A NG535A NG62	Satellite Communications (25) Fixed Microwave (101) Satellite Communications (25)
29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.484B 5.516B 5.527A 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space) 5.540 5.542	29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.484B 5.516B 5.527A 5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) 5.541 5.525 5.526 5.527 5.529 5.540	29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.484B 5.516B 5.527A 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space) 5.540 5.542		29.5-30 FIXED-SATELLITE (Earth-to-space) NG527A MOBILE-SATELLITE (Earth-to-space) 5.525 5.526 5.527 5.529 5.543	
29.9-30 FIXED-SATELLITE (Earth-to-space) 5.484A 5.484B 5.516B 5.527A 5.539 MOBILE-SATELLITE (Earth-to-space)					

Earth exploration-satellite (Earth-to-space) 5.541 5.543 5.525 5.526 5.527 5.538 5.540 5.542					
30-31 FIXED-SATELLITE (Earth-to-space) 5.338A MOBILE-SATELLITE (Earth-to-space) Standard frequency and time signal-satellite (space-to-Earth) 5.542			30-31 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Standard frequency and time signal-satellite (space-to-Earth) G117	30-31 Standard frequency and time signal-satellite (space-to-Earth)	
31-31.3 FIXED 5.338A 5.543A MOBILE Standard frequency and time signal-satellite (space-to-Earth) Space research 5.544 5.545 5.149			31-31.3 Standard frequency and time signal-satellite (space-to-Earth) US211 US342	31-31.3 FIXED NG60 MOBILE Standard frequency and time signal-satellite (space-to-Earth) US211 US342	Fixed Microwave (101)
31.3-31.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			31.3-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)		
31.5-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile 5.149 5.546	31.5-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340	31.5-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile 5.149	US246		

Table of Frequency Allocations			31.8-42 GHz (EHF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
31.8-32 FIXED 5.547A RADIONAVIGATION SPACE RESEARCH (deep space) (space-to-Earth) 5.547 5.547B 5.548			31.8-32.3 RADIONAVIGATION US69 SPACE RESEARCH (deep space) (space-to-Earth) US262	31.8-32.3 SPACE RESEARCH (deep space) (space-to-Earth) US262	
32-32.3 FIXED 5.547A RADIONAVIGATION SPACE RESEARCH (deep space) (space-to-Earth) 5.547 5.547C 5.548			5.548 US211	5.548 US211	
32.3-33 FIXED 5.547A INTER-SATELLITE RADIONAVIGATION 5.547 5.547D 5.548			32.3-33 INTER-SATELLITE US278 RADIONAVIGATION US69 5.548		Aviation (87)
33-33.4 FIXED 5.547A RADIONAVIGATION 5.547 5.547E			33-33.4 RADIONAVIGATION US69 US360 G117		
33.4-34.2 RADIOLOCATION 5.549			33.4-34.2 RADIOLOCATION US360 G117	33.4-34.2 Radiolocation US360	Private Land Mobile (90)

34.2-34.7 RADIOLOCATION SPACE RESEARCH (deep space) (Earth-to-space) 5.549	34.2-34.7 RADIOLOCATION SPACE RESEARCH (deep space) (Earth-to-space) US262 US360 G34 G117	34.2-34.7 Radiolocation Space research (deep space) (Earth-to-space) US262 US360	
34.7-35.2 RADIOLOCATION Space research 5.550 5.549	34.7-35.5 RADIOLOCATION	34.7-35.5 Radiolocation	
35.2-35.5 METEOROLOGICAL AIDS RADIOLOCATION 5.549	US360 G117	US360	
35.5-36 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.549 5.549A	35.5-36 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) US360 G117	35.5-36 Earth exploration-satellite (active) Radiolocation Space research (active) US360	
36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) 5.149 5.550A	36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US342 US550A		

37-37.5 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-Earth) 5.547	37-38 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-Earth)	37-37.5 FIXED MOBILE except aeronautical mobile US151	Upper Microwave Flexible Use (30)
37.5-38 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile SPACE RESEARCH (space-to-Earth) Earth exploration-satellite (space-to-Earth) 5.547	US151	37.5-38 FIXED FIXED-SATELLITE (space-to-Earth) NG63 MOBILE except aeronautical mobile US151	Satellite Communications (25) Upper Microwave Flexible Use (30)
38-39.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Earth exploration-satellite (space-to-Earth) 5.547	38-38.6 FIXED MOBILE 38.6-39.5	38-39.5 FIXED FIXED-SATELLITE (space-to-Earth) NG63 MOBILE NG175	
39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B MOBILE MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite (space-to-Earth) 5.547	39.5-40 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US382 G117	39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) NG63 MOBILE NG175 US382	

40-40.5			40-40.5	40-40.5		Satellite
EARTH EXPLORATION-SATELLITE (Earth-to-space)			EARTH EXPLORATION-SATELLITE (Earth-to-space)	FIXED-SATELLITE (space-to-Earth)		Communications (25)
FIXED			FIXED-SATELLITE (space-to-Earth)	MOBILE-SATELLITE (space-to-Earth)		
FIXED-SATELLITE (space-to-Earth) 5.516B			MOBILE-SATELLITE (space-to-Earth)			
MOBILE			SPACE RESEARCH (Earth-to-space)			
MOBILE-SATELLITE (space-to-Earth)			Earth exploration-satellite (space-to-Earth)			
SPACE RESEARCH (Earth-to-space)			G117			
Earth exploration-satellite (space-to-Earth)						
40.5-41	40.5-41	40.5-41	40.5-41	40.5-41		
FIXED	FIXED	FIXED	FIXED-SATELLITE (space-to-Earth)	FIXED-SATELLITE (space-to-Earth)		
FIXED-SATELLITE (space-to-Earth)	FIXED-SATELLITE (space-to-Earth) 5.516B	FIXED-SATELLITE (space-to-Earth)	Mobile-satellite (space-to-Earth)	BROADCASTING		
BROADCASTING	BROADCASTING	BROADCASTING-SATELLITE		BROADCASTING-SATELLITE		
BROADCASTING-SATELLITE	BROADCASTING	Mobile		Fixed		
Mobile	BROADCASTING-SATELLITE	Mobile-satellite (space-to-Earth)		Mobile		
	Mobile			Mobile-satellite (space-to-Earth)		
	Mobile-satellite (space-to-Earth)					
5.547	5.547	5.547	US211 G117	US211		
41-42.5			41-42.5	41-42		
FIXED				FIXED		
FIXED-SATELLITE (space-to-Earth) 5.516B				FIXED-SATELLITE (space-to-Earth)		
BROADCASTING				MOBILE		
BROADCASTING-SATELLITE				BROADCASTING		
Mobile				BROADCASTING-SATELLITE		
				US211		
5.547 5.551F 5.551H 5.551I			US211			

Table of Frequency Allocations			42-56.9 GHz (EHF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
(See previous page)			(See previous page)	42-42.5 FIXED MOBILE US211	
42.5-43.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149 5.547			42.5-43.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile RADIO ASTRONOMY US342	42.5-43.5 RADIO ASTRONOMY US342	
43.5-47 MOBILE 5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE			43.5-45.5 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) G117	43.5-45.5	
			45.5-46.9 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE 5.554		
5.554			46.9-47 MOBILE MOBILE-SATELLITE (Earth-to-space)	46.9-47 FIXED MOBILE	

		RADIONAVIGATION-SATELLITE 5.554	MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE 5.554	
47-47.2 AMATEUR AMATEUR-SATELLITE		47-48.2	47-47.2 AMATEUR AMATEUR-SATELLITE	Amateur Radio (97)
47.2-47.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE 5.552A			47.2-48.2 FIXED FIXED-SATELLITE (Earth-to-space) US297 NG65 MOBILE	Satellite Communications (25) Upper Microwave Flexible Use (30)
47.5-47.9 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 (space-to-Earth) 5.516B 5.554A MOBILE	47.5-47.9 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE			
47.9-48.2 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE 5.552A				
48.2-48.54 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 (space-to-Earth) 5.516B	48.2-50.2 FIXED FIXED-SATELLITE (Earth-to-space) 5.338A 5.516B 5.552	48.2-50.2 FIXED FIXED-SATELLITE (Earth-to-space) US156 US297		Satellite Communications (25)

5.554A 5.555B MOBILE	MOBILE	MOBILE US264		
48.54-49.44 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE 5.149 5.340 5.555				
49.44-50.2 FIXED FIXED-SATELLITE (Earth-to-space) 5.338A 5.552 (space-to-Earth) 5.516B 5.554A 5.555B MOBILE	5.149 5.340 5.555	5.555 US342		
50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) 5.340		50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US246		
50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) 5.338A MOBILE Mobile-satellite (Earth-to-space)		50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) US156 MOBILE MOBILE-SATELLITE (Earth-to-space) G117	50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) US156 MOBILE MOBILE-SATELLITE (Earth-to-space) NG65	Satellite Communications (25)
51.4-52.6		51.4-52.6		

FIXED 5.338A MOBILE 5.547 5.556	FIXED US157 MOBILE	
52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) 5.340 5.556	52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US246	
54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive) 5.556B	54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive)	Satellite Communications (25)
55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED 5.557A INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) 5.547 5.557	55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED US379 INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) US353 US532	

Table of Frequency Allocations			56.9-81 GHz (EHF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.558A MOBILE 5.558 SPACE RESEARCH (passive) 5.547 5.557			56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE G128 MOBILE 5.558 SPACE RESEARCH (passive) US532	56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE 5.558 SPACE RESEARCH (passive) US532	
57-58.2 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) 5.547 5.557			57-58.2 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) US532		RF Devices (15) Satellite Communications (25)
58.2-59 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) 5.547 5.556			58.2-59 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US353 US354		RF Devices (15)

59-59.3 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.556A MOBILE 5.558 RADIOLOCATION 5.559 SPACE RESEARCH (passive)	59-59.3 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.556A MOBILE 5.558 RADIOLOCATION 5.559 SPACE RESEARCH (passive) US353	59-59.3 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE 5.558 RADIOLOCATION 5.559 SPACE RESEARCH (passive) US353	
59.3-64 FIXED INTER-SATELLITE MOBILE 5.558 RADIOLOCATION 5.559 5.138	59.3-64 FIXED INTER-SATELLITE MOBILE 5.558 RADIOLOCATION 5.559 5.138 US353	59.3-64 FIXED MOBILE 5.558 RADIOLOCATION 5.559 5.138 US353	RF Devices (15) ISM Equipment (18)
64-65 FIXED INTER-SATELLITE MOBILE except aeronautical mobile 5.547 5.556	64-65 FIXED INTER-SATELLITE MOBILE except aeronautical mobile	64-65 FIXED MOBILE except aeronautical mobile	RF Devices (15)
65-66 EARTH EXPLORATION-SATELLITE FIXED INTER-SATELLITE MOBILE except aeronautical mobile SPACE RESEARCH	65-66 EARTH EXPLORATION-SATELLITE FIXED MOBILE except aeronautical mobile SPACE RESEARCH	65-66 EARTH EXPLORATION-SATELLITE FIXED INTER-SATELLITE MOBILE except aeronautical mobile	RF Devices (15) Satellite Communications (25)

5.547		SPACE RESEARCH	
66-71 INTER-SATELLITE MOBILE 5.553 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554	66-71 MOBILE 5.553 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554	66-71 INTER-SATELLITE MOBILE 5.553 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554	
71-74 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth)	71-74 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth) US389		Fixed Microwave (101)
74-76 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE BROADCASTING BROADCASTING-SATELLITE Space research (space-to-Earth) 5.561	74-76 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Space research (space-to-Earth) US389	74-76 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE BROADCASTING BROADCASTING-SATELLITE Space research (space-to-Earth) US389	RF Devices (15) Fixed Microwave (101)
76-77.5 RADIO ASTRONOMY RADIOLOCATION	76-81 RADIO ASTRONOMY RADIOLOCATION	76-77 RADIO ASTRONOMY RADIOLOCATION Amateur	RF Devices (15) Personal Radio (95)

Amateur Amateur-satellite Space research (space-to-Earth) 5.149	Space research (space-to-Earth) 5.560 US342	Space research (space-to-Earth) US342 77-81 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) 5.560 US342	Amateur Radio (97)
77.5-78 AMATEUR AMATEUR-SATELLITE RADIOLOCATION 5.559B Radio astronomy Space research (space-to-Earth) 5.149			
78-79 RADIOLOCATION Amateur Amateur-satellite Radio astronomy Space research (space-to-Earth) 5.149 5.560			
79-81 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) 5.149			

Table of Frequency Allocations			81-123 GHz (EHF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
81-84			81-84		
FIXED 5.338A			FIXED		RF Devices (15)
FIXED-SATELLITE (Earth-to-space)			FIXED-SATELLITE (Earth-to-space) US297		Fixed Microwave (101)
MOBILE			MOBILE		
MOBILE-SATELLITE (Earth-to-space)			MOBILE-SATELLITE (Earth-to-space)		
RADIO ASTRONOMY			RADIO ASTRONOMY		
Space research (space-to-Earth)			Space research (space-to-Earth)		
5.149 5.561A			US161 US342 US389		
84-86			84-86		
FIXED 5.338A			FIXED		
FIXED-SATELLITE (Earth-to-space) 5.561B			FIXED-SATELLITE (Earth-to-space)		
MOBILE			MOBILE		
RADIO ASTRONOMY			RADIO ASTRONOMY		
5.149			US161 US342 US389		
86-92			86-92		
EARTH EXPLORATION-SATELLITE (passive)			EARTH EXPLORATION-SATELLITE (passive)		
RADIO ASTRONOMY			RADIO ASTRONOMY US74		
SPACE RESEARCH (passive)			SPACE RESEARCH (passive)		
5.340			US246		
92-94			92-94		
FIXED 5.338A			FIXED		RF Devices (15)
MOBILE			MOBILE		Fixed Microwave (101)
RADIO ASTRONOMY			RADIO ASTRONOMY		

RADIOLOCATION 5.149	RADIOLOCATION US161 US342		
94-94.1 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) Radio astronomy 5.562 5.562A	94-94.1 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) Radio astronomy 5.562 5.562A	94-94.1 RADIOLOCATION Radio astronomy 5.562A	RF Devices (15)
94.1-95 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149	94.1-95 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION US161 US342		RF Devices (15) Fixed Microwave (101)
95-100 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.149 5.554	95-100 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554 US342		

100-102 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341	100-102 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246	
102-105 FIXED MOBILE RADIO ASTRONOMY 5.149 5.341	102-105 FIXED MOBILE RADIO ASTRONOMY 5.341 US342	
105-109.5 FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.149 5.341	105-109.5 FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.341 US342	
109.5-111.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341	109.5-111.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246	
111.8-114.25 FIXED MOBILE RADIO ASTRONOMY	111.8-114.25 FIXED MOBILE RADIO ASTRONOMY	

SPACE RESEARCH (passive) 5.562B 5.149 5.341	SPACE RESEARCH (passive) 5.562B 5.341 US342		
114.25-116 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341	114.25-116 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246		
116-119.98 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562C SPACE RESEARCH (passive) 5.341	116-122.25 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562C SPACE RESEARCH (passive)		ISM Equipment (18)
119.98-122.25 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562C SPACE RESEARCH (passive) 5.138 5.341	5.138 5.341 US211		
122.25-123 FIXED INTER-SATELLITE MOBILE 5.558 Amateur 5.138	122.25-123 FIXED INTER-SATELLITE MOBILE 5.558 5.138	122.25-123 FIXED INTER-SATELLITE MOBILE 5.558 Amateur 5.138	ISM Equipment (18) Amateur Radio (97)

Table of Frequency Allocations			123-191.8 GHz (EHF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
123-130			123-130		
FIXED-SATELLITE (space-to-Earth)			FIXED-SATELLITE (space-to-Earth)		
MOBILE-SATELLITE (space-to-Earth)			MOBILE-SATELLITE (space-to-Earth)		
RADIONAVIGATION			RADIONAVIGATION		
RADIONAVIGATION-SATELLITE			RADIONAVIGATION-SATELLITE		
Radio astronomy 5.562D			Radio astronomy		
5.149 5.554			5.554 US211 US342		
130-134			130-134		
EARTH EXPLORATION-SATELLITE (active) 5.562E			EARTH EXPLORATION-SATELLITE (active) 5.562E		
FIXED			FIXED		
INTER-SATELLITE			INTER-SATELLITE		
MOBILE 5.558			MOBILE 5.558		
RADIO ASTRONOMY			RADIO ASTRONOMY		
5.149 5.562A			5.562A US342		
134-136			134-136	134-136	
AMATEUR			Radio astronomy	AMATEUR	Amateur Radio (97)
AMATEUR-SATELLITE				AMATEUR-SATELLITE	
Radio astronomy				Radio astronomy	
136-141			136-141	136-141	
RADIO ASTRONOMY			RADIO ASTRONOMY	RADIO ASTRONOMY	
RADIOLOCATION			RADIOLOCATION	RADIOLOCATION	
Amateur				Amateur	
Amateur-satellite				Amateur-satellite	

5.149	US342	US342	
141-148.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149	141-148.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION US342		
148.5-151.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340	148.5-151.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
151.5-155.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149	151.5-155.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION US342		
155.5-158.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE	155.5-158.5 FIXED MOBILE RADIO ASTRONOMY		

RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.149 5.562F 5.562G	 US342	
158.5-164 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth)	158.5-164 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth) US211	
164-167 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340	164-167 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246	
167-174.5 FIXED FIXED-SATELLITE (space-to-Earth) INTER-SATELLITE MOBILE 5.558 5.149 5.562D	167-174.5 FIXED FIXED-SATELLITE (space-to-Earth) INTER-SATELLITE MOBILE 5.558 US211 US342	
174.5-174.8 FIXED INTER-SATELLITE MOBILE 5.558	174.5-174.8 FIXED INTER-SATELLITE MOBILE 5.558	

174.8-182		174.8-182	
EARTH EXPLORATION-SATELLITE (passive)		EARTH EXPLORATION-SATELLITE (passive)	
INTER-SATELLITE 5.562H		INTER-SATELLITE 5.562H	
SPACE RESEARCH (passive)		SPACE RESEARCH (passive)	
182-185		182-185	
EARTH EXPLORATION-SATELLITE (passive)		EARTH EXPLORATION-SATELLITE (passive)	
RADIO ASTRONOMY		RADIO ASTRONOMY	
SPACE RESEARCH (passive)		SPACE RESEARCH (passive)	
5.340		US246	
185-190		185-190	
EARTH EXPLORATION-SATELLITE (passive)		EARTH EXPLORATION-SATELLITE (passive)	
INTER-SATELLITE 5.562H		INTER-SATELLITE 5.562H	
SPACE RESEARCH (passive)		SPACE RESEARCH (passive)	
190-191.8		190-191.8	
EARTH EXPLORATION-SATELLITE (passive)		EARTH EXPLORATION-SATELLITE (passive)	
SPACE RESEARCH (passive)		SPACE RESEARCH (passive)	
5.340		US246	

Table of Frequency Allocations			191.8-3000 GHz (EHF)		
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
191.8-200 FIXED INTER-SATELLITE MOBILE 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.149 5.341 5.554			191.8-200 FIXED INTER-SATELLITE MOBILE 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.341 5.554 US211 US342		
200-209 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341 5.563A			200-209 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 5.563A US246		
209-217 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.149 5.341			209-217 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.341 US342		
217-226 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE			217-226 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE		

RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.149 5.341	RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.341 US342	
226-231.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340	226-231.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) US246	
231.5-232 FIXED MOBILE Radiolocation	231.5-232 FIXED MOBILE Radiolocation	
232-235 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Radiolocation	232-235 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Radiolocation	
235-238 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) SPACE RESEARCH (passive) 5.563A 5.563B	235-238 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) SPACE RESEARCH (passive) 5.563A 5.563B	
238-240 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	238-240 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	

RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE	RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE		
240-241 FIXED MOBILE RADIOLOCATION	240-241 FIXED MOBILE RADIOLOCATION		
241-248 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite 5.138 5.149	241-248 RADIO ASTRONOMY RADIOLOCATION 5.138 US342	241-248 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite 5.138 US342	 ISM Equipment (18) Amateur Radio (97)
248-250 AMATEUR AMATEUR-SATELLITE Radio astronomy 5.149	248-250 Radio astronomy US342	248-250 AMATEUR AMATEUR-SATELLITE Radio astronomy US342	 Amateur Radio (97)
250-252 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.563A	250-252 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.563A US246		
252-265	252-265		

FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.149 5.554	FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554 US211 US342	
265-275 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.149 5.563A	265-275 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.563A US342	
275-3000 (Not allocated) 5.565	275-3000 (Not allocated) US565	Amateur Radio (97)

International Footnotes

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5.54B *Additional allocation:* In Algeria, Saudi Arabia, Bahrain, Egypt, the United Arab Emirates, the Russian Federation, Iran (Islamic Republic of), Iraq, Kuwait, Lebanon, Morocco, Qatar, the Syrian Arab Republic, Sudan and Tunisia, the frequency band 8.3–9 kHz is also allocated to the radionavigation, fixed and mobile services on a primary basis. (WRC–15)

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5.55 *Additional allocation:* In Armenia, the Russian Federation, Georgia, Kyrgyzstan, Tajikistan and Turkmenistan, the frequency band 14–17 kHz is also allocated to the radionavigation service on a primary basis. (WRC–15)

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5.68 *Alternative allocation:* In Congo (Rep. of the), the Dem. Rep. of the Congo and South Africa, the frequency band 160–200 kHz is allocated to the fixed service on a primary basis. (WRC–15)

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5.93 *Additional allocation:* In Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Hungary, Kazakhstan, Latvia, Lithuania, Mongolia, Nigeria, Uzbekistan, Poland, Kyrgyzstan, Slovakia, Tajikistan, Chad, Turkmenistan and Ukraine, the frequency bands 1625–1635 kHz, 1800–1810 kHz and 2160–2170 kHz are also allocated to the fixed and land mobile services on a primary basis, subject to agreement obtained under No. 9.21. (WRC–15)

5.96 In Germany, Armenia, Austria, Azerbaijan, Belarus, Croatia, Denmark, Estonia, the Russian Federation, Finland, Georgia, Hungary, Ireland, Iceland, Israel, Kazakhstan, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Norway, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Rep., the United Kingdom, Sweden, Switzerland, Tajikistan, Turkmenistan and Ukraine, administrations may allocate up to 200 kHz to their amateur service in the frequency bands 1715–1800 kHz and 1850–2000 kHz. However, when allocating the frequency bands within this range to their amateur service, administrations shall, after prior consultation with administrations of neighbouring countries, take such steps as may be necessary to prevent harmful interference from their amateur service to the fixed and mobile services of other countries. The mean power of any amateur station shall not exceed 10 W. (WRC–15)

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5.98 *Alternative allocation:* In Armenia, Azerbaijan, Belarus, Belgium, Cameroon, Congo (Rep. of the), Denmark, Egypt, Eritrea, Spain, Ethiopia, the Russian Federation, Georgia, Greece, Italy, Kazakhstan, Lebanon, Lithuania, the Syrian Arab Republic, Kyrgyzstan, Somalia, Tajikistan, Tunisia, Turkmenistan and Turkey, the frequency band 1810–1830 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis. (WRC–15)

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5.102 *Alternative allocation:* In Bolivia, Chile, Paraguay and Peru, the frequency band 1850–2000 kHz is allocated to the fixed, mobile except aeronautical mobile, radiolocation and radionavigation services on a primary basis. (WRC–15)

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5.119 *Additional allocation:* In Peru, the frequency band 3500–3750 kHz is also allocated to the fixed and mobile services on a primary basis. (WRC–15)

5.122 *Alternative allocation:* In Bolivia, Chile, Ecuador, Paraguay and Peru, the frequency band 3750–4000 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis. (WRC–15)

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5.132B *Alternative allocation:* In Armenia, Belarus, Moldova, Uzbekistan and Kyrgyzstan, the frequency band 4438–4488 kHz is allocated to the fixed and mobile, except aeronautical mobile (R), services on a primary basis. (WRC–15)

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5.133A *Alternative allocation:* In Armenia, Belarus, Moldova, Uzbekistan and Kyrgyzstan, the frequency bands 5250–5275 kHz and 26200–26350 kHz are allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis. (WRC–15)

5.133B Stations in the amateur service using the frequency band 5351.5–5366.5 kHz shall not exceed a maximum radiated power of 15 W (e.i.r.p.). However, in Region 2 in Mexico, stations in the amateur service using the frequency band 5351.5–5366.5 kHz shall not exceed a maximum radiated power of 20 W (e.i.r.p.). In the following Region 2 countries: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Dominica, El Salvador, Ecuador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela, as well as the overseas territories of the Netherlands in Region 2, stations in the amateur service using the frequency band 5351.5–5366.5 kHz shall not exceed a maximum radiated power of 25 W (e.i.r.p.). (WRC–15)

5.134 The use of the bands 5900–5950 kHz, 7300–7350 kHz, 9400–9500 kHz, 11600–11650 kHz, 12050–12100 kHz, 13570–13600 kHz, 13800–13870 kHz, 15600–15800 kHz, 17480–17550 kHz and 18900–19020 kHz by the broadcasting service is subject to the application of the procedure of Article 12. Administrations are encouraged to use these bands to facilitate the introduction of digitally modulated emissions in accordance with the provisions of Resolution 517 (Rev.WRC–15). (FCC)

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5.140 *Additional allocation:* In Angola, Iraq, Somalia and Togo, the frequency band 7000–7050 kHz is also allocated to the fixed service on a primary basis. (WRC–15)

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5.141B *Additional allocation:* In Algeria, Saudi Arabia, Australia, Bahrain, Botswana, Brunei Darussalam, China, Comoros, Korea (Rep. of), Diego Garcia, Djibouti, Egypt, United Arab Emirates, Eritrea, Guinea, Indonesia, Iran (Islamic Republic of), Japan, Jordan, Kuwait, Libya, Mali, Morocco, Mauritania, Niger, New Zealand, Oman, Papua New Guinea, Qatar, the Syrian Arab Republic, Singapore, Sudan, South Sudan, Tunisia, Viet Nam and Yemen, the frequency band 7100–7200 kHz is also allocated to the fixed and the mobile, except aeronautical mobile (R), services on a primary basis. (WRC–15)

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5.145B *Alternative allocation:* In Armenia, Belarus, Moldova, Uzbekistan and Kyrgyzstan, the frequency bands 9305–9355 kHz and 16100–16200 kHz are allocated to the fixed service on a primary basis. (WRC–15)

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5.149A *Alternative allocation:* In Armenia, Belarus, Moldova, Uzbekistan and Kyrgyzstan, the frequency band 13450–13550 kHz is allocated to the fixed service on a primary basis and to the mobile, except aeronautical mobile (R), service on a secondary basis. (WRC–15)

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5.158 *Alternative allocation:* In Armenia, Belarus, Moldova, Uzbekistan and Kyrgyzstan, the frequency band 24450–24600 kHz is allocated to the fixed and land mobile services on a primary basis. (WRC–15)

5.159 *Alternative allocation:* In Armenia, Belarus, Moldova, Uzbekistan and Kyrgyzstan, the frequency band 39–39.5 MHz is allocated to the fixed and mobile services on a primary basis. (WRC–15)

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5.161B *Alternative allocation:* In Albania, Germany, Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Cyprus, Vatican, Croatia, Denmark, Spain, Estonia, Finland, France, Greece, Hungary, Ireland, Iceland, Italy, Latvia, The Former Yugoslav Rep. of Macedonia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Norway, Uzbekistan, Netherlands, Portugal, Kyrgyzstan, Slovakia, Czech Rep., Romania, United Kingdom, San Marino, Slovenia, Sweden, Switzerland, Turkey and Ukraine, the frequency band 42–42.5 MHz is allocated to the fixed and mobile services on a primary basis. (WRC–15)

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5.164 *Additional allocation:* In Albania, Algeria, Germany, Austria, Belgium, Bosnia and Herzegovina, Botswana, Bulgaria, Côte d'Ivoire, Croatia, Denmark, Spain, Estonia, Finland, France, Gabon, Greece, Ireland, Israel, Italy, Jordan, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mali, Malta, Morocco, Mauritania, Monaco, Montenegro, Nigeria, Norway, the Netherlands, Poland, Syrian Arab Republic, Slovakia, Czech Rep., Romania, the United Kingdom, Serbia, Slovenia, Sweden, Switzerland, Swaziland, Chad, Togo, Tunisia and Turkey, the frequency band 47–68 MHz, in South Africa the frequency band 47–50 MHz, and in Latvia the frequency band 48.5–56.5 MHz, are also allocated to the land mobile service on a primary basis. However, stations of the land mobile service in the countries mentioned in connection with each frequency band referred to in this footnote shall not cause

harmful interference to, or claim protection from, existing or planned broadcasting stations of countries other than those mentioned in connection with the frequency band. (WRC–15)

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5.167 *Alternative allocation:* In Bangladesh, Brunei Darussalam, India, Iran (Islamic Republic of), Pakistan and Singapore, the frequency band 50–54 MHz is allocated to the fixed, mobile and broadcasting services on a primary basis. (WRC–15)

5.167A *Additional allocation:* In Indonesia and Thailand, the frequency band 50–54 MHz is also allocated to the fixed, mobile and broadcasting services on a primary basis. (WRC–15)

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5.170 *Additional allocation:* In New Zealand, the frequency band 51–54 MHz is also allocated to the fixed and mobile services on a primary basis. (WRC–15)

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5.172 *Different category of service:* In the French overseas departments and communities in Region 2 and Guyana, the allocation of the frequency band 54–68 MHz to the fixed and mobile services is on a primary basis (see No. 5.33). (WRC–15)

5.173 *Different category of service:* In the French overseas departments and communities in Region 2 and Guyana, the allocation of the frequency band 68–72 MHz to the fixed and mobile services is on a primary basis (see No. 5.33). (WRC–15)

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5.185 *Different category of service:* In the United States, the French overseas departments and communities in Region 2, Guyana and Paraguay, the allocation of the frequency band 76–88 MHz to the fixed and mobile services is on a primary basis (see No. 5.33). (WRC–15)

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5.201 *Additional allocation:* In Armenia, Azerbaijan, Belarus, Bulgaria, Estonia, the Russian Federation, Georgia, Hungary, Iran (Islamic Republic of), Iraq (Republic of), Japan, Kazakhstan, Moldova, Mongolia, Mozambique, Uzbekistan, Papua New Guinea, Poland, Kyrgyzstan, Romania, Tajikistan, Turkmenistan and Ukraine, the frequency band 132–136 MHz is also allocated to the aeronautical mobile (OR) service on a primary basis. In assigning frequencies to stations of the aeronautical mobile (OR) service, the administration shall take account of the frequencies assigned to stations in the aeronautical mobile (R) service. (WRC–15)

5.202 *Additional allocation:* In Saudi Arabia, Armenia, Azerbaijan, Belarus, Bulgaria, the United Arab Emirates, the Russian Federation, Georgia, Iran (Islamic Republic of), Jordan, Oman, Uzbekistan, Poland, the Syrian Arab Republic, Kyrgyzstan, Romania, Tajikistan, Turkmenistan and Ukraine, the frequency band 136–137 MHz is also allocated to the aeronautical mobile (OR) service on a primary basis. In assigning frequencies to stations of the aeronautical mobile (OR) service, the administration shall take account of the frequencies assigned to stations in the aeronautical mobile (R) service. (WRC–15)

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5.208B In the frequency bands:

137–138 MHz,
387–390 MHz,
400.15–401 MHz,
1452–1492 MHz,
1525–1610 MHz,
1613.8–1626.5 MHz,
2655–2690 MHz,
21.4–22 GHz,

Resolution 739 (Rev.WRC–15) applies. (WRC–15)

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5.211 *Additional allocation:* In Germany, Saudi Arabia, Austria, Bahrain, Belgium, Denmark, the United Arab Emirates, Spain, Finland, Greece, Guinea, Ireland, Israel, Kenya, Kuwait, The Former Yugoslav Republic of Macedonia, Lebanon, Liechtenstein, Luxembourg, Mali, Malta, Montenegro, Norway, the Netherlands, Qatar, Slovakia, the United Kingdom, Serbia, Slovenia, Somalia, Sweden, Switzerland, Tanzania, Tunisia and Turkey, the frequency band 138–144 MHz is also allocated to the maritime mobile and land mobile services on a primary basis. (WRC–15)

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5.220 The use of the frequency bands 149.9–150.05 MHz and 399.9–400.05 MHz by the mobile-satellite service is subject to coordination under No. 9.11A. (WRC–15)

5.221 Stations of the mobile-satellite service in the frequency band 148–149.9 MHz shall not cause harmful interference to, or claim protection from, stations of the fixed or mobile services operating in accordance with the Table of Frequency Allocations in the following countries: Albania, Algeria, Germany, Saudi Arabia, Australia, Austria, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Cameroon, China, Cyprus, Congo (Rep. of the), Korea (Rep. of), Côte d'Ivoire, Croatia, Cuba, Denmark, Djibouti, Egypt, the United Arab Emirates, Eritrea, Spain, Estonia, Ethiopia, the Russian Federation, Finland, France, Gabon, Georgia, Ghana, Greece, Guinea, Guinea Bissau, Hungary, India, Iran (Islamic Republic of), Ireland, Iceland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, The Former Yugoslav Republic of Macedonia, Lesotho, Latvia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Mali, Malta, Mauritania, Moldova, Mongolia, Montenegro, Mozambique, Namibia, Norway, New Zealand, Oman, Uganda, Uzbekistan, Pakistan, Panama, Papua New Guinea, Paraguay, the Netherlands, the Philippines, Poland, Portugal, Qatar, the Syrian Arab Republic, Kyrgyzstan, Dem. People's Rep. of Korea, Slovakia, Romania, the United Kingdom, Senegal, Serbia, Sierra Leone, Singapore, Slovenia, Sudan, Sri Lanka, South Africa, Sweden, Switzerland, Swaziland, Tanzania, Chad, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Ukraine, Viet Nam, Yemen, Zambia and Zimbabwe. (WRC–15)

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5.228AA The use of the frequency bands 161.9375–161.9625 MHz and 161.9875–162.0125 MHz by the maritime mobile-satellite (Earth-to-space) service is limited to the systems which operate in accordance with Appendix 18. (WRC–15)

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5.256A *Additional allocation:* In China, the Russian Federation and Kazakhstan, the frequency band 258–261 MHz is also allocated to the space research service (Earth-to-space) and space operation service (Earth-to-space) on a primary basis. Stations in the space research service (Earth-to-space) and space operation service (Earth-to-space) shall not cause harmful interference to, or claim protection from, or constrain the use and development of, the mobile service systems and mobile-satellite service systems operating in the frequency band. Stations in space research service (Earth-to-space) and space operation service (Earth-to-space) shall not constrain the future development of fixed service systems of other countries. (WRC–15)

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5.265 In the frequency band 403–410 MHz, Resolution 205 (Rev.WRC–15) applies. (WRC–15)

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5.268 Use of the frequency band 410–420 MHz by the space research service is limited to space-to-space communication links with an orbiting, manned space vehicle. The power flux-density at the surface of the Earth produced by emissions from transmitting stations of the space research service (space-to-space) in the frequency band 410–420 MHz shall not exceed -153 dB(W/m^2) for $0° \leq \delta \leq 5°$, $-153 + 0.077\ (\delta - 5)$ dB(W/m^2) for $5° \leq \delta \leq 70°$ and -148 dB(W/m^2) for $70° \leq \delta \leq 90°$, where δ is the angle of arrival of the radio-frequency wave and the reference bandwidth is 4 kHz. In this frequency band, stations of the space research service (space-to-space) shall not claim protection from, nor constrain the use and development of, stations of the fixed and mobile services. No. 4.10 does not apply. (WRC–15)

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5.275 *Additional allocation:* In Croatia, Estonia, Finland, Libya, The Former Yugoslav Republic of Macedonia, Montenegro and Serbia, the frequency bands 430–432 MHz and 438–440 MHz are also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis. (WRC–15)

5.276 *Additional allocation:* In Afghanistan, Algeria, Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Burkina Faso, Djibouti, Egypt, the United Arab Emirates, Ecuador, Eritrea, Ethiopia, Greece, Guinea, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Jordan, Kenya, Kuwait, Libya, Malaysia, Niger, Nigeria, Oman, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, the Dem. People's Rep. of Korea, Singapore, Somalia, Sudan, Switzerland, Thailand, Togo, Turkey and Yemen, the frequency band 430–440 MHz is also allocated to the fixed service on a primary basis and the frequency bands 430–435 MHz and 438–440 MHz are also allocated, except in Ecuador, to the mobile, except aeronautical mobile, service on a primary basis. (WRC–15)

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5.279A The use of the frequency band 432–438 MHz by sensors in the Earth exploration-satellite service (active) shall be in accordance with Recommendation ITU–R RS.1260–1. Additionally, the Earth exploration-satellite service (active) in the frequency band 432–438 MHz shall not cause harmful interference to the aeronautical radionavigation service in China. The provisions of this footnote in no way diminish the obligation of the Earth exploration-satellite service (active) to operate as a secondary service in accordance with Nos. 5.29 and 5.30. (WRC–15)

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5.286AA The frequency band 450–470 MHz is identified for use by administrations wishing to implement International Mobile Telecommunications (IMT). See Resolution 224 (Rev.WRC–15). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. (WRC–15)

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5.287 Use of the frequency bands 457.5125–457.5875 MHz and 467.5125–467.5875 MHz by the maritime mobile service is limited to on-board communication stations. The characteristics of the equipment and the channelling arrangement shall be in accordance with Recommendation ITU–R M.1174–3. The use of these frequency bands in territorial waters is subject to the national regulations of the administration concerned. (WRC–15)

5.288 In the territorial waters of the United States and the Philippines, the preferred frequencies for use by on-board communication stations shall be 457.525 MHz, 457.550 MHz, 457.575 MHz and 457.600 MHz paired, respectively, with 467.750 MHz, 467.775 MHz, 467.800 MHz and 467.825 MHz. The characteristics of the equipment used shall conform to those specified in Recommendation ITU–R M.1174–3. (WRC–15)

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5.291A *Additional allocation:* In Germany, Austria, Denmark, Estonia, Liechtenstein, the Czech Rep., Serbia and Switzerland, the frequency band 470–494 MHz is also allocated to the radiolocation service on a secondary basis. This use is limited to the operation of wind profiler radars in accordance with Resolution 217 (WRC–97). (WRC–15)

5.292 *Different category of service:* In Argentina, Uruguay and Venezuela, the allocation of the frequency band 470–512 MHz to the mobile service is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21. (WRC–15)

5.293 *Different category of service:* In Canada, Chile, Cuba, the United States, Guyana, Jamaica and Panama, the allocation of the frequency bands 470–512 MHz and 614–806 MHz to the fixed service is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21. In the Bahamas, Barbados, Canada, Chile, Cuba, the United States, Guyana, Jamaica, Mexico and Panama, the allocation of the frequency bands 470–512 MHz and 614–698 MHz to the mobile service is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21. In Argentina and Ecuador, the allocation of the frequency band 470–512 MHz to the fixed and mobile services is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21. (WRC–15)

5.294 *Additional allocation:* In Saudi Arabia, Cameroon, Côte d'Ivoire, Egypt, Ethiopia, Israel, Libya, the Syrian Arab Republic, Chad and Yemen, the frequency band 470–582 MHz is also allocated to the fixed service on a secondary basis. (WRC–15)

5.295 In the Bahamas, Barbados, Canada, the United States and Mexico, the frequency band 470–608 MHz, or portions thereof, is identified for International Mobile Telecommunications (IMT)—see Resolution 224 (Rev.WRC–15). This identification does not preclude the use of these frequency bands by any application of the services to which they are allocated and does not establish priority in the Radio Regulations. Mobile service stations of the IMT system within the frequency band are subject to agreement obtained under No. 9.21 and shall not cause harmful interference to, or claim protection from, the broadcasting service of neighbouring countries. Nos. 5.43 and 5.43A apply. In Mexico, the use of IMT in this frequency band will not start before 31 December 2018 and may be extended if agreed by the neighbouring countries. (WRC–15)

5.296 *Additional allocation:* In Albania, Germany, Angola, Saudi Arabia, Austria, Bahrain, Belgium, Benin, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Burundi, Cameroon, Vatican, Congo (Rep. of the), Côte d'Ivoire, Croatia, Denmark, Djibouti, Egypt, United Arab Emirates, Spain, Estonia, Finland, France, Gabon, Georgia, Ghana, Hungary, Iraq, Ireland, Iceland, Israel, Italy, Jordan, Kenya, Kuwait, Lesotho, Latvia, The Former Yugoslav Republic of Macedonia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Malawi, Mali, Malta, Morocco, Mauritius, Mauritania, Moldova, Monaco, Mozambique, Namibia, Niger, Nigeria, Norway, Oman, Uganda, the Netherlands, Poland, Portugal, Qatar, the Syrian Arab Republic, Slovakia, the Czech Republic, the United Kingdom, Rwanda, San Marino, Serbia, Sudan, South Africa, Sweden, Switzerland, Swaziland, Tanzania, Chad, Togo, Tunisia, Turkey, Ukraine, Zambia and Zimbabwe, the frequency band 470–694 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting and programme-making. Stations of the land mobile service in the countries listed in this footnote shall not cause harmful interference to existing or planned stations operating in accordance with the Table in countries other than those listed in this footnote. (WRC–15)

5.296A In Micronesia, the Solomon Islands, Tuvalu and Vanuatu, the frequency band 470–698 MHz, or portions thereof, and in Bangladesh, Maldives and New Zealand, the frequency band 610–698 MHz, or portions thereof, are identified for use by these administrations wishing to implement International Mobile Telecommunications (IMT)—see Resolution 224 (Rev.WRC–15). This identification does not preclude the use of these frequency bands by any application of the services to which they are allocated and does not establish priority in the Radio Regulations. The mobile allocation in this frequency band shall not be used for IMT systems unless subject to agreement obtained under No. 9.21 and shall not cause harmful interference to, or claim protection from, the broadcasting service of neighbouring countries. Nos. 5.43 and 5.43A apply. (WRC–15)

5.297 *Additional allocation:* In Canada, Costa Rica, Cuba, El Salvador, the United States, Guatemala, Guyana and Jamaica, the frequency band 512–608 MHz is also allocated to the fixed and mobile services on a primary basis, subject to agreement obtained under No. 9.21. In the Bahamas, Barbados and Mexico, the frequency band 512–608 MHz is also allocated to the mobile service on a primary basis, subject to agreement obtained under No. 9.21. (WRC–15)

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5.300 *Additional allocation:* In Saudi Arabia, Cameroon, Egypt, United Arab Emirates, Israel, Jordan, Libya, Oman, Qatar, the Syrian Arab Republic and Sudan, the frequency band 582–790 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis. (WRC–15)

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5.308 *Additional allocation:* In Belize and Colombia, the frequency band 614–698 MHz is also allocated to the mobile service on a primary basis. Stations of the mobile service within the frequency band are subject to agreement obtained under No. 9.21. (WRC–15)

5.308A In the Bahamas, Barbados, Belize, Canada, Colombia, the United States and Mexico, the frequency band 614–698 MHz, or portions thereof, is identified for International Mobile Telecommunications (IMT)—see Resolution 224 (Rev.WRC–15). This identification does not preclude the use of these frequency bands by any application of the services to which they are allocated and does not establish priority in the Radio Regulations. Mobile service stations of the IMT system within the frequency band are subject to agreement obtained under No. 9.21 and shall not cause harmful interference to or claim protection from the broadcasting service of neighbouring countries. Nos. 5.43 and 5.43A apply. In Belize and Mexico, the use of IMT in this frequency band will not start before 31 December 2018 and may be extended if agreed by the neighbouring countries. (WRC–15)

5.309 *Different category of service:* In El Salvador, the allocation of the frequency band 614–806 MHz to the fixed service is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21. (WRC–15)

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5.312 *Additional allocation:* In Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the frequency band 645–862 MHz, in Bulgaria the frequency bands 646–686 MHz, 726–758

MHz, 766–814 MHz and 822–862 MHz, and in Poland the frequency band 860–862 MHz until 31 December 2017, are also allocated to the aeronautical radionavigation service on a primary basis. (WRC–15)

5.312A In Region 1, the use of the frequency band 694–790 MHz by the mobile, except aeronautical mobile, service is subject to the provisions of Resolution 760 (WRC–15). See also Resolution 224 (Rev.WRC–15). (WRC–15)

5.313A The frequency band, or portions of the frequency band 698–790 MHz, in Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Korea (Rep. of), Fiji, India, Indonesia, Japan, Kiribati, Lao P.D.R., Malaysia, Myanmar (Union of), New Zealand, Pakistan, Papua New Guinea, the Philippines, Solomon Islands, Samoa, Singapore, Thailand, Tonga, Tuvalu, Vanuatu and Viet Nam, are identified for use by these administrations wishing to implement International Mobile Telecommunications (IMT). This identification does not preclude the use of these frequency bands by any application of the services to which they are allocated and does not establish priority in the Radio Regulations. In China, the use of IMT in this frequency band will not start until 2015. (WRC–15)

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5.316B In Region 1, the allocation to the mobile, except aeronautical mobile, service in the frequency band 790–862 MHz is subject to agreement obtained under No. 9.21 with respect to the aeronautical radionavigation service in countries mentioned in No. 5.312. For countries party to the GE06 Agreement, the use of stations of the mobile service is also subject to the successful application of the procedures of that Agreement. Resolutions 224 (Rev.WRC–15) and 749 (Rev.WRC–15) shall apply, as appropriate. (WRC–15)

5.317 *Additional allocation:* In Region 2 (except Brazil, the United States and Mexico), the frequency band 806–890 MHz is also allocated to the mobile-satellite service on a primary basis, subject to agreement obtained under No. 9.21. The use of this service is intended for operation within national boundaries. (WRC–15)

5.317A The parts of the frequency band 698–960 MHz in Region 2 and the frequency bands 694–790 MHz in Region 1 and 790–960 MHz in Regions 1 and 3 which are allocated to the mobile service on a primary basis are identified for use by administrations wishing to implement International Mobile Telecommunications (IMT)—see Resolutions 224 (Rev.WRC–15), 760 (WRC–15) and 749 (Rev.WRC–15), where applicable. This identification does not preclude the use of these frequency bands by any application of the services to which they are allocated and does not establish priority in the Radio Regulations. (WRC – 15)

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5.325A *Different category of service:* In Argentina, Brazil, Costa Rica, Cuba, Dominican Republic, El Salvador, Ecuador, the French overseas departments and communities in Region 2, Guatemala, Mexico, Paraguay, Uruguay and Venezuela, the frequency band 902–928 MHz is allocated to the land mobile service on a primary basis. In Colombia, the frequency band 902–905 MHz is allocated to the land mobile service on a primary basis. (WRC–15)

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5.327A The use of the frequency band 960–1164 MHz by the aeronautical mobile (R) service is limited to systems that operate in accordance with recognized international aeronautical standards. Such use shall be in accordance with Resolution 417 (Rev.WRC–15). (WRC–15)

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5.328AA The frequency band 1087.7–1092.3 MHz is also allocated to the aeronautical mobile-satellite (R) service (Earth-to-space) on a primary basis, limited to the space station reception of Automatic Dependent Surveillance-Broadcast (ADS–B) emissions from aircraft transmitters that operate in accordance with recognized international aeronautical standards. Stations operating in the aeronautical mobile-satellite (R) service shall not claim protection from stations operating in the aeronautical radionavigation service. Resolution 425 (WRC–15) shall apply. (WRC–15)

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5.329 Use of the radionavigation-satellite service in the band 1215–1300 MHz shall be subject to the condition that no harmful interference is caused to, and no protection is claimed from, the radionavigation service authorized under No. 5.331. Furthermore, the use of the radionavigation-satellite service in the band 1215–1300 MHz shall be subject to the condition that no harmful interference is caused to the radiolocation service. No. 5.43 shall not apply in respect of the radiolocation service. Resolution 608 (Rev.WRC–15) shall apply. (FCC)

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5.338A In the frequency bands 1350–1400 MHz, 1427–1452 MHz, 22.55–23.55 GHz, 30–31.3 GHz, 49.7–50.2 GHz, 50.4–50.9 GHz, 51.4–52.6 GHz, 81–86 GHz and 92–94 GHz, Resolution 750 (Rev.WRC–15) applies. (WRC–15)

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5.341A In Region 1, the frequency bands 1427–1452 MHz and 1492–1518 MHz are identified for use by administrations wishing to implement International Mobile Telecommunications (IMT) in accordance with Resolution 223 (Rev.WRC–15). This identification does not preclude the use of these frequency bands by any other application of the services to which it is allocated and does not establish priority in the Radio Regulations. The use of IMT stations is subject to agreement obtained under No. 9.21 with respect to the aeronautical mobile service used for aeronautical telemetry in accordance with No. 5.342. (WRC–15)

5.341B In Region 2, the frequency band 1427–1518 MHz is identified for use by administrations wishing to implement International Mobile Telecommunications (IMT) in accordance with Resolution 223 (Rev.WRC–15). This identification does not preclude the use of this frequency band by any application of the services to which they are allocated and does not establish priority in the Radio Regulations. (WRC–15)

5.341C The frequency bands 1427–1452 MHz and 1492–1518 MHz are identified for use by administrations in Region 3 wishing to implement International Mobile Telecommunications (IMT) in accordance with Resolution 223 (Rev.WRC–15). The use of these frequency bands by the above administrations for the implementation of IMT in the frequency bands 1429–1452 MHz and 1492–1518 MHz is subject to agreement obtained under No. 9.21 from countries using stations of the aeronautical mobile service. This identification does not preclude the use of these frequency bands by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. (WRC–15)

5.342 *Additional allocation:* In Armenia, Azerbaijan, Belarus, the Russian Federation, Uzbekistan, Kyrgyzstan and Ukraine, the frequency band 1429–1535 MHz is also allocated to the aeronautical mobile service on a primary basis, exclusively for the purposes of aeronautical telemetry within the national territory. As of 1 April 2007, the use of the frequency band 1452–1492 MHz is subject to agreement between the administrations concerned. (WRC–15)

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5.345 Use of the band 1452–1492 MHz by the broadcasting-satellite service, and by the broadcasting service, is limited to digital audio broadcasting and is subject to the provisions of Resolution 528 (Rev.WRC–15). (FCC)

5.346 In Algeria, Angola, Saudi Arabia, Bahrain, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Congo (Rep. of the), Côte d'Ivoire, Djibouti, Egypt, United Arab Emirates, Gabon, Gambia, Ghana, Guinea, Iraq, Jordan, Kenya, Kuwait, Lesotho, Lebanon, Liberia, Madagascar, Malawi, Mali, Morocco, Mauritius, Mauritania, Mozambique, Namibia, Niger, Nigeria, Oman, Uganda, Palestine, Qatar, Dem. Rep. of the Congo, Rwanda, Senegal, Seychelles, Sudan, South Sudan, South Africa, Swaziland, Tanzania, Chad, Togo, Tunisia, Zambia, and Zimbabwe, the frequency band 1452–1492 MHz is identified for use by administrations listed above wishing to implement International Mobile Telecommunications (IMT) in accordance with Resolution 223 (Rev.WRC–15). This identification does not preclude the use of this frequency band by any other application of the services to which it is allocated and does not establish priority in the Radio Regulations. The use of this frequency band for the implementation of IMT is subject to agreement obtained under No. 9.21 with respect to the aeronautical mobile service used for aeronautical telemetry in accordance with No. 5.342. See also Resolution 761 (WRC–15). (WRC–15)

Note: The use by Palestine of the allocation to the mobile service in the frequency band 1452–1492 MHz identified for IMT is noted, pursuant to Resolution 99 (Rev. Busan, 2014) and taking into account the Israeli-Palestinian Interim Agreement of 28 September 1995.

5.346A The frequency band 1452–1492 MHz is identified for use by administrations in Region 3 wishing to implement

International Mobile Telecommunications (IMT) in accordance with Resolution 223 (Rev.WRC–15) and Resolution 761 (WRC–15). The use of this frequency band by the above administrations for the implementation of IMT is subject to agreement obtained under No. 9.21 from countries using stations of the aeronautical mobile service. This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. (WRC–15)

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5.351A For the use of the bands 1518–1544 MHz, 1545–1559 MHz, 1610–1645.5 MHz, 1646.5–1660.5 MHz, 1668–1675 MHz, 1980–2010 MHz, 2170–2200 MHz, 2483.5–2520 MHz and 2670–2690 MHz by the mobile-satellite service, see Resolutions 212 (Rev.WRC–15) and 225 (Rev.WRC–12). (FCC)

5.352A In the frequency band 1525–1530 MHz, stations in the mobile-satellite service, except stations in the maritime mobile-satellite service, shall not cause harmful interference to, or claim protection from, stations of the fixed service in Algeria, Saudi Arabia, Egypt, France and French overseas communities of Region 3, Guinea, India, Israel, Italy, Jordan, Kuwait, Mali, Morocco, Mauritania, Nigeria, Oman, Pakistan, the Philippines, Qatar, Syrian Arab Republic, Viet Nam and Yemen notified prior to 1 April 1998. (WRC–15)

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5.359 *Additional allocation:* In Germany, Saudi Arabia, Armenia, Azerbaijan, Belarus, Benin, Cameroon, the Russian Federation, France, Georgia, Guinea, Guinea-Bissau, Jordan, Kazakhstan, Kuwait, Lithuania, Mauritania, Uganda, Uzbekistan, Pakistan, Poland, the Syrian Arab Republic, Kyrgyzstan, the Dem. People's Rep. of Korea, Romania, Tajikistan, Tunisia, Turkmenistan and Ukraine, the frequency bands 1550–1559 MHz, 1610–1645.5 MHz and 1646.5–1660 MHz are also allocated to the fixed service on a primary basis. Administrations are urged to make all practicable efforts to avoid the implementation of new fixed-service stations in these frequency bands. (WRC–15)

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5.382 *Different category of service:* In Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Congo (Rep. of the), Egypt, the United Arab Emirates, Eritrea, Ethiopia, the Russian Federation, Guinea, Iraq, Israel, Jordan, Kazakhstan, Kuwait, the Former Yugoslav Republic of Macedonia, Lebanon, Mauritania, Moldova, Mongolia, Oman, Uzbekistan, Poland, Qatar, the Syrian Arab Republic, Kyrgyzstan, Somalia, Tajikistan, Turkmenistan, Ukraine and Yemen, the allocation of the frequency band 1690–1700 MHz to the fixed and mobile, except aeronautical mobile, services is on a primary basis (see No. 5.33), and in the Dem. People's Rep. of Korea, the allocation of the frequency band 1690–1700 MHz to the fixed service is on a primary basis (see No. 5.33) and to the mobile, except aeronautical mobile, service on a secondary basis. (WRC–15)

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5.384A The frequency bands, 1710–1885 MHz, 2300–2400 MHz and 2500–2690 MHz, or portions thereof, are identified for use by administrations wishing to implement International Mobile Telecommunications (IMT) in accordance with Resolution 223 (Rev.WRC–15). This identification does not preclude the use of these frequency bands by any application of the services to which they are allocated and does not establish priority in the Radio Regulations. (WRC–15)

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5.386 *Additional allocation:* The frequency band 1750–1850 MHz is also allocated to the space operation (Earth-to-space) and space research (Earth-to-space) services in Region 2 (except in Mexico), in Australia, Guam, India, Indonesia and Japan on a primary basis, subject to agreement obtained under No. 9.21, having particular regard to troposcatter systems. (WRC–15)

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5.388 The frequency bands 1885–2025 MHz and 2110–2200 MHz are intended for use, on a worldwide basis, by administrations wishing to implement International Mobile Telecommunications (IMT). Such use does not preclude the use of these frequency bands by other services to which they are allocated. The frequency bands should be made available for IMT in accordance with Resolution 212 (Rev.WRC–15) (see also Resolution 223 (Rev.WRC–15)). (WRC–15)

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5.391 In making assignments to the mobile service in the frequency bands 2025–2110 MHz and 2200–2290 MHz, administrations shall not introduce high-density mobile systems, as described in Recommendation ITU–R SA.1154–0, and shall take that Recommendation into account for the introduction of any other type of mobile system. (WRC–15)

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5.393 *Additional allocation:* In Canada, the United States and India, the frequency band 2310–2360 MHz is also allocated to the broadcasting-satellite service (sound) and complementary terrestrial sound broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528 (Rev.WRC–15), with the exception of *resolves* 3 in regard to the limitation on broadcasting-satellite systems in the upper 25 MHz. (WRC–15)

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5.396 Space stations of the broadcasting-satellite service in the band 2310–2360 MHz operating in accordance with No. 5.393 that may affect the services to which this band is allocated in other countries shall be coordinated and notified in accordance with Resolution 33 (Rev.WRC–15). Complementary terrestrial broadcasting stations shall be subject to bilateral coordination with neighbouring countries prior to their bringing into use. (FCC)

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5.401 In Angola, Australia, Bangladesh, China, Eritrea, Ethiopia, India, Iran (Islamic Republic of), Lebanon, Liberia, Libya, Madagascar, Mali, Pakistan, Papua New Guinea, Syrian Arab Republic, Dem. Rep. of the Congo, Sudan, Swaziland, Togo and Zambia, the frequency band 2483.5–2500 MHz was already allocated on a primary basis to the radiodetermination-satellite service before WRC–12, subject to agreement obtained under No. 9.21 from countries not listed in this provision. Systems in the radiodetermination-satellite service for which complete coordination information has been received by the Radiocommunication Bureau before 18 February 2012 will retain their regulatory status, as of the date of receipt of the coordination request information. (WRC–15)

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5.418 *Additional allocation:* In India, the frequency band 2535–2655 MHz is also allocated to the broadcasting-satellite service (sound) and complementary terrestrial broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528 (Rev.WRC–15). The provisions of No. 5.416 and Table 21–4 of Article 21, do not apply to this additional allocation. Use of non-geostationary-satellite systems in the broadcasting-satellite service (sound) is subject to Resolution 539 (Rev.WRC–15). Geostationary broadcasting-satellite service (sound) systems for which complete Appendix 4 coordination information has been received after 1 June 2005 are limited to systems intended for national coverage. The power flux-density at the Earth's surface produced by emissions from a geostationary broadcasting-satellite service (sound) space station operating in the frequency band 2630–2655 MHz, and for which complete Appendix 4 coordination information has been received after 1 June 2005, shall not exceed the following limits, for all conditions and for all methods of modulation:

—130 dB(W/(m^2 · MHz)) for $0° \le \theta \le 5°$

—130 + 0.4 $(\theta - 5)$ dB(W/(m^2 · MHz)) for $5° < \theta \le 25°$

—122 dB(W/(m^2 · MHz)) for $25° < \theta \le 90°$

where θ is the angle of arrival of the incident wave above the horizontal plane, in degrees. These limits may be exceeded on the territory of any country whose administration has so agreed. As an exception to the limits above, the pfd value of −122 dB(W/(m^2 · MHz)) shall be used as a threshold for coordination under No. 9.11 in an area of 1500 km around the territory of the administration notifying the broadcasting-satellite service (sound) system.

In addition, an administration listed in this provision shall not have simultaneously two overlapping frequency assignments, one under this provision and the other under No. 5.416 for systems for which complete Appendix 4 coordination information has been received after 1 June 2005. (WRC–15)

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5.428 *Additional allocation:* In Azerbaijan, Kyrgyzstan and Turkmenistan, the frequency band 3100–3300 MHz is also allocated to the radionavigation service on a primary basis. (WRC–15)

5.429 *Additional allocation:* In Saudi Arabia, Bahrain, Bangladesh, Benin, Brunei Darussalam, Cambodia, Cameroon, China, Congo (Rep. of the), Korea (Rep. of), Côte d'Ivoire, Egypt, the United Arab Emirates, India, Indonesia, Iran (Islamic Republic of),

Iraq, Israel, Japan, Jordan, Kenya, Kuwait, Lebanon, Libya, Malaysia, Oman, Uganda, Pakistan, Qatar, the Syrian Arab Republic, the Dem. Rep. of the Congo, the Dem. People's Rep. of Korea, Sudan and Yemen, the frequency band 3300–3400 MHz is also allocated to the fixed and mobile services on a primary basis. The countries bordering the Mediterranean shall not claim protection for their fixed and mobile services from the radiolocation service. (WRC–15)

5.429A *Additional allocation:* In Angola, Benin, Botswana, Burkina Faso, Burundi, Ghana, Guinea, Guinea-Bissau, Lesotho, Liberia, Malawi, Mauritania, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sudan, South Sudan, South Africa, Swaziland, Tanzania, Chad, Togo, Zambia and Zimbabwe, the frequency band 3300–3400 MHz is allocated to the mobile, except aeronautical mobile, service on a primary basis. Stations in the mobile service operating in the frequency band 3300–3400 MHz shall not cause harmful interference to, or claim protection from, stations operating in the radiolocation service. (WRC–15)

5.429B In the following countries of Region 1 south of 30° parallel north: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Congo (Rep. of the), Côte d'Ivoire, Egypt, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Malawi, Mauritania, Mozambique, Namibia, Niger, Nigeria, Uganda, the Dem. Rep. of the Congo, Rwanda, Sudan, South Sudan, South Africa, Swaziland, Tanzania, Chad, Togo, Zambia and Zimbabwe, the frequency band 3300–3400 MHz is identified for the implementation of International Mobile Telecommunications (IMT). The use of this frequency band shall be in accordance with Resolution 223 (Rev.WRC–15). The use of the frequency band 3300–3400 MHz by IMT stations in the mobile service shall not cause harmful interference to, or claim protection from, systems in the radiolocation service, and administrations wishing to implement IMT shall obtain the agreement of neighbouring countries to protect operations within the radiolocation service. This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. (WRC–15)

5.429C *Different category of service:* In Argentina, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Mexico, Paraguay and Uruguay, the frequency band 3300–3400 MHz is allocated to the mobile, except aeronautical mobile, service on a primary basis. In Argentina, Brazil, Guatemala, Mexico and Paraguay, the frequency band 3300–3400 MHz is also allocated to the fixed service on a primary basis. Stations in the fixed and mobile services operating in the frequency band 3300–3400 MHz shall not cause harmful interference to, or claim protection from, stations operating in the radiolocation service. (WRC–15)

5.429D In the following countries in Region 2: Argentina, Colombia, Costa Rica, Ecuador, Mexico and Uruguay, the use of the frequency band 3300–3400 MHz is identified for the implementation of International Mobile Telecommunications (IMT). Such use shall be in accordance with Resolution 223 (Rev.WRC–15). This use in Argentina and Uruguay is subject to the application of No. 9.21. The use of the frequency band 3300–3400 MHz by IMT stations in the mobile service shall not cause harmful interference to, or claim protection from, systems in the radiolocation service, and administrations wishing to implement IMT shall obtain the agreement of neighbouring countries to protect operations within the radiolocation service. This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. (WRC–15)

5.429E *Additional allocation:* In Papua New Guinea, the frequency band 3300–3400 MHz is allocated to the mobile, except aeronautical mobile, service on a primary basis. Stations in the mobile service operating in the frequency band 3300–3400 MHz shall not cause harmful interference to, or claim protection from, stations operating in the radiolocation service. (WRC–15)

5.429F In the following countries in Region 3: Cambodia, India, Lao P.D.R., Pakistan, the Philippines and Viet Nam, the use of the frequency band 3300–3400 MHz is identified for the implementation of International Mobile Telecommunications (IMT). Such use shall be in accordance with Resolution 223 (Rev.WRC–15). The use of the frequency band 3300–3400 MHz by IMT stations in the mobile service shall not cause harmful interference to, or claim protection from, systems in the radiolocation service. Before an administration brings into use a base or mobile station of an IMT system in this frequency band, it shall seek agreement under No. 9.21 with neighbouring countries to protect the radiolocation service. This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. (WRC–15)

5.430 *Additional allocation:* In Azerbaijan, Kyrgyzstan and Turkmenistan, the frequency band 3300–3400 MHz is also allocated to the radionavigation service on a primary basis. (WRC–15)

5.430A The allocation of the frequency band 3400–3600 MHz to the mobile, except aeronautical mobile, service is subject to agreement obtained under No. 9.21. This frequency band is identified for International Mobile Telecommunications (IMT). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. The provisions of Nos. 9.17 and 9.18 shall also apply in the coordination phase. Before an administration brings into use a (base or mobile) station of the mobile service in this frequency band, it shall ensure that the power flux-density (pfd) produced at 3 m above ground does not exceed -154.5 dB(W/($m^2 \cdot 4$ kHz)) for more than 20% of time at the border of the territory of any other administration. This limit may be exceeded on the territory of any country whose administration has so agreed. In order to ensure that the pfd limit at the border of the territory of any other administration is met, the calculations and verification shall be made, taking into account all relevant information, with the mutual agreement of both administrations (the administration responsible for the terrestrial station and the administration responsible for the earth station) and with the assistance of the Bureau if so requested. In case of disagreement, calculation and verification of the pfd shall be made by the Bureau, taking into account the information referred to above. Stations of the mobile service in the frequency band 3400–3600 MHz shall not claim more protection from space stations than that provided in Table 21–4 of the Radio Regulations (Edition of 2004). This allocation is effective from 17 November 2010. (WRC–15)

5.431 *Additional allocation:* In Germany and Israel, the frequency band 3400–3475 MHz is also allocated to the amateur service on a secondary basis. (WRC–15)

5.431A In Region 2, the allocation of the frequency band 3400–3500 MHz to the mobile, except aeronautical mobile, service on a primary basis is subject to agreement obtained under No. 9.21. (WRC–15)

5.431B In Region 2, the frequency band 3400–3600 MHz is identified for use by administrations wishing to implement International Mobile Telecommunications (IMT). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. At the stage of coordination the provisions of Nos. 9.17 and 9.18 also apply. Before an administration brings into use a base or mobile station of an IMT system, it shall seek agreement under No. 9.21 with other administrations and ensure that the power flux-density (pfd) produced at 3 m above ground does not exceed -154.5 dB(W/($m^2 \cdot 4$ kHz)) for more than 20% of time at the border of the territory of any other administration. This limit may be exceeded on the territory of any country whose administration has so agreed. In order to ensure that the pfd limit at the border of the territory of any other administration is met, the calculations and verification shall be made, taking into account all relevant information, with the mutual agreement of both administrations (the administration responsible for the terrestrial station and the administration responsible for the earth station), with the assistance of the Bureau if so requested. In case of disagreement, the calculation and verification of the pfd shall be made by the Bureau, taking into account the information referred to above. Stations of the mobile service, including IMT systems, in the frequency band 3400–3600 MHz shall not claim more protection from space stations than that provided in Table 21–4 of the Radio Regulations (Edition of 2004). (WRC–15)

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5.432B *Different category of service:* In Australia, Bangladesh, China, French overseas communities of Region 3, India, Iran (Islamic Republic of), New Zealand, the Philippines and Singapore, the frequency band 3400–3500 MHz is allocated to the mobile, except aeronautical mobile, service on a primary basis, subject to agreement obtained under No. 9.21 with other

administrations and is identified for International Mobile Telecommunications (IMT). This identification does not preclude the use of this band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. At the stage of coordination the provisions of Nos. 9.17 and 9.18 also apply. Before an administration brings into use a (base or mobile) station of the mobile service in this band it shall ensure that the power flux-density (pfd) produced at 3 m above ground does not exceed −also apply. Be· 4 kHz)) for more than 20% of time at the border of the territory of any other administration. This limit may be exceeded on the territory of any country whose administration has so agreed. In order to ensure that the pfd limit at the border of the territory of any other administration is met, the calculations and verification shall be made, taking into account all relevant information, with the mutual agreement of both administrations (the administration responsible for the terrestrial station and the administration responsible for the earth station), with the assistance of the Bureau if so requested. In case of disagreement, the calculation and verification of the pfd shall be made by the Bureau, taking into account the information referred to above. Stations of the mobile service in the band 3400–3500 MHz shall not claim more protection from space stations than that provided in Table 21–4 of the Radio Regulations (Edition of 2004). (WRC–15)

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5.433A In Australia, Bangladesh, China, French overseas communities of Region 3, Korea (Rep. of), India, Iran (Islamic Republic of), Japan, New Zealand, Pakistan and the Philippines, the frequency band 3500–3600 MHz is identified for International Mobile Telecommunications (IMT). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. At the stage of coordination the provisions of Nos. 9.17 and 9.18 also apply. Before an administration brings into use a (base or mobile) station of the mobile service in this frequency band it shall ensure that the power flux-density (pfd) produced at 3 m above ground does not exceed −154.5 dB(W/(m² · 4 kHz)) for more than 20% of time at the border of the territory of any other administration. This limit may be exceeded on the territory of any country whose administration has so agreed. In order to ensure that the pfd limit at the border of the territory of any other administration is met, the calculations and verification shall be made, taking into account all relevant information, with the mutual agreement of both administrations (the administration responsible for the terrestrial station and the administration responsible for the earth station), with the assistance of the Bureau if so requested. In case of disagreement, the calculation and verification of the pfd shall be made by the Bureau, taking into account the information referred to above. Stations of the mobile service in the frequency band 3500–3600 MHz shall not claim more protection from space stations than that provided in Table 21–4 of the Radio Regulations (Edition of 2004). (WRC–15)

5.434 In Canada, Colombia, Costa Rica and the United States, the frequency band 3600–3700 MHz, or portions thereof, is identified for use by these administrations wishing to implement International Mobile Telecommunications (IMT). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. At the stage of coordination the provisions of Nos. 9.17 and 9.18 also apply. Before an administration brings into use a base or mobile station of an IMT system, it shall seek agreement under No. 9.21 with other administrations and ensure that the power flux-density (pfd) produced at 3 m above ground does not exceed −154.5 dB(W/(m² · 4 kHz)) for more than 20% of time at the border of the territory of any other administration. This limit may be exceeded on the territory of any country whose administration has so agreed. In order to ensure that the pfd limit at the border of the territory of any other administration is met, the calculations and verification shall be made, taking into account all relevant information, with the mutual agreement of both administrations (the administration responsible for the terrestrial station and the administration responsible for the earth station), with the assistance of the Bureau if so requested. In case of disagreement, the calculation and verification of the pfd shall be made by the Bureau, taking into account the information referred to above. Stations of the mobile service, including IMT systems, in the frequency band 3600–3700 MHz shall not claim more protection from space stations than that provided in Table 21–4 of the Radio Regulations (Edition of 2004). (WRC–15)

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5.436 Use of the frequency band 4200–4400 MHz by stations in the aeronautical mobile (R) service is reserved exclusively for wireless avionics intra-communication systems that operate in accordance with recognized international aeronautical standards. Such use shall be in accordance with Resolution 424 (WRC–15). (WRC–15)

5.437 Passive sensing in the Earth exploration-satellite and space research services may be authorized in the frequency band 4200–4400 MHz on a secondary basis. (WRC–15)

5.438 Use of the frequency band 4200–4400 MHz by the aeronautical radionavigation service is reserved exclusively for radio altimeters installed on board aircraft and for the associated transponders on the ground. (WRC–15)

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5.441A In Uruguay, the frequency band 4800–4900 MHz, or portions thereof, is identified for the implementation of International Mobile Telecommunications (IMT). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. The use of this frequency band for the implementation of IMT is subject to agreement obtained with neighbouring countries, and IMT stations shall not claim protection from stations of other applications of the mobile service. Such use shall be in accordance with Resolution 223 (Rev.WRC–15). (WRC–15)

5.441B In Cambodia, Lao P.D.R. and Viet Nam, the frequency band 4800–4990 MHz, or portions thereof, is identified for use by administrations wishing to implement International Mobile Telecommunications (IMT). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. The use of this frequency band for the implementation of IMT is subject to agreement obtained under No. 9.21 with concerned administrations, and IMT stations shall not claim protection from stations of other applications of the mobile service. In addition, before an administration brings into use an IMT station in the mobile service, it shall ensure that the power flux-density produced by this station does not exceed −155 dB(W/(m² · 1 MHz)) produced up to 19 km above sea level at 20 km from the coast, defined as the low-water mark, as officially recognized by the coastal State. This criterion is subject to review at WRC–19. See Resolution 223 (Rev.WRC–15). This identification shall be effective after WRC–19. (WRC–15)

5.442 In the frequency bands 4825–4835 MHz and 4950–4990 MHz, the allocation to the mobile service is restricted to the mobile, except aeronautical mobile, service. In Region 2 (except Brazil, Cuba, Guatemala, Mexico, Paraguay, Uruguay and Venezuela), and in Australia, the frequency band 4825–4835 MHz is also allocated to the aeronautical mobile service, limited to aeronautical mobile telemetry for flight testing by aircraft stations. Such use shall be in accordance with Resolution 416 (WRC–07) and shall not cause harmful interference to the fixed service. (WRC–15)

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5.443B In order not to cause harmful interference to the microwave landing system operating above 5030 MHz, the aggregate power flux-density produced at the Earth's surface in the frequency band 5030–5150 MHz by all the space stations within any radionavigation-satellite service system (space-to-Earth) operating in the frequency band 5010–5030 MHz shall not exceed −124.5 dB(W/m²) in a 150 kHz band. In order not to cause harmful interference to the radio astronomy service in the frequency band 4990–5000 MHz, radionavigation-satellite service systems operating in the frequency band 5010–5030 MHz shall comply with the limits in the frequency band 4990–5000 MHz defined in Resolution 741 (Rev.WRC–15). (WRC–15)

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5.444 The frequency band 5030–5150 MHz is to be used for the operation of the international standard system (microwave landing system) for precision approach and landing. In the frequency band 5030–5091 MHz, the requirements of this system shall have priority over other uses of this frequency band. For the use of the frequency band 5091–5150 MHz, No. 5.444A and Resolution 114 (Rev.WRC–15) apply. (WRC–15)

5.444A The use of the allocation to the fixed-satellite service (Earth-to-space) in the

frequency band 5091–5150 MHz is limited to feeder links of non-geostationary satellite systems in the mobile-satellite service and is subject to coordination under No. 9.11A. The use of the frequency band 5091–5150 MHz by feeder links of non-geostationary satellite systems in the mobile-satellite service shall be subject to application of Resolution 114 (Rev.WRC–15). Moreover, to ensure that the aeronautical radionavigation service is protected from harmful interference, coordination is required for feeder-link earth stations of the non-geostationary satellite systems in the mobile-satellite service which are separated by less than 450 km from the territory of an administration operating ground stations in the aeronautical radionavigation service. (WRC–15)

5.444B The use of the frequency band 5091–5150 MHz by the aeronautical mobile service is limited to:

—systems operating in the aeronautical mobile (R) service and in accordance with international aeronautical standards, limited to surface applications at airports. Such use shall be in accordance with Resolution 748 (Rev.WRC–15);

—aeronautical telemetry transmissions from aircraft stations (see No. 1.83) in accordance with Resolution 418 (Rev.WRC–15). (WRC–15)

5.446 *Additional allocation:* In the countries listed in No. 5.369, the frequency band 5150–5216 MHz is also allocated to the radiodetermination-satellite service (space-to-Earth) on a primary basis, subject to agreement obtained under No. 9.21. In Region 2 (except in Mexico), the frequency band is also allocated to the radiodetermination-satellite service (space-to-Earth) on a primary basis. In Regions 1 and 3, except those countries listed in No. 5.369 and Bangladesh, the frequency band is also allocated to the radiodetermination-satellite service (space-to-Earth) on a secondary basis. The use by the radiodetermination-satellite service is limited to feeder links in conjunction with the radiodetermination-satellite service operating in the frequency bands 1610–1626.5 MHz and/or 2483.5–2500 MHz. The total power flux-density at the Earth's surface shall in no case exceed −159 dB (W/m^2) in any 4 kHz band for all angles of arrival. (WRC–15)

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5.446C *Additional allocation:* In Region 1 (except in Algeria, Saudi Arabia, Bahrain, Egypt, United Arab Emirates, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Syrian Arab Republic, Sudan, South Sudan and Tunisia) and in Brazil, the band 5150–5250 MHz is also allocated to the aeronautical mobile service on a primary basis, limited to aeronautical telemetry transmissions from aircraft stations (see No. 1.83), in accordance with Resolution 418 (Rev.WRC–15). These stations shall not claim protection from other stations operating in accordance with Article 5. No. 5.43A does not apply. (FCC)

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5.447E *Additional allocation:* The frequency band 5250–5350 MHz is also allocated to the fixed service on a primary basis in the following countries in Region 3: Australia, Korea (Rep. of), India, Indonesia, Iran (Islamic Republic of), Japan, Malaysia, Papua New Guinea, the Philippines, Dem. People's Rep. of Korea, Sri Lanka, Thailand and Viet Nam. The use of this frequency band by the fixed service is intended for the implementation of fixed wireless access systems and shall comply with Recommendation ITU–R F.1613–0. In addition, the fixed service shall not claim protection from the radiodetermination, Earth exploration-satellite (active) and space research (active) services, but the provisions of No. 5.43A do not apply to the fixed service with respect to the Earth exploration-satellite (active) and space research (active) services. After implementation of fixed wireless access systems in the fixed service with protection for the existing radiodetermination systems, no more stringent constraints should be imposed on the fixed wireless access systems by future radiodetermination implementations. (WRC–15)

5.447F In the frequency band 5250–5350 MHz, stations in the mobile service shall not claim protection from the radiolocation service, the Earth exploration-satellite service (active) and the space research service (active). These services shall not impose on the mobile service more stringent protection criteria, based on system characteristics and interference criteria, than those stated in Recommendations ITU–R M.1638–0 and ITU–R RS.1632–0. (WRC–15)

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5.450A In the frequency band 5470–5725 MHz, stations in the mobile service shall not claim protection from radiodetermination services. Radiodetermination services shall not impose on the mobile service more stringent protection criteria, based on system characteristics and interference criteria, than those stated in Recommendation ITU–R M.1638–0. (WRC–15)

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5.457A In the frequency bands 5925–6425 MHz and 14–14.5 GHz, earth stations located on board vessels may communicate with space stations of the fixed-satellite service. Such use shall be in accordance with Resolution 902 (WRC–03). In the frequency band 5925–6425 MHz, earth stations located on board vessels and communicating with space stations of the fixed-satellite service may employ transmit antennas with minimum diameter of 1.2 m and operate without prior agreement of any administration if located at least 330 km away from the low-water mark as officially recognized by the coastal State. All other provisions of Resolution 902 (WRC–03) shall apply. (WRC–15)

5.457B In the frequency bands 5925–6425 MHz and 14–14.5 GHz, earth stations located on board vessels may operate with the characteristics and under the conditions contained in Resolution 902 (WRC–03) in Algeria, Saudi Arabia, Bahrain, Comoros, Djibouti, Egypt, United Arab Emirates, Jordan, Kuwait, Libya, Morocco, Mauritania, Oman, Qatar, the Syrian Arab Republic, Sudan, Tunisia and Yemen, in the maritime mobile-satellite service on a secondary basis. Such use shall be in accordance with Resolution 902 (WRC–03). (WRC–15)

5.457C In Region 2 (except Brazil, Cuba, French overseas departments and communities, Guatemala, Mexico, Paraguay, Uruguay and Venezuela), the frequency band 5925–6700 MHz may be used for aeronautical mobile telemetry for flight testing by aircraft stations (see No. 1.83). Such use shall be in accordance with Resolution 416 (WRC–07) and shall not cause harmful interference to, or claim protection from, the fixed-satellite and fixed services. Any such use does not preclude the use of this frequency band by other mobile service applications or by other services to which this frequency band is allocated on a co-primary basis and does not establish priority in the Radio Regulations. (WRC–15)

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5.459 *Additional allocation:* In the Russian Federation, the frequency bands 7100–7155 MHz and 7190–7235 MHz are also allocated to the space operation service (Earth-to-space) on a primary basis, subject to agreement obtained under No. 9.21. In the frequency band 7190–7235 MHz, with respect to the Earth exploration-satellite service (Earth-to-space), No. 9.21 does not apply. (WRC–15)

5.460 No emissions from space research service (Earth-to-space) systems intended for deep space shall be effected in the frequency band 7190–7235 MHz. Geostationary satellites in the space research service operating in the frequency band 7190–7235 MHz shall not claim protection from existing and future stations of the fixed and mobile services and No. 5.43A does not apply. (WRC–15)

5.460A The use of the frequency band 7190–7250 MHz (Earth-to-space) by the Earth exploration-satellite service shall be limited to tracking, telemetry and command for the operation of spacecraft. Space stations operating in the Earth exploration-satellite service (Earth-to-space) in the frequency band 7190–7250 MHz shall not claim protection from existing and future stations in the fixed and mobile services, and No. 5.43A does not apply. No. 9.17 applies. Additionally, to ensure protection of the existing and future deployment of fixed and mobile services, the location of earth stations supporting spacecraft in the Earth exploration-satellite service in non-geostationary orbits or geostationary orbit shall maintain a separation distance of at least 10 km and 50 km, respectively, from the respective border(s) of neighbouring countries, unless a shorter distance is otherwise agreed between the corresponding administrations. (WRC–15)

5.460B Space stations on the geostationary orbit operating in the Earth exploration-satellite service (Earth-to-space) in the frequency band 7190–7235 MHz shall not claim protection from existing and future stations of the space research service, and No. 5.43A does not apply. (WRC–15)

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5.461AA The use of the frequency band 7375–7750 MHz by the maritime mobile-satellite service is limited to geostationary-satellite networks. (WRC–15)

5.461AB In the frequency band 7375–7750 MHz, earth stations in the maritime mobile-satellite service shall not claim protection from, nor constrain the use and development of, stations in the fixed and

mobile, except aeronautical mobile, services. No. 5.43A does not apply. (WRC–15)

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5.462A In Regions 1 and 3 (except for Japan), in the band 8025–8400 MHz, the Earth exploration-satellite service using geostationary satellites shall not produce a power flux-density in excess of the following values for angles of arrival (θ), without the consent of the affected administration:

− 135 dB(W/m²) in a 1 MHz band for $0 \leq \theta < 5°$

− 135 + 0.5 (θ − 5) dB(W/m²) in a 1 MHz band for $5 \leq \theta < 25°$

− 125 dB(W/m²) in a 1 MHz band for $25 \leq \theta \leq 90°$ (WRC–12)

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5.468 *Additional allocation:* In Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Burundi, Cameroon, China, Congo (Rep. of the), Djibouti, Egypt, the United Arab Emirates, Gabon, Guyana, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Libya, Malaysia, Mali, Morocco, Mauritania, Nepal, Nigeria, Oman, Uganda, Pakistan, Qatar, Syrian Arab Republic, the Dem. People's Rep. of Korea, Senegal, Singapore, Somalia, Sudan, Swaziland, Chad, Togo, Tunisia and Yemen, the frequency band 8500–8750 MHz is also allocated to the fixed and mobile services on a primary basis. (WRC–15)

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5.471 *Additional allocation:* In Algeria, Germany, Bahrain, Belgium, China, Egypt, the United Arab Emirates, France, Greece, Indonesia, Iran (Islamic Republic of), Libya, the Netherlands, Qatar and Sudan, the frequency bands 8825–8850 MHz and 9000–9200 MHz are also allocated to the maritime radionavigation service, on a primary basis, for use by shore-based radars only. (WRC–15)

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5.474A The use of the frequency bands 9200–9300 MHz and 9900–10400 MHz by the Earth exploration-satellite service (active) is limited to systems requiring necessary bandwidth greater than 600 MHz that cannot be fully accommodated within the frequency band 9300–9900 MHz. Such use is subject to agreement to be obtained under No. 9.21 from Algeria, Saudi Arabia, Bahrain, Egypt, Indonesia, Iran (Islamic Republic of), Lebanon and Tunisia. An administration that has not replied under No. 9.52 is considered as not having agreed to the coordination request. In this case, the notifying administration of the satellite system operating in the Earth exploration-satellite service (active) may request the assistance of the Bureau under Sub-Section IID of Article 9. (WRC–15)

5.474B Stations operating in the Earth exploration-satellite (active) service shall comply with Recommendation ITU–R RS.2066–0. (WRC–15)

5.474C Stations operating in the Earth exploration-satellite (active) service shall comply with Recommendation ITU–R RS.2065–0. (WRC–15)

5.474D Stations in the Earth exploration-satellite service (active) shall not cause harmful interference to, or claim protection from, stations of the maritime radionavigation and radiolocation services in the frequency band 9200–9300 MHz, the radionavigation and radiolocation services in the frequency band 9900–10000 MHz and the radiolocation service in the frequency band 10.0–10.4 GHz. (WRC–15)

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5.477 *Different category of service:* In Algeria, Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, Djibouti, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Liberia, Malaysia, Nigeria, Oman, Uganda, Pakistan, Qatar, Syrian Arab Republic, the Dem. People's Rep. of Korea, Singapore, Somalia, Sudan, South Sudan, Trinidad and Tobago, and Yemen, the allocation of the frequency band 9800–10000 MHz to the fixed service is on a primary basis (see No. 5.33). (WRC–15)

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5.480 *Additional allocation:* In Argentina, Brazil, Chile, Cuba, El Salvador, Ecuador, Guatemala, Honduras, Paraguay, the Netherlands Antilles, Peru and Uruguay, the frequency band 10–10.45 GHz is also allocated to the fixed and mobile services on a primary basis. In Colombia, Costa Rica, Mexico and Venezuela, the frequency band 10–10.45 GHz is also allocated to the fixed service on a primary basis. (WRC–15)

5.481 *Additional allocation:* In Algeria, Germany, Angola, Brazil, China, Côte d'Ivoire, El Salvador, Ecuador, Spain, Guatemala, Hungary, Japan, Kenya, Morocco, Nigeria, Oman, Uzbekistan, Pakistan, Paraguay, Peru, the Dem. People's Rep. of Korea, Romania and Uruguay, the frequency band 10.45–10.5 GHz is also allocated to the fixed and mobile services on a primary basis. In Costa Rica, the frequency band 10.45–10.5 GHz is also allocated to the fixed service on a primary basis. (WRC–15)

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5.486 *Different category of service:* In the United States, the allocation of the frequency band 11.7–12.1 GHz to the fixed service is on a secondary basis (see No. 5.32). (WRC–15)

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5.494 *Additional allocation:* In Algeria, Saudi Arabia, Bahrain, Cameroon, the Central African Rep., Congo (Rep. of the), Côte d'Ivoire, Djibouti, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Gabon, Ghana, Guinea, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Madagascar, Mali, Morocco, Mongolia, Nigeria, Oman, Qatar, the Syrian Arab Republic, the Dem. Rep. of the Congo, Somalia, Sudan, South Sudan, Chad, Togo and Yemen, the frequency band 12.5–12.75 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis. (WRC–15)

5.495 *Additional allocation:* In France, Greece, Monaco, Montenegro, Uganda, Romania and Tunisia, the frequency band 12.5–12.75 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis. (WRC–15)

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5.499A The use of the frequency band 13.4–13.65 GHz by the fixed-satellite service (space-to-Earth) is limited to geostationary-satellite systems and is subject to agreement obtained under No. 9.21 with respect to satellite systems operating in the space research service (space-to-space) to relay data from space stations in the geostationary-satellite orbit to associated space stations in non-geostationary satellite orbits for which advance publication information has been received by the Bureau by 27 November 2015. (WRC–15)

5.499B Administrations shall not preclude the deployment and operation of transmitting earth stations in the standard frequency and time signal-satellite service (Earth-to-space) allocated on a secondary basis in the frequency band 13.4–13.65 GHz due to the primary allocation to FSS (space-to-Earth). (WRC–15)

5.499C The allocation of the frequency band 13.4–13.65 GHz to the space research service on a primary basis is limited to:

—Satellite systems operating in the space research service (space-to-space) to relay data from space stations in the geostationary-satellite orbit to associated space stations in non-geostationary satellite orbits for which advance publication information has been received by the Bureau by 27 November 2015,

—active spaceborne sensors,

—satellite systems operating in the space research service (space-to-Earth) to relay data from space stations in the geostationary-satellite orbit to associated earth stations.

Other uses of the frequency band by the space research service are on a secondary basis. (WRC–15)

5.499D In the frequency band 13.4–13.65 GHz, satellite systems in the space research service (space-to-Earth) and/or the space research service (space-to-space) shall not cause harmful interference to, nor claim protection from, stations in the fixed, mobile, radiolocation and Earth exploration-satellite (active) services. (WRC–15)

5.499E In the frequency band 13.4–13.65 GHz, geostationary-satellite networks in the fixed-satellite service (space-to-Earth) shall not claim protection from space stations in the Earth exploration-satellite service (active) operating in accordance with these Regulations, and No. 5.43A does not apply. The provisions of No. 22.2 do not apply to the Earth exploration-satellite service (active) with respect to the fixed-satellite service (space-to-Earth) in this frequency band. (WRC–15)

5.500 *Additional allocation:* In Algeria, Saudi Arabia, Bahrain, Brunei Darussalam, Cameroon, Egypt, the United Arab Emirates, Gabon, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kuwait, Lebanon, Madagascar, Malaysia, Mali, Morocco, Mauritania, Niger, Nigeria, Oman, Qatar, the Syrian Arab Republic, Singapore, Sudan, South Sudan, Chad and Tunisia, the frequency band 13.4–14 GHz is also allocated to the fixed and mobile services on a primary basis. In Pakistan, the frequency band 13.4–13.75 GHz is also allocated to the fixed and mobile services on a primary basis. (WRC–15)

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5.501A The allocation of the frequency band 13.65–13.75 GHz to the space research service on a primary basis is limited to active

spaceborne sensors. Other uses of the frequency band by the space research service are on a secondary basis. (WRC–15)

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5.504B Aircraft earth stations operating in the aeronautical mobile-satellite service in the frequency band 14–14.5 GHz shall comply with the provisions of Annex 1, Part C of Recommendation ITU–R M.1643–0, with respect to any radio astronomy station performing observations in the 14.47–14.5 GHz frequency band located on the territory of Spain, France, India, Italy, the United Kingdom and South Africa. (WRC–15)

5.504C In the frequency band 14–14.25 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Bahrain, Botswana, Côte d'Ivoire, Egypt, Guinea, India, Iran (Islamic Republic of), Kuwait, Nigeria, Oman, the Syrian Arab Republic and Tunisia by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU–R M.1643–0, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29. (WRC–15)

5.505 *Additional allocation:* In Algeria, Saudi Arabia, Bahrain, Botswana, Brunei Darussalam, Cameroon, China, Congo (Rep. of the), Korea (Rep. of), Djibouti, Egypt, the United Arab Emirates, Gabon, Guinea, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Japan, Jordan, Kuwait, Lebanon, Malaysia, Mali, Morocco, Mauritania, Oman, the Philippines, Qatar, the Syrian Arab Republic, the Dem. People's Rep. of Korea, Singapore, Somalia, Sudan, South Sudan, Swaziland, Chad, Viet Nam and Yemen, the frequency band 14–14.3 GHz is also allocated to the fixed service on a primary basis. (WRC–15)

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5.506B Earth stations located on board vessels communicating with space stations in the fixed-satellite service may operate in the frequency band 14–14.5 GHz without the need for prior agreement from Cyprus and Malta, within the minimum distance given in Resolution 902 (WRC–03) from these countries. (WRC–15)

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5.508A In the frequency band 14.25–14.3 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Bahrain, Botswana, China, Côte d'Ivoire, Egypt, France, Guinea, India, Iran (Islamic Republic of), Italy, Kuwait, Nigeria, Oman, the Syrian Arab Republic, the United Kingdom and Tunisia by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU–R M.1643–0, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29. (WRC–15)

5.509A In the frequency band 14.3–14.5 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Bahrain, Botswana, Cameroon, China, Côte d'Ivoire, Egypt, France, Gabon, Guinea, India, Iran (Islamic Republic of), Italy, Kuwait, Morocco, Nigeria, Oman, the Syrian Arab Republic, the United Kingdom, Sri Lanka, Tunisia and Viet Nam by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU–R M.1643–0, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29. (WRC–15)

5.509B The use of the frequency bands 14.5–14.75 GHz in countries listed in Resolution 163 (WRC–15) and 14.5–14.8 GHz in countries listed in Resolution 164 (WRC–15) by the fixed-satellite service (Earth-to-space) not for feeder links for the broadcasting-satellite service is limited to geostationary-satellites. (WRC–15)

5.509C For the use of the frequency bands 14.5–14.75 GHz in countries listed in Resolution 163 (WRC–15) and 14.5–14.8 GHz in countries listed in Resolution 164 (WRC–15) by the fixed-satellite service (Earth-to-space) not for feeder links for the broadcasting-satellite service, the fixed-satellite service earth stations shall have a minimum antenna diameter of 6 m and a maximum power spectral density of −44.5 dBW/Hz at the input of the antenna. The earth stations shall be notified at known locations on land. (WRC–15)

5.509D Before an administration brings into use an earth station in the fixed-satellite service (Earth-to-space) not for feeder links for the broadcasting-satellite service in the frequency bands 14.5–14.75 GHz (in countries listed in Resolution 163 (WRC–15)) and 14.5–14.8 GHz (in countries listed in Resolution 164 (WRC–15)), it shall ensure that the power flux-density produced by this earth station does not exceed −151.5 dB(W/(m^2 · 4 kHz)) produced at all altitudes from 0 m to 19000 m above sea level at 22 km seaward from all coasts, defined as the low-water mark, as officially recognized by each coastal State. (WRC–15)

5.509E In the frequency bands 14.50–14.75 GHz in countries listed in Resolution 163 (WRC–15) and 14.50–14.8 GHz in countries listed in Resolution 164 (WRC–15), the location of earth stations in the fixed-satellite service (Earth-to-space) not for feeder links for the broadcasting-satellite service shall maintain a separation distance of at least 500 km from the border(s) of other countries unless shorter distances are explicitly agreed by those administrations. No. 9.17 does not apply. When applying this provision, administrations should consider the relevant parts of these Regulations and the latest relevant ITU–R Recommendations. (WRC–15)

5.509F In the frequency bands 14.50–14.75 GHz in countries listed in Resolution 163 (WRC–15) and 14.50–14.8 GHz in countries listed in Resolution 164 (WRC–15), earth stations in the fixed-satellite service (Earth-to-space) not for feeder links for the broadcasting-satellite service shall not constrain the future deployment of the fixed and mobile services. (WRC–15)

5.509G The frequency band 14.5–14.8 GHz is also allocated to the space research service on a primary basis. However, such use is limited to the satellite systems operating in the space research service (Earth-to-space) to relay data to space stations in the geostationary-satellite orbit from associated earth stations. Stations in the space research service shall not cause harmful interference to, or claim protection from, stations in the fixed and mobile services and in the fixed-satellite service limited to feeder links for the broadcasting-satellite service and associated space operations functions using the guardbands under Appendix 30A and feeder links for the broadcasting-satellite service in Region 2. Other uses of this frequency band by the space research service are on a secondary basis. (WRC–15)

5.510 Except for use in accordance with Resolution 163 (WRC–15) and Resolution 164 (WRC–15), the use of the frequency band 14.5–14.8 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for the broadcasting-satellite service. This use is reserved for countries outside Europe. Uses other than feeder links for the broadcasting-satellite service are not authorized in Regions 1 and 2 in the frequency band 14.75–14.8 GHz. (WRC–15)

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5.511A Use of the frequency band 15.43–15.63 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links of non-geostationary systems in the mobile-satellite service, subject to coordination under No. 9.11A. (WRC–15)

5.511C Stations operating in the aeronautical radionavigation service shall limit the effective e.i.r.p. in accordance with Recommendation ITU–R S.1340–0. The minimum coordination distance required to protect the aeronautical radionavigation stations (No. 4.10 applies) from harmful interference from feeder-link earth stations and the maximum e.i.r.p. transmitted towards the local horizontal plane by a feeder-link earth station shall be in accordance with Recommendation ITU–R S.1340–0. (WRC–15)

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5.512 *Additional allocation:* In Algeria, Saudi Arabia, Austria, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, Congo (Rep. of the), Egypt, El Salvador, the United Arab Emirates, Eritrea, Finland, Guatemala, India, Indonesia, Iran (Islamic Republic of), Jordan, Kenya, Kuwait, Lebanon, Libya, Malaysia, Mali, Morocco, Mauritania, Montenegro, Nepal, Nicaragua, Niger, Oman, Pakistan, Qatar, Syrian Arab Republic, the Dem. Rep. of the Congo, Singapore, Somalia, Sudan, South Sudan, Chad, Togo and Yemen, the frequency band 15.7–17.3 GHz is also allocated to the fixed and mobile services on a primary basis. (WRC–15)

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5.514 *Additional allocation:* In Algeria, Saudi Arabia, Bahrain, Bangladesh, Cameroon, El Salvador, the United Arab Emirates, Guatemala, India, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Jordan,

Kuwait, Libya, Lithuania, Nepal, Nicaragua, Nigeria, Oman, Uzbekistan, Pakistan, Qatar, Kyrgyzstan, Sudan and South Sudan, the frequency band 17.3–17.7 GHz is also allocated to the fixed and mobile services on a secondary basis. The power limits given in Nos. 21.3 and 21.5 shall apply. (WRC–15)

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5.521 *Alternative allocation:* In the United Arab Emirates and Greece, the frequency band 18.1–18.4 GHz is allocated to the fixed, fixed-satellite (space-to-Earth) and mobile services on a primary basis (see No. 5.33). The provisions of No. 5.519 also apply. (WRC–15)

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5.524 *Additional allocation:* In Afghanistan, Algeria, Saudi Arabia, Bahrain, Brunei Darussalam, Cameroon, China, Congo (Rep. of the), Costa Rica, Egypt, the United Arab Emirates, Gabon, Guatemala, Guinea, India, Iran (Islamic Republic of), Iraq, Israel, Japan, Jordan, Kuwait, Lebanon, Malaysia, Mali, Morocco, Mauritania, Nepal, Nigeria, Oman, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, the Dem. Rep. of the Congo, the Dem. People's Rep. of Korea, Singapore, Somalia, Sudan, South Sudan, Chad, Togo and Tunisia, the frequency band 19.7–21.2 GHz is also allocated to the fixed and mobile services on a primary basis. This additional use shall not impose any limitation on the power flux- density of space stations in the fixed-satellite service in the frequency band 19.7–21.2 GHz and of space stations in the mobile-satellite service in the frequency band 19.7–20.2 GHz where the allocation to the mobile-satellite service is on a primary basis in the latter frequency band. (WRC–15)

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5.530A Unless otherwise agreed between the administrations concerned, any station in the fixed or mobile services of an administration shall not produce a power flux-density in excess of −120.4 dB(W/(m^2 · MHz)) at 3 m above the ground of any point of the territory of any other administration in Regions 1 and 3 for more than 20% of the time. In conducting the calculations, administrations should use the most recent version of Recommendation ITU–R P.452 (see also the most recent version of Recommendation ITU–R BO.1898). (WRC–15)

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5.530D See Resolution 555 (Rev.WRC–15). (FCC)

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5.536B In Saudi Arabia, Austria, Bahrain, Belgium, Brazil, China, Korea (Rep. of), Denmark, Egypt, United Arab Emirates, Estonia, Finland, Hungary, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Jordan, Kenya, Kuwait, Lebanon, Libya, Lithuania, Moldova, Norway, Oman, Uganda, Pakistan, the Philippines, Poland, Portugal, the Syrian Arab Republic, Dem. People's Rep. of Korea, Slovakia, the Czech Rep., Romania, the United Kingdom, Singapore, Sweden, Tanzania, Turkey, Viet Nam and Zimbabwe, earth stations operating in the Earth exploration-satellite service in the frequency band 25.5–27 GHz shall not claim protection from, or constrain the use and deployment of, stations of the fixed and mobile services. (WRC–15)

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5.543A In Bhutan, Cameroon, Korea (Rep. of), the Russian Federation, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Kazakhstan, Malaysia, Maldives, Mongolia, Myanmar, Uzbekistan, Pakistan, the Philippines, Kyrgyzstan, the Dem. People's Rep. of Korea, Sudan, Sri Lanka, Thailand and Viet Nam, the allocation to the fixed service in the frequency band 31–31.3 GHz may also be used by systems using high altitude platform stations (HAPS) in the ground-to-HAPS direction. The use of the frequency band 31–31.3 GHz by systems using HAPS is limited to the territory of the countries listed above and shall not cause harmful interference to, nor claim protection from, other types of fixed-service systems, systems in the mobile service and systems operated under No. 5.545. Furthermore, the development of these services shall not be constrained by HAPS. Systems using HAPS in the frequency band 31–31.3 GHz shall not cause harmful interference to the radio astronomy service having a primary allocation in the frequency band 31.3–31.8 GHz, taking into account the protection criterion as given in the most recent version of Recommendation ITU–R RA.769. In order to ensure the protection of satellite passive services, the level of unwanted power density into a HAPS ground station antenna in the frequency band 31.3–31.8 GHz shall be limited to −106 dB(W/MHz) under clear-sky conditions, and may be increased up to −100 dB(W/MHz) under rainy conditions to mitigate fading due to rain, provided the effective impact on the passive satellite does not exceed the impact under clear-sky conditions. See Resolution 145 (Rev.WRC–12). (WRC–15)

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5.551H The equivalent power flux-density (epfd) produced in the frequency band 42.5–43.5 GHz by all space stations in any non-geostationary-satellite system in the fixed-satellite service (space-to-Earth), or in the broadcasting-satellite service operating in the frequency band 42–42.5 GHz, shall not exceed the following values at the site of any radio astronomy station for more than 2% of the time:

- −230 dB(W/m^2) in 1 GHz and −246 dB(W/m^2) in any 500 kHz of the frequency band 42.5–43.5 GHz at the site of any radio astronomy station registered as a single-dish telescope; and
- −209 dB(W/m^2) in any 500 kHz of the frequency band 42.5–43.5 GHz at the site of any radio astronomy station registered as a very long baseline interferometry station.

These epfd values shall be evaluated using the methodology given in Recommendation ITU–R S.1586–1 and the reference antenna pattern and the maximum gain of an antenna in the radio astronomy service given in Recommendation ITU–R RA.1631–0 and shall apply over the whole sky and for elevation angles higher than the minimum operating angle θ_{min} of the radiotelescope (for which a default value of 5° should be adopted in the absence of notified information).

These values shall apply at any radio astronomy station that either:

- —was in operation prior to 5 July 2003 and has been notified to the Bureau before 4 January 2004; or
- —was notified before the date of receipt of the complete Appendix 4 information for coordination or notification, as appropriate, for the space station to which the limits apply.

Other radio astronomy stations notified after these dates may seek an agreement with administrations that have authorized the space stations. In Region 2, Resolution 743 (WRC–03) shall apply. The limits in this footnote may be exceeded at the site of a radio astronomy station of any country whose administration so agreed. (WRC–15)

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5.562D *Additional allocation:* In Korea (Rep. of), the frequency bands 128–130 GHz, 171–171.6 GHz, 172.2–172.8 GHz and 173.3–174 GHz are also allocated to the radio astronomy service on a primary basis. Radio astronomy stations in Korea (Rep. of) operating in the frequency bands referred to in this footnote shall not claim protection from, or constrain the use and development of, services in other countries operating in accordance with the Radio Regulations. (WRC–15)

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United States (US) Footnotes

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US99 In the band 1668.4–1670 MHz, the meteorological aids service (radiosonde) will avoid operations to the maximum extent practicable. Whenever it is necessary to operate radiosondes in the band 1668.4–1670 MHz within the United States, notification of the operations shall be sent as far in advance as possible to the National Science Foundation, Division of Astronomical Sciences, Electromagnetic Spectrum Management Unit, 2415 Eisenhower Avenue, Alexandria, VA 22314; Email: *esm@nsf.gov.*

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US287 In the maritime mobile service, the frequencies 457.525 MHz, 457.550 MHz, 457.575 MHz, 467.525 MHz, 467.550 MHz and 467.575 MHz may be used by on-board communication stations. Where needed, equipment designed for 12.5 kHz channel spacing using also the additional frequencies 457.5375 MHz, 457.5625 MHz, 467.5375 MHz and 467.5625 MHz may be introduced for on-board communications. The use of these frequencies in territorial waters may be subject to the national regulations of the administration concerned. The characteristics of the equipment used shall conform to those specified in Recommendation ITU–R M.1174–2.

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US385 Radio astronomy observations may be made in the bands 1350–1400 MHz, 1718.8–1722.2 MHz, and 4950–4990 MHz on an unprotected basis, and in the band 2655–2690 MHz on a secondary basis, at the following radio astronomy observatories:

Allen Telescope Array, Hat Creek, CA	Rectangle between latitudes 40°00′ N and 42°00′ N and between longitudes 120°15′ W and 122°15′ W.	
NASA Goldstone Deep Space Communications Complex, Goldstone, CA	80 kilometers (50 mile) radius centered on 35°20′ N, 116°53′ W.	
National Astronomy and Ionosphere Center, Arecibo, PR	Rectangle between latitudes 17°30′ N and 19°00′ N and between longitudes 65°10′ W and 68°00′ W.	
National Radio Astronomy Observatory, Socorro, NM	Rectangle between latitudes 32°30′ N and 35°30′ N and between longitudes 106°00′ W and 109°00′ W.	
National Radio Astronomy Observatory, Green Bank, WV	Rectangle between latitudes 37°30′ N and 39°15′ N and between longitudes 78°30′ W and 80°30′ W.	
National Radio Astronomy Observatory, Very Long Baseline Array Stations	80 kilometer radius centered on:	
	North latitude	West longitude
Brewster, WA	48°08′	119°41′
Fort Davis, TX	30°38′	103°57′
Hancock, NH	42°56′	71°59′
Kitt Peak, AZ	31°57′	111°37′
Los Alamos, NM	35°47′	106°15′
Mauna Kea, HI	19°48′	155°27′
North Liberty, IA	41°46′	91°34′
Owens Valley, CA	37°14′	118°17′
Pie Town, NM	34°18′	108°07′
Saint Croix, VI	17°45′	64°35′
Owens Valley Radio Observatory, Big Pine, CA	Two contiguous rectangles, one between latitudes 36°00′ N and 37°00′ N and between longitudes 117°40′ W and 118°30′ W and the second between latitudes 37°00′ N and 38°00′ N and between longitudes 118°00′ W and 118°50′ W.	

(a) In the bands 1350–1400 MHz and 4950–4990 MHz, every practicable effort will be made to avoid the assignment of frequencies to stations in the fixed and mobile services that could interfere with radio astronomy observations within the geographic areas given above. In addition, every practicable effort will be made to avoid assignment of frequencies in these bands to stations in the aeronautical mobile service which operate outside of those geographic areas, but which may cause harmful interference to the listed observatories. Should such assignments result in harmful interference to these observatories, the situation will be remedied to the extent practicable.

(b) In the band 2655–2690 MHz, for radio astronomy observations performed at the locations listed above, licensees are urged to coordinate their systems through the National Science Foundation, Division of Astronomical Sciences, Electromagnetic Spectrum Management Unit, 2415 Eisenhower Avenue, Alexandria, VA 22314; Email: *esm@nsf.gov.*

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Non-Federal Government (NG) Footnotes

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NG159 In the band 698–806 MHz, stations authorized under 47 CFR part 74, subparts F and G may continue to operate indefinitely on a secondary basis to all other stations operating in that band.

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Federal Government (G) Footnotes

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G132 Use of the radionavigation-satellite service in the band 1215–1240 MHz shall be subject to the condition that no harmful interference is caused to, and no protection is claimed from, the radionavigation service authorized under ITU Radio Regulation No. 5.331. Furthermore, the use of the radionavigation-satellite service in the band 1215–1240 MHz shall be subject to the condition that no harmful interference is caused to the radiolocation service. ITU Radio Regulation No. 5.43 shall not apply in respect of the radiolocation service. ITU Resolution 608 (Rev.WRC–15) shall apply.

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■ 10. Section 2.107 is amended by revising paragraph (a) to read as follows:

§ 2.107 Radio astronomy station notification.

(a) Pursuant to No. 11.12 of Article 11 to the Radio Regulations, operators of radio astronomy stations desiring international recognition of their use of specific radio astronomy frequencies for reception, should file the following information with the Commission for inclusion in the Master International Frequency Register:

(1) The characteristics of radio astronomy stations specified in Annex 2 of Appendix 4 to the Radio Regulations.

(2) The name, mailing address, and email of the operator.

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■ 11. Section 2.1091 is amended by revising paragraph (c)(2) to read as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: Mobile devices.

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(c) * * *

(2) Unlicensed personal communications service devices, unlicensed millimeter-wave devices, and unlicensed NII devices authorized under §§ 15.255(f), 15.257(g), 15.319(i), and 15.407(f) of this chapter are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if their ERP is 3 watts or more or if they meet the definition of a portable device as specified in § 2.1093(b) requiring evaluation under the provisions of that section.

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■ 12. Section 2.1093 is amended by revising paragraph (c)(1) to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: Portable devices.

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(c)(1) Portable devices that operate in the Cellular Radiotelephone Service pursuant to part 22 of this chapter; the Personal Communications Service (PCS) pursuant to part 24 of this chapter; the Satellite Communications Services pursuant to part 25 of this chapter; the Miscellaneous Wireless Communications Services pursuant to part 27 of this chapter; the Upper

Microwave Flexible Use Service pursuant to part 30 of this chapter; the Maritime Services (ship earth station devices only) pursuant to part 80 of this chapter; the Specialized Mobile Radio Service, the 4.9 GHz Band Service, and the 3650 MHz Wireless Broadband Service pursuant to part 90 of this chapter; the Wireless Medical Telemetry Service (WMTS), the Medical Device Radiocommunication Service (MedRadio), and the 76–81 GHz Band Radar Service pursuant to subparts H, I, and M of part 95 of this chapter, respectively; unlicensed personal communication service, unlicensed NII devices and millimeter-wave devices authorized under §§ 15.255(f), 15.257(g), 15.319(i), and 15.407(f) of this chapter; and the Citizens Broadband Radio Service pursuant to part 96 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use.

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PART 15—RADIO FREQUENCY DEVICES

■ 13. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 14. Section 15.510 is amended by revising the section heading to read as follows:

§ 15.510 Technical requirements for through-wall imaging systems.

* * * * *

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

■ 15. The authority citation for part 18 is revised to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 304, 307.

■ 16. Section 18.301 is revised to read as follows:

§ 18.301 Operating frequencies.

ISM equipment may be operated on any frequency above 9 kHz except as indicated in § 18.303. The following frequency bands, in accordance with § 2.106 of the rules, are designated for use by ISM equipment:

TABLE 1 TO § 18.301

ISM frequency	Tolerance
6.78 MHz	± 15.0 kHz
13.56 MHz	± 7.0 kHz
27.12 MHz	± 163.0 kHz
40.68 MHz	± 20.0 kHz
915 MHz	± 13.0 MHz
2450 MHz	± 50.0 MHz
5800 MHz	± 75.0 MHz
24.125 GHz	± 125.0 MHz
61.25 GHz	± 250.0 MHz
122.50 GHz	± 500.0 MHz
245.00 GHz	± 1.0 GHz

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 17. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

■ 18. Section 27.1321 is amended by revising paragraph (b) to read as follows:

§ 27.1321 Requirements for operation of base and fixed stations in the 600 MHz downlink band in close proximity to Radio Astronomy Observatories.

* * * * *

(b) 600 MHz band base and fixed stations in the 600 MHz downlink band within 25 kilometers of VLBA observatories are subject to coordination with the National Science Foundation (NSF) prior to commencing operations. The appropriate NSF contact point to initiate coordination is: Division of Astronomical Sciences, Electromagnetic Spectrum Management Unit, 2415 Eisenhower Avenue, Alexandria, VA 22314; Email: *esm@nsf.gov.*

* * * * *

PART 95—PERSONAL RADIO SERVICES

■ 19. The authority citation for part 95 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307.

■ 20. Section 95.2309 is amended by revising paragraph (f)(3) to read as follows:

§ 95.2309 WMTS frequency coordination.

* * * * *

(f) * * *

(3) The National Science Foundation (NSF) point of contact for coordination is: Division of Astronomical Sciences, Electromagnetic Spectrum Management Unit, 2415 Eisenhower Avenue, Alexandria, VA 22314; Email: *esm@nsf.gov.*

* * * * *

[FR Doc. 2020–04203 Filed 6–25–20; 8:45 am]

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