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Contents

Federal Register

Vol. 85, No. 149

Monday, August 3, 2020

Agriculture Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46586

Air Force Department
NOTICES
Environmental Impact Statements; Availability, etc.:
Housing Program at Wright-Patterson Air Force Base, OH, 46603

Antitrust Division
NOTICES
Changes under the National Cooperative Research and Production Act:
Information Warfare Research Consortium, 46729–46730

Bureau of Consumer Financial Protection
NOTICES
Request for Information:
Equal Credit Opportunity Act and Regulation B, 46600–46603

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46630–46635

Coast Guard
RULES
Safety Zone:
Port Huron Float Down, St. Clair River, Port Huron, MI, 46536–46538
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46683–46685

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Defense Department
See Air Force Department

Drug Enforcement Administration
NOTICES
Bulk Manufacturer of Controlled Substances; Application:
American Radiolabeled Chemicals, Inc., 46730–46731
Importer of Controlled Substances; Application:
Chattem Chemicals, Inc., 46731
Curium US, LLC, 46731

Education Department
RULES
Priorities, Requirements, Definitions, and Selection Criteria:
Vocational Rehabilitation Technical Assistance Center; Quality Management; and Vocational Rehabilitation Technical Assistance Center, Quality Employment, 46538–46550
NOTICES
Applications for New Awards:
Rehabilitation Training; Vocational Rehabilitation Technical Assistance Center; Quality Management and Vocational Rehabilitation Technical Assistance Center; Quality Employment, 46603–46615

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Acquisition Regulation:
Open Source Software, 46556–46559
Significant New Use Rules:
Certain Chemical Substances; 19–5.B, 46550–46556
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Massachusetts; Reasonably Available Control Technology for the 2008 and 2015 Ozone Standard, 46581–46585
Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Franklin County Area, 46576–46581
NOTICES
Administrative Settlement Agreement:
J.H. and C.K. Eagle Mill Site, Kulpmont, Northumberland County, PA, 46621
Public Water System Supervision Program; Requirement Revisions:
Commonwealth of Massachusetts, State of Connecticut, and State of New Hampshire, 46620–46621

Export-Import Bank
NOTICES
Meetings; Sunshine Act, 46622

Farm Credit Administration
NOTICES
Privacy Act; Systems of Records, 46622–46627

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus SAS Airplanes, 46531–46533
Bombardier, Inc., Airplanes, 46533–46536
PROPOSED RULES
Airworthiness Directives:
Dassault Aviation Airplanes, 46560–46566

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46627–46628

Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Requests for Special Priorities Assistance, 46688–46689
Major Disaster and Related Determinations:
Alabama, 46685–46686

Arkansas, 46689
Hawaii, 46686–46687
Michigan, 46687–46688
Mississippi, 46685
Missouri, 46690–46691
North Dakota, 46688
Tennessee, 46690
Utah, 46687

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 46615–46616
Environmental Assessments; Availability, etc.:
Rio Bravo Pipeline Company, LLC, 46616–46619
License Application:
Notice of Intent Parties, 46619–46620

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46628–46630

Fish and Wildlife Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Horseshoe Crab and Cooperative Fish Tagging Programs, 46694–46696
Marine Mammal Marking, Tagging, and Reporting Certificates, and Registration of Certain Dead Marine Mammal Hard Parts, 46701–46703
National Wildlife Refuge Special Use Permit Applications and Reports, 46697–46699
North American Woodcock Singing Ground Survey, 46692–46693
Permit Application:
Foreign Endangered Species, 46699–46701
Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink, Polk County, FL; Categorical Exclusion, 46693–46694
Permits:
Endangered Species; Marine Mammals, 46696

Food and Drug Administration
PROPOSED RULES
Import Data in the Automated Commercial Environment for Veterinary Devices, 46566–46575
NOTICES
Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2021, 46635–46641
Animal Generic Drug User Fee Rates and Payment Procedures for Fiscal Year 2021, 46647–46651
Assessing the Resource Needs of the Generic Drug User Fee Amendments, 46658–46659
Food Safety Modernization Act Domestic and Foreign Facility Reinspection, Recall, and Importer Reinspection Fee Rates for Fiscal Year 2021, 46669–46672
Food Safety Modernization Act Third-Party Certification Program User Fee Rate for Fiscal Year 2021, 46659–46662
Food Safety Modernization Act Voluntary Qualified Importer Program User Fee Rate for Fiscal Year 2021, 46666–46669
Generic Drug User Fee Rates for Fiscal Year 2021, 46662–46666
Guidance:
Documents Related to Coronavirus Disease 2019; Availability, 46641–46646
Submitting Initial Pediatric Study Plans and Amended Initial Pediatric Study Plans, 46672–46673
Medical Device User Fee Rates for Fiscal Year 2021, 46673–46679
Prescription Drug User Fee Rates for Fiscal Year 2021, 46651–46657
Withdrawal of Approval of Abbreviated New Drug Applications:
Watson Laboratories, Inc.; Oxycodone Hydrochloride and Ibuprofen Tablets, 46657–46658

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46679–46680

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
RULES
Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 46788–46929

Housing and Urban Development Department
NOTICES
Multifamily and Healthcare Loan Sale, 46691–46692

Interior Department
See Fish and Wildlife Service
See National Park Service

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, 46587
Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China, 46586–46587

International Trade Commission
NOTICES
Hearing:
Raspberries for Processing: Conditions of Competition between U.S. and Foreign Suppliers, with a Focus on Washington State; Change in Form, 46712–46713
Investigations; Determinations, Modifications, and Rulings, etc.:
4th Tier Cigarettes from Korea, 46718–46719
Certain Botulinum Toxin Products, Processes for Manufacturing or Relating to Same and Certain Products Containing Same, 46711–46712
Certain Dental and Orthodontic Scanners and Software, 46713–46715
Certain Digital Video Receivers, Broadband Gateways, and Related Hardware and Software Components, 46728
Certain Preserved Mushrooms from Chile, China, India, and Indonesia, 46725–46727
Chloropicrin from China; Institution of a Five-Year Review, 46722–46725
Crepe Paper from China; Institution of a Five-Year Review, 46715–46718

Diamond Sawblades and Parts Thereof from China, 46719–46722
Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam, 46729

Justice Department
See Antitrust Division
See Drug Enforcement Administration

Labor Department
See Occupational Safety and Health Administration

National Highway Traffic Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Survey of Speeding Attitudes and Behaviors, 46782–46786

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 46681
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 46681
National Institute of Allergy and Infectious Diseases, 46680
National Institute of Environmental Health Sciences, 46680–46681

National Oceanic and Atmospheric Administration
NOTICES
2019 Marine Mammal Stock Assessment Reports, 46589–46598
Determination of Overfishing or an Overfished Condition, 46588
Federal Consistency Appeal by Electric Boat Corporation of New York State Department of State Objection, 46598–46599
Meetings:
New England Fishery Management Council, 46588–46589, 46599

National Park Service
NOTICES
Repatriation of Cultural Items:
California State University, Sacramento, Sacramento, CA, 46704–46705
Effigy Mounds National Monument, Harpers Ferry, IA, 46710–46711
Inventory Completion:
Baylor University's Mayborn Museum Complex, Waco, TX, 46703–46704
Effigy Mounds National Monument, Harpers Ferry, IA, 46708–46710
San Diego Museum of Man, San Diego, CA, 46706–46707
University of California, Davis, Davis, CA, 46705–46706
Warren Anatomical Museum, Harvard University, Boston, MA, 46707–46708

National Science Foundation
NOTICES
Antarctic Conservation Act Permits; Modification, 46733–46734

Nuclear Regulatory Commission
NOTICES
Development of an Ex Situ Performance Testing Protocol for Nuclear Power Plant Flood Penetration Seals, 46734–46735
Guidance:
License Renewal; Documents Regarding Reactor Vessel Internal Components in Pressurized Water Reactors, 46735–46737

Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Fire Brigades Standard, 46731–46733

Patent and Trademark Office
RULES
Setting and Adjusting Patent Fees during Fiscal Year 2020, 46932–46993

Postal Regulatory Commission
NOTICES
New Postal Product, 46737–46738

Postal Service
PROPOSED RULES
New Mailing Standards for the Separation of Hazardous Materials, 46575–46576

Presidential Documents
ADMINISTRATIVE ORDERS
Presidential Permits:
Kansas City Southern Railway Company; Authorization To Construct, Connect, Operate, and Maintain Railway Bridge Facilities at the U.S.-Mexico International Boundary (Permit of July 29, 2020), 47009–47011
NuStar Logistics, L.P.; Authorization To Construct, Connect, Operate, and Maintain Pipeline Facilities at the U.S.-Mexico International Boundary (Permit of July 29, 2020), 46995–46999
NuStar Logistics, L.P.; Authorization To Operate and Maintain Existing Pipeline Facilities at the U.S.-Mexico International Boundary (Permit of July 29, 2020), 47001–47003
TransCanada Keystone Pipeline, L.P.; Authorization To Operate and Maintain Existing Pipeline Facilities at the U.S.-Canada International Boundary (Permit of July 29, 2020), 47005–47007

Securities and Exchange Commission
NOTICES
Application:
1WS Credit Income Fund, et al., 46755–46759
Blackstone Alternative Investment Funds; Blackstone Alternative Investment Advisors, LLC, 46744–46746
Morgan Stanley Direct Lending Fund, et al., 46747–46755
Joint Industry Plan:
Filing and Immediate Effectiveness of Amendment to the National Market System Plan for the Selection and Reservation of Securities Symbols to Add MEMX, LLC as a Party Thereto, 46767–46768
Filing and Immediate Effectiveness of Amendment to the Plan Establishing Procedures Under Rule 605 of Regulation NMS to Add the MEMX LLC as a Participant, 46746–46747

Filing and Immediate Effectiveness of Amendment to the Plan to Address Extraordinary Market Volatility to Add MEMX LLC as a Participant, 46762–46763
Filing and Immediate Effectiveness of the Forty-Eighth Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis, 46771–46772
Meetings; Sunshine Act, 46766
Self-Regulatory Organizations; Proposed Rule Changes:
Consolidated Tape Association, 46766–46767
ICEEU Ltd., 46763–46766
National Securities Clearing Corp., 46768–46771
NYSE Arca, Inc., 46744, 46772–46775
NYSE Chicago, Inc., 46741–46743
NYSE National, Inc., 46738–46740
The Nasdaq Stock Market, LLC, 46759–46762

Small Business Administration
NOTICES
504 Debt Refinancing Without Expansion:
Borrower's Contribution for Projects Involving Limited or Single Purpose Buildings During Recession, 46775–46776
Meetings:
National Small Business Development Centers Advisory Board, 46775

State Department
NOTICES
Meetings:
Program for the Study of Eastern Europe and Eurasia (Title VIII) Advisory Committee, 46776–46777
Privacy Act; Systems of Records, 46776

Substance Abuse and Mental Health Services Administration
NOTICES
Certified Laboratories and Instrumented Initial Testing Facilities:
Urine Drug Testing for Federal Agencies, 46681–46683

Trade Representative, Office of United States
NOTICES
Product Exclusions:
China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 46777–46782

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Separate Parts In This Issue

Part II
Homeland Security Department, 46788–46929

Part III
Commerce Department, Patent and Trademark Office, 46932–46993

Part IV
Presidential Documents, 46995–46999, 47001–47003, 47005–47007, 47009–47011

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Administrative Orders:

Presidential Permits:
Permit of July 29, 2020 46997
Permit of July 29, 2020 47001
Permit of July 29, 2020 47005
Permit of July 29, 2020 47009

8 CFR

103....46788
106....46788
204....46788
211....46788
212....46788
214....46788
216....46788
217....46788
223....46788
235....46788
236....46788
240....46788
244....46788
245....46788
245a....46788
248....46788
264....46788
274a....46788
286....46788
301....46788
319....46788
320....46788
322....46788
324....46788
334....46788
341....46788
343a....46788
343b....46788
392....46788

14 CFR

39 (2 documents) 46531, 46533

Proposed Rules:

39 (2 documents) 46560, 46563

21 CFR

Proposed Rules:

1....46566

33 CFR

165....46536

34 CFR

Ch. III....46538

37 CFR

1....46932
11....46932
41....46932
42....46932

39 CFR

Proposed Rules:

113....46575

40 CFR

9....46550
721....46550

Proposed Rules:

52 (2 documents) 46576, 46581

48 CFR

1539....46556
1552....46556

Rules and Regulations

Federal Register
Vol. 85, No. 149
Monday, August 3, 2020

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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0329; Product Identifier 2020–NM–028–AD; Amendment 39–19925; AD 2020–12–16]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A320–214, –216, –231, –232, –233, –251N, and –271N airplanes. This AD was prompted by a report that following the installation of a second cargo fire extinguishing bottle, insufficient clearance between the cargo compartment fire extinguishing pipes was found. This AD requires inspection and modification of the cargo compartment fire extinguishing pipes, and on-condition actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 8, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 8, 2020.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0329.

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–2020–0329; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0279R1, dated February 5, 2020 (''EASA AD 2019–0279R1'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A320–214, –216, –231, –232, –233, –251N, and –271N airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A320–214, –216, –231, –232, –233, –251N, and –271N airplanes. The NPRM published in the **Federal Register** on April 10, 2020 (85 FR 20209). The NPRM was prompted by a report that following the installation of a second cargo fire extinguishing bottle, insufficient clearance between the cargo compartment fire extinguishing pipes was found. The NPRM proposed to require an inspection and modification of the cargo compartment fire extinguishing pipes, and on-condition actions if necessary, as specified in an EASA AD.

The FAA is issuing this AD to address insufficient clearance between the cargo compartment fire extinguishing pipes, which could lead to wear and chafing of the pipes and possibly result in reduced fire extinguishing capability in case of a cargo compartment fire. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0279R1 describes procedures for an inspection and modification of the cargo compartment fire extinguishing pipes, including installing a clamp, checking the distance between the pipes, and accomplishing on-condition actions including adjusting the screws and pipes and installing a spacer between the two pipes.

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

Costs of Compliance

The FAA estimates that this AD affects 368 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 3 work-hours × $85 per hour = $255.	$103	Up to $358	Up to $131,744.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

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):

2020–12–16 Airbus SAS: Amendment 39–19925; Docket No. FAA–2020–0329; Product Identifier 2020–NM–028–AD.

(a) Effective Date

This AD is effective September 8, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A320–214, –216, –231, –232, –233, –251N, and –271N airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0279R1, dated February 5, 2020 (''EASA AD 2019–0279R1'').

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Reason

This AD was prompted by a report that following the installation of a second cargo fire extinguishing bottle, insufficient clearance between the cargo compartment fire extinguishing pipes was found. The FAA is issuing this AD to address insufficient clearance between the cargo compartment fire extinguishing pipes, which could lead to wear and chafing of the pipes and possibly result in reduced fire extinguishing capability in case of a cargo compartment fire.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0279R1.

(h) Exceptions to EASA AD 2019–0279R1

(1) Where EASA AD 2019–0279R1 refers to ''the effective date of the original issue of [AD 2019–0279]'' or ''the effective date of this revised AD,'' this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0279R1 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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.

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0279R1 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an

airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

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

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0279R1, dated February 5, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2019–0279R1, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0329.

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

Issued on June 19, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–16728 Filed 7–31–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0104; Product Identifier 2019–NM–210–AD; Amendment 39–19923; AD 2020–12–14]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by a report that the anti-fretting coating on the piston rods of certain ram air turbine (RAT) deployment actuators may have been incorrectly applied. This AD requires a review of airplane maintenance records or an inspection of the RAT deployment actuator to determine the serial number and, depending on the findings, replacement with an upgraded RAT deployment actuator. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 8, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 8, 2020.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514 855–7401; email *thd.crj@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0104.

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–2020–0104; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–38, dated October 30, 2019 (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0104.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on February 24, 2020 (85 FR 10346). The NPRM was prompted by a report that the anti-fretting coating on the piston rods of certain RAT deployment actuators may have been incorrectly applied. The NPRM proposed to require a review of airplane maintenance records or an inspection of the RAT deployment actuator to determine the serial number and, depending on the findings, replacement with an upgraded RAT deployment actuator. The FAA is issuing this AD to address incorrect application of the anti-fretting coating that may lead to galling of the piston rod over time, which could cause the unit to seize and fail to fully deploy. This condition which, if not corrected, could result in the inability to power essential systems in the event that other sources of power are also lost. See the MCAI for additional background information.

Comment

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comment received on the NPRM and the FAA's response.

Request To Require Testing of the Anti-Fretting Coating in Lieu of Inspection

Paul Risenhoover questioned why the FAA doesn't require testing instead of the inspection of the anti-fretting coating on the piston rods of certain ram air turbine (RAT) deployment actuators. The commenter did not provide justification for his request.

The FAA infers that the commenter was requesting testing of the RAT deployment actuator in lieu of an inspection of the anti-fretting coating on the piston rods. The FAA disagrees with the commenter's request. This AD

requires an inspection of the RAT deployment actuator to determine the serial number, not an inspection of the anti-fretting coating on the piston rods. If the inspection reveals the RAT deployment actuator is an older model, the actuator needs to be replaced, regardless of it passing any test. The older RAT deployment actuator models are susceptible to failure due to the anti-fretting coating not being applied correctly to the piston rods. Even if the RAT deployment actuator passed a test, it would still be susceptible to failure in the future. The FAA finds it necessary to issue this AD as proposed.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information, which describes procedures for inspecting the RAT deployment actuator to identify the serial number and replacing certain RAT deployment actuators with upgraded parts. These documents are distinct since they apply to different airplane models with different configurations.

- Bombardier Service Bulletin 700–1A11–24–029, dated February 22, 2019.
- Bombardier Service Bulletin 700–24–090, dated February 22, 2019.
- Bombardier Service Bulletin 700–24–5015, dated February 22, 2019.
- Bombardier Service Bulletin 700–24–6015, dated February 22, 2019.

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.

Costs of Compliance

The FAA estimates that this AD affects 380 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTION

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$32,300

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
5 work-hours × $85 per hour = $425	Up to $41,006	Up to $41,431.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

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):

2020–12–14 Bombardier, Inc.: Amendment 39–19923; Docket No. FAA–2020–0104; Product Identifier 2019–NM–210 AD.

(a) Effective Date

This AD is effective September 8, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers 9002 through 9828 inclusive, 9830, 9832 through 9835 inclusive, 9840, 9854, 9855, and 9998.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by a report that the anti-fretting coating on the piston rods of certain ram air turbine (RAT) deployment actuators may have been incorrectly applied. Incorrect application of this anti-fretting coating may lead to galling of the piston rod over time, which could cause the unit to seize and fail to fully deploy. The FAA is issuing this AD to address this condition which, if not corrected, could result in the inability to power essential systems in the event that other sources of power are also lost.

(f) Compliance

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

(g) Determine RAT Serial Number

Within 36 months after the effective date of this AD: Perform an inspection to determine the serial number of the RAT deployment actuator, having part number (P/N) BZ02001–01 (GL456–1301–1). A review of the airplane maintenance records is acceptable in lieu of this inspection, provided the serial number of the RAT deployment actuator can be conclusively determined from that review.

(1) If the serial number of the RAT deployment actuator is not listed in the table referred to in paragraph 2.B., Part A-Special Check, of the Accomplishment Instructions of the applicable Bombardier service information specified in figure 1 to paragraphs (g)(1) and (2), (h), and (i) of this AD, no further action is required by this AD.

Figure 1 to paragraphs (g)(1) and (2), (h), and (i) – *Service Information*

Airplane Model	Service Information
BD-700-1A10 airplanes having serial numbers 9002 through 9312 inclusive, 9314 through 9380 inclusive, and 9384 through 9429 inclusive	Bombardier Service Bulletin 700-24-090, dated February 22, 2019
BD-700-1A10 airplanes having serial numbers 9313, 9381, 9432 through 9828 inclusive, 9830, 9832 through 9835 inclusive, 9854, and 9855	Bombardier Service Bulletin 700-24-6015, dated February 22, 2019
BD-700-1A11 airplanes having serial numbers 9127 through 9383 inclusive, 9389 through 9400 inclusive, 9404 through 9431 inclusive, and 9998	Bombardier Service Bulletin 700-1A11-24-029, dated February 22, 2019
BD-700-1A11 airplanes having serial numbers 9386, 9401, and 9445 through 9840 inclusive	Bombardier Service Bulletin 700-24-5015, dated February 22, 2019

(2) If the serial number of the RAT deployment actuator is listed in the table referred to in paragraph 2.B., Part A-Special Check, of the Accomplishment Instructions of the applicable Bombardier service information specified in figure 1 to paragraphs (g)(1) and (2), (h), and (i) of this AD, do the replacement required by paragraph (h) of this AD.

(h) Replacement

If, during the inspection or records review required by paragraph (g) of this AD, any RAT deployment actuator is found to have an affected serial number: Within 36 months after the effective date of this AD, replace the RAT deployment actuator, having P/N BZ02001–01 (GL456–1301–1), with an upgraded part, in accordance with Paragraph 2.C., Part B-Modification, of the Accomplishment Instructions of the applicable Bombardier service information specified in figure 1 to paragraphs (g)(1) and (2), (h), and (i) of this AD.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install on any airplane, a RAT deployment actuator having P/N BZ02001–01 (GL456–1301–1) with a serial number referred to in Paragraph 2.B., Part A-Special Check, of the Accomplishment Instructions, of the applicable Bombardier service information specified in figure 1 to paragraphs (g)(1) and (2), (h), and (i) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–38, dated October 30, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0104.

(2) For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 700–1A11–24–029, dated February 22, 2019.

(ii) Bombardier Service Bulletin 700–24–090, dated February 22, 2019.

(iii) Bombardier Service Bulletin 700–24–5015, dated February 22, 2019.

(iv) Bombardier Service Bulletin 700–24–6015, dated February 22, 2019.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514 855–7401; email *thd.crj@aero.bombardier.com;* internet *https://www.bombardier.com.*

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

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

Issued on June 19, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–16727 Filed 7–31–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0439]

RIN 1625–AA00

Safety Zone; Port Huron Float Down, St. Clair River, Port Huron, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the St. Clair River in the vicinity of Port Huron, MI. This zone is intended to restrict and control movement of vessels in a portion of the St. Clair River. Though this is an unsanctioned, non-permitted marine event, this zone is necessary to provide for the safety of life on the navigable waters during a float down event near Port Huron, MI.

DATES: This temporary final rule is effective from 12 noon through 8 p.m. on August 16, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2020–0439 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313–568–9564, or email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Detroit
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

During the afternoon of August 16, 2020, a non-sanctioned public event is scheduled to take place. The event is advertised over various social-media sites, in which a large number of persons float down a segment of the St. Clair River, using inner tubes and other similar floatation devices. The 2020 float down event will occur between approximately 12 noon and 8 p.m. on August 16, 2020. This non-sanctioned event has taken place in the month of August annually since 2009.

No private or municipal entity requested a marine event permit from the Coast Guard for this event, and it has not received state or federal permits since its inception. The event has drawn over 5,000 participants of various ages annually. Despite plans put together by federal, state and local officials, emergency responders and law enforcement officials have been overburdened pursuing safety during this event. Medical emergencies, people drifting across the international border, and people trespassing on residential property when trying to get out of the water before the designated finish line are some of the numerous difficulties encountered during the float down event.

During the 2014 float-down event, a 19-year-old participant died. During the 2016 float down, a wind shift caused thousands of U.S. citizen rafters with no passports to drift into Canadian waters. The current and wind made it impossible for the rafters to paddle back into U.S. waters, necessitating significant coordination with the Canadian authorities. Despite these events, promotional information for the event continues to be published. More than 5,000 people are again anticipated to float down the river this year. No public or private organization holds themselves responsible as the event sponsor.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this float down event in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. Moreover, delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public and vessels from the hazards associated with the float down event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because prompt action is needed to protect the public and participants in this event on August 16, 2020.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined the float down poses significant risk to public safety and property from 12 noon through 8 p.m. on August 16, 2020. The likely combination of large numbers of participants, strong river currents, limited rescue resources, and difficult emergency response scenarios could easily result in serious injuries or fatalities to float down participants and spectators. Therefore, the COTP is establishing a safety zone around the event location to help minimize risks to safety of life and property during this event.

IV. Discussion of the Rule

This rule establishes a safety zone from 12 noon through 8 p.m. on August 16, 2020. The safety zone will begin at Lighthouse Beach and encompass all

U.S. waters of the St. Clair River bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00.416′ N; 082°25.333′ W, extending east to the international boundary to a point at position 43°00.416′ N; 082°25.033′ W, following south along the international boundary to a point at position 42°54.500′ N; 082°27.683′ W, extending west to a point on land just north of Stag Island at position 42°54.500′ N; 082°27.966′ W, and following north along the U.S. shoreline to the point of origin (NAD 83). No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Vessel operators must contact the COTP or his or her on-scene representative to obtain permission to transit through this safety zone. Additionally, no one under the age of 18 will be permitted to enter the safety zone if they are not wearing a Coast Guard approved personal floatation device. The COTP or his or her on-scene representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will not be able to safely transit around this safety zone which will impact a small designated area of the St. Clair River from 12 noon until 8 p.m. on August 16, 2020. Moreover, the Coast Guard will issue Broadcast Notice to Mariners (BNM) via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting eight hours that will prohibit entry into a designated area. It is categorically excluded from further review under paragraph L[60](a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the

person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0439 to read as follows:

§ 165.T09–0439 Safety Zone; Port Huron Float Down, St. Clair River, Port Huron, MI.

(a) *Location.* A safety zone is established to include all U.S. navigable waters of southern Lake Huron and the St. Clair River adjacent to Port Huron, MI, beginning at Lighthouse Beach and encompassing all U.S. waters of the St. Clair River bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00.416′ N; 082°25.333′ W, extending east to the international boundary to a point at position 43°00.416′ N; 082°25.033′ W, following south along the international boundary to a point at position 42°54.500′ N; 082°27.683′ W, extending west to a point on land just north of Stag Island at position 42°54.500′ N; 082°27.966′ W, and following north along the U.S. shoreline to the point of origin (NAD 83).

(b) *Enforcement period.* The regulated area described in paragraph (a) will be in enforced from 12 noon through 8 p.m. on August 16, 2020.

(c) *Regulations.* (1) No vessel or person may enter, transit through, or anchor within the safety zone unless authorized by the Captain of the Port Detroit (COTP), or his or her on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or his or her on-scene representative.

(3) The ''on-scene representative'' of COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his or her behalf.

(4) Vessel operators shall contact the COTP or his or her on-scene representative to obtain permission to enter or operate within the safety zone. The COTP or his or her on-scene representative may be contacted via VHF Channel 16 or at (313) 568–9560. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP or his or her on-scene representative.

Dated: July 24, 2020.

Brad W. Kelly,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2020–16538 Filed 7–31–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[ED–2020–OSERS–0104]

Final Priorities, Requirements and Definitions—Rehabilitation Training: Vocational Rehabilitation Technical Assistance Center-Quality Management; and Vocational Rehabilitation Technical Assistance Center-Quality Employment

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Final priorities, requirements, and definitions.

SUMMARY: The Department of Education (Department) announces priorities, requirements, and definitions under the Rehabilitation Training program, Catalog of Federal Domestic Assistance (CFDA) numbers 84.264J and 84.264K. The Department may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2020 and later years. We take this action to focus attention on an identified national need to fund a Vocational Rehabilitation Technical Assistance Center for Quality Management (VRTAC–QM) and a Vocational Rehabilitation Technical Assistance Center for Quality Employment (VRTAC–QE). We intend for the VRTAC–QM and VRTAC–QE to increase the number and quality of employment outcomes for individuals with disabilities through training and technical assistance to State vocational rehabilitation (VR) agency personnel. We expect the VRTAC–QM to enable State VR agency personnel to manage available resources better and improve service delivery, and the VRTAC–QE to support State VR agency personnel to implement innovative and effective employment strategies and supporting practices.

DATES: *Effective Date*: These priorities, requirements, and definitions are effective September 2, 2020.

FOR FURTHER INFORMATION CONTACT: For 84.264J: Douglas Zhu, U.S. Department of Education, 400 Maryland Avenue SW, Room 5095, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–6037. Email: *84.264J@ed.gov.* For 84.264K: Felipe Lulli, U.S. Department of Education, 400 Maryland Avenue SW, Room 5101, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7425. Email: *84.264K@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: Under the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by the Workforce Innovation and Opportunity Act (WIOA), the Rehabilitation Services Administration (RSA) makes grants to States and public or nonprofit agencies and organizations (including institutions of higher education) to pay part of the cost of projects to provide State VR agency personnel with training and technical assistance designed to assist in increasing the numbers of, and upgrading the skills of, qualified personnel (especially rehabilitation counselors), who are trained in providing vocational, medical, social, and psychological rehabilitation services to individuals with disabilities. They are also trained to assist individuals with communication and related disorders and to provide other services authorized under the Rehabilitation Act.

Program Authority: 29 U.S.C. 772(a)(1).

Applicable Program Regulations: 34 CFR part 385.

We published a notice of proposed priorities, requirements, and definitions (NPP) for this program in the **Federal Register** on April 9, 2020 (85 FR 19908). That notice contained background information and our reasons for proposing the particular priorities, requirements, and definitions.

Except for minor editorial and technical revisions for grammar and clarity and three minor substantive changes explained in the discussion of comments that follow, there are no differences between the proposed

priorities, requirements, and definitions and these final priorities, requirements, and definitions.

Public Comment: In response to our invitation in the NPP, 12 parties submitted comments on the proposed priorities, requirements, and definitions.

We group major issues according to subject and discuss substantive issues under each of the titles—priorities, requirements, and definitions—to which they pertain. Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make. In addition, we do not address general comments that raise concerns not directly related to the proposed priorities, requirements, or definitions.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities, requirements, and definitions since publication of the NPP follows.

Priorities

Comment: Some commenters expressed concern that the proposed priorities contained what appeared to be some conceptual overlapping of lead responsibilities between the VRTAC–QM and the VRTAC–QE, for example, between improving VR service delivery and implementing employment strategies. One of the commenters referenced the centers' shared focus on pre-employment transition services. Another commenter pointed out that both centers are required to engage with the training and technical assistance resources funded by the U.S. Departments of Education, Labor, and Health and Human Services. The commenters recommended that the final priorities provide specifics about the nature and extent of required coordination between the two VRTACs to ensure that each center's resources are used most effectively, clearly differentiate the lead responsibilities among the centers, and require the centers to coordinate their work on the State, regional, and national levels.

Discussion: The Department appreciates the commenters' suggestions and recommendations. The Department agrees that clarity of roles and coordination of activities between the centers are necessary for the efficient and cost-effective delivery of intensive training and technical assistance to State VR agency personnel. This is why we require the VRTAC–QM and VRTAC–QE to coordinate training and technical assistance with other technical assistance centers. Such clarity and coordination are especially critical because both centers will assist VR agencies to improve the provision of VR services, including pre-employment transition services and the achievement of quality employment outcomes. The VRTAC–QM pursues these goals through improved program management and resource utilization, whereas the VRTAC–QE focuses on the implementation of promising employment strategies and practices. Coordination and clarity of roles between the VRTAC–QM and VRTAC–QE will be pursued through RSA's cooperative agreement with each center, training and technical assistance agreements with each State VR agency, RSA leadership and direction at the national level, and ongoing communication between the respective project officers. As such, further clarification and differentiation are not necessary.

Changes: None.

Comment: One commenter noted that although the WIOA Joint Rule for Unified and Combined State Plans, Performance Accountability, and One-Stop System Joint Provisions became effective on October 18, 2016, several key RSA policy directives and technical assistance circulars that have provided guidance in implementing those regulations were released a year or more later. As a result, State VR agencies still need technical assistance to ensure effective implementation of the requirements of the newer rules. The commenter suggested that Priority 1, VRTAC–QM, include a more general focus on continued training and technical assistance to assist State VR agencies in implementing the requirements of WIOA.

Discussion: The Department appreciates the commenter's suggestion. As stated in the purpose of the program in the VRTAC–QM and the VRTAC–QE priorities, each project will provide training and technical assistance to State VR agency personnel to equip and increase the number of personnel with the necessary skills to implement the provisions in the Rehabilitation Act as amended by WIOA. The VRTAC–QM and VRTAC–QE will provide training and technical assistance to address the need of State VR agencies to ensure effective implementation of the requirements of WIOA, including those raised by the commenter.

Changes: None.

Comment: One commenter noted that resource limitations related to States' challenges in meeting VR program match requirements, as well as the requirement to reserve at least 15 percent of Federal VR program funds for pre-employment transition services to eligible and potentially eligible students with disabilities, have reduced State VR agencies' ability to serve all eligible individuals with disabilities. The commenter stated that, in the absence of significant additional resources devoted to serving individuals with disabilities, the coronavirus pandemic's current and future impact on State budgets and labor markets will almost certainly lead to even fewer eligible individuals being served and smaller numbers of employment outcomes among VR participants in program year 2020 and beyond. This commenter suggested that targeted and intensive technical assistance can help VR agencies identify ways to use available resources more effectively.

Discussion: The Department appreciates the commenter's support for the priorities. Under the priority for quality management, the VRTAC–QM will be able, through targeted and intensive technical assistance, to help State VR agencies to identify ways to use available resources more effectively and to implement program and resource management strategies and practices that lead to effective and efficient service delivery and quality employment outcomes.

Changes: None.

Comment: Several commenters addressed the COVID–19 pandemic's potential impact on VRTAC–QM and VRTAC–QE's intensive training and technical assistance delivery methods, topic areas, and performance assessments. A few of the commenters inquired whether RSA would allow the centers' intensive training and technical assistance to be delivered virtually rather than in-person, if necessary or advisable due to continued travel restrictions and social distancing requirements. One commenter recommended that the intensive training and technical assistance include a focus on promoting effective distance service delivery and community engagement approaches, especially in the provision of pre-employment transition services. Another commenter inquired whether RSA would consider the pandemic's impact on State budgets, local economies, employers, and, ultimately, VR participants in its evaluation of the centers' performance.

Discussion: The VRTAC–QM and the VRTAC–QE will provide training and technical assistance to State VR agency personnel to achieve the State VR agency's program management, service delivery, and quality employment goals in a manner consistent with the priority and with each State's particular circumstances, including those related to COVID–19. The centers' training and technical assistance will help VR

personnel to assess and improve the VR agency's management and service delivery systems, which may include remote delivery of services, including how to provide pre-employment transition services remotely. Further, while intensive training and technical assistance are typically provided on-site, nothing in the priorities precludes the VRTAC–QM and VRTAC–QE from providing the training and technical assistance remotely if on-site delivery is not possible or advisable. The service delivery and performance evaluation considerations related to COVID–19 can be addressed in the cooperative agreement between RSA and the respective technical assistance center. To reflect that the priorities are broad enough to encompass these activities, RSA has revised the priorities to address remote delivery of training and technical assistance and to provide technical assistance on remote delivery of services.

Changes: We have revised the definition of ''intensive training and technical assistance'' under the *Final Definitions* section by adding remote delivery as needed and appropriate.

Comment: One commenter asserted that the VRTAC–QE should not be responsible for directly implementing employment strategies and supporting practices in the participating State VR agencies.

Discussion: We agree with the commenter that the VR agencies are responsible for implementing specific strategies or practices in their States. The VRTAC–QE and VRTAC–QM are responsible for conducting comprehensive reviews of current and promising strategies and practices, presenting them as options to participating State VR agency personnel, and providing high-quality and relevant intensive training and technical assistance to State VR agency personnel if they choose to implement selected strategies or practices.

Changes: None.

Comment: Several commenters expressed concern that the proposed priorities did not sufficiently emphasize training and technical assistance to Community Rehabilitation Programs (CRPs), given the importance of CRPs' role in promoting quality employment outcomes for individuals with disabilities. One of the commenters noted that the proposed priorities focus exclusively on improving the knowledge, skills, and capabilities of VR personnel but devote little or no attention to the knowledge, skills, and capabilities of CRP personnel. One commenter pointed out that only one of the six listed supporting practices explicitly references CRPs. Another commenter stressed the need for flexible and innovative approaches for CRPs in Supported Employment, in particular. The commenters recommended that the proposed priorities elevate the role of CRPs and prioritize training and technical assistance to CRP personnel.

Discussion: We agree that CRPs play a very important role in promoting quality employment outcomes for individuals with disabilities. Consistent with section 302 of the Rehabilitation Act, as amended by WIOA, the purpose of these priorities is to support projects that provide training and technical assistance designed to assist in increasing the numbers of, and upgrading the skills of, qualified personnel (especially rehabilitation counselors). The VRTAC–QM and VRTAC–QE will provide intensive training and technical assistance to VR personnel according to a signed agreement between RSA and each participating State VR agency. The intensive training and technical assistance agreement includes the specific State agency's goals and objectives, selected strategies and practices, individuals or groups of individuals to receive the training and technical assistance, and designated partner organizations. The intensive training and technical assistance provided under an agreement may involve CRPs as partner organizations because of their expertise in and potential contributions to the implementation of VRTAC–QM or VRTAC–QE strategies and practices and may include topics and approaches such as those recommended by the commenter.

Changes: We added a reference to CRPs and other partners in both priorities.

Comment: One commenter noted that the employment rate of people with intellectual and developmental disabilities has been nationally around 20 percent for the last 10 years, and a reasonable person would have a hard time believing that the low rate is because of what VR counselors are doing or not doing, or that technical assistance can make a positive impact. This commenter suggested that when starting the technical assistance centers, it would be prudent for the centers to include people who can analyze such data.

Discussion: The Department agrees that it is necessary for the technical assistance centers to include personnel who can analyze data. Data collection, data analysis, and evaluation are addressed in the proposed priorities and project requirements and include activities such as analyzing case service data, including the VR Program Case Service Report (RSA–911) data and other agency performance data, to identify trends and inconsistencies in program performance and developing strategies to improve the quantity and quality of employment outcomes achieved by various groups of individuals with disabilities served by the VR program.

Changes: None.

Comment: A few commenters noted that many nonprofit organizations employ people with disabilities and have the capacity to hire and train more people with disabilities than they currently hire and train. These commenters suggested that the VRTAC–QE assist VR agencies' personnel to expedite and streamline the referral of persons with disabilities to nonprofit organizations.

Discussion: The Department appreciates the commenters' suggestions. Nothing in the priorities precludes the technical assistance centers from providing training and technical assistance to VR agency personnel on topics related to improving referrals for the purpose of assisting individuals with disabilities to achieve competitive integrated employment, if it is identified as a need by a VR agency.

Changes: None.

Comment: One commenter noted that the way in which current program performance measures are calculated is important, but that it is even more important both to understand the limitations on the reliability and validity of the data used to calculate the measures and to ensure that program performance data are used appropriately to inform program and policy decisions. The work of the Technical Assistance Center for Program Evaluation and Quality Assurance (PEQA–TAC), including the collaborative Summit Conference in which the PEQA–TAC has played a major role in recent years, has been of tremendous value in enhancing VR agencies' use of effective program evaluation strategies, according to the commenter. The commenter suggested that the VRTAC–QM focus on enhancing VR agencies' ability to effectively use both performance measurement strategies and in-depth program evaluation processes as recommended by the Government Accountability Office in publications such as GAO–05–739SP and GAO–11–646SP.

Discussion: The Department agrees with the commenter that the ability of VR personnel to effectively use both performance measurement strategies

and in-depth program evaluation processes is important for VR program management. Since conducting quality assurance and performance improvement, including the use of data for performance management systems and the implementation of the common performance measures required by WIOA, are already included in the priority for VRTAC–QM, there is no need to make changes to the priority to address this focus area.

Changes: None.

Comment: One commenter suggested that RSA continue funding for the existing technical assistance centers that have effectively served VR agencies over the past several years. The commenter also stated that the challenges inherent in establishing new national technical assistance centers will inevitably result in delays in the centers' collective ability to respond to the needs of State VR agencies, as well as gaps in the technical assistance available to VR agencies that they can ill afford to experience during a time of ongoing change in State VR programs, particularly in light of the current and ongoing challenges that all VR agencies face in addressing the COVID–19 pandemic. The commenter suggested that RSA consider continuing funding the current technical assistance centers for at least the next two years.

Discussion: The Department agrees with the commenter that the current centers have performed well and continued technical assistance is needed. The current centers were put in place to respond to very specific changes WIOA made to the Rehabilitation Act, and State VR agencies are in a different place now than they were five years ago with respect to implementing the changes. The current set of RSA-funded VR technical assistance centers will be reaching the end of their five-year performance period, and the Department believes the new priority areas will provide the training and technical assistance that State VR agencies need. Given the status of the State VR agencies in implementing the specific changes based on WIOA, RSA believes that State VR agency personnel will benefit from technical assistance to achieve the State VR agency's program management, service delivery, and quality employment goals, in a manner consistent with the priority and with each State's particular circumstances, including those related to COVID–19. RSA expects that the new technical assistance centers will be able to respond to the technical assistance needs of the State VR agencies.

Changes: None.

Comment: One commenter noted that quality management is a pressing topic for individuals with disabilities accessing the State VR program for the purpose of achieving competitive integrated employment. This commenter also noted that the amendments to the Rehabilitation Act emphasized expanding quality employment outcomes and career advancement for individuals with disabilities. The commenter suggested that the VRTAC–QM focus on fiscal and programmatic changes to VR agency operations that are philosophically consistent with the emphasis on expanding quality employment outcomes and career advancement for as many eligible individuals with disabilities as possible. The commenter also suggested that increasing the capacity of agencies in these areas should result in qualifying individuals for services in a manner that does not lead to the disqualification of other individuals.

Discussion: The Department appreciates the commenter's suggestions. The priority for the VRTAC–QM stresses maximizing available resources to support consumer services and includes the types of services and outcomes suggested by the commenter.

Changes: None.

Project Requirements

Comment: One commenter suggested making it mandatory to include a representative from a CRP or a provider association on the advisory committee for the VRTAC–QM.

Discussion: The Department acknowledges the important role of CRPs in assisting individuals with disabilities to achieve their employment outcomes. The proposed priority for the VRTAC–QM requires a representative of stakeholders, which would include CRPs, to serve on the committee. However, given the important role of CRPs in providing rehabilitation services, RSA agrees with the commenter that the committee must include a CRP representative.

Changes: We added CRP representatives to the list of required members of the VRTAC–QM advisory committee in the Project Requirements section of Priority 1.

Comment: One commenter asked for clarification regarding whether the VRTAC–QM has discretion to provide distinct intensive training and technical assistance to State VR agencies on resource management or programmatic management.

Discussion: The Department believes that the VRTAC–QM should have the capacity to provide intensive training and technical assistance to VR agencies on both program management and resource management. The VRTAC–QM may provide training and technical assistance to State VR agency personnel on topics related to program management, resource management, or both, based on the participating State VR agency's identified needs.

Changes: None.

Comment: One commenter asked whether the state-of-the-art website and information technology (IT) platform to be established by the technical assistance centers for communicating with State VR agencies can be an existing website specifically designed to house and provide VR-specific information and resources, or whether a new site must be constructed.

Discussion: If the grantee has a website that can be modified for the purpose of the specific technical assistance center and it meets all of the final requirements, RSA may approve that website. Otherwise, a new website must be constructed for the purpose of the VRTAC–QM or VRTAC–QE exclusively.

Changes: None.

Comment: One commenter suggested that the VRTAC–QM have three critical management objectives: (1) Explore strategies to respond to increased demands for services that build capacity through the redesign of service delivery, including, but not limited to, virtual counseling, outcome-based payments to incentivize success with job placement and worker retention, and increased emphasis on poverty reduction that recognizes the impact of financial stress on physical and mental health; (2) develop new options for collaboration that draw additional financial and human resources in coordination with VR to meet expanded client demand; and (3) expand coordination with the employer community to build new on-ramps and pathways into employment for individuals with disabilities through inclusive apprenticeships and entrepreneurial opportunities.

Discussion: The Department agrees that these three objectives are reasonable options under the priorities, if they are among the needs identified by the participating VR agency; supported by the agency's strengths, weaknesses, opportunities for improvement, and threats (SWOT) quality management assessment; and included in the corresponding training and technical assistance agreement. Please note that building new on-ramps and pathways into employment for individuals with disabilities is

addressed through the priority for the VRTAC–QE.

Changes: None.

Comment: One commenter suggested that RSA establish criteria to prioritize the State VR agencies to receive intensive technical assistance from the technical assistance centers. The commenter noted that the criteria would be based on the degree to which State VR agencies exhibit (1) ownership of their conditions, (2) engagement willingness, (3) clear understanding of technical assistance to meet needs, and (4) partnership and communication capacities.

Discussion: The Department agrees that, given the limited resources of the technical assistance centers, it is possible that there will be multiple VR agencies requiring training and technical assistance from the centers. The technical assistance centers need to have a system in place to address this scenario so that they can prioritize the training and technical assistance to the State VR agencies most in need. RSA will work with the technical assistance centers to prioritize which VR agencies get technical assistance through the cooperative agreement between RSA and the technical assistance centers.

Changes: None.

Comment: One commenter suggested that the Department be cautious reaching any conclusions regarding VR agencies' performance that are based primarily on data from Program Year (PY) 2017 and PY 2018 because the reliability, validity, and completeness of the new performance indicator data first reported in 2017 are limited. The commenter noted that the current RSA–911 reporting requirements that went into effect on July 1, 2017, compelled State VR agencies to make substantial, complex, and challenging revisions to the information collected and reported on the individuals they serve, and to provide significant training and support to VR counselors who are responsible for much of the new data collection. The commenter stated that, in particular, the PY 2017 and PY 2018 data on measurable skill gains (MSG) among VR participants enrolled in education or training were suppressed by limitations on the timeframe for reporting those gains, combined with the requirement for VR staff to verify the gains with supporting documentation for each reported skill gain, often under significant time pressure. This commenter also suggested that the employment records for VR participants maintained by State Unemployment Insurance (UI) programs do not include all VR participants who achieved employment outcomes. The commenter noted that, due to State VR agencies' limited resources for extensive ''contact tracing'' of individuals who do not have UI wage records, the data on participants' post-VR employment and earnings will continue being underreported for a period of time until all State VR agencies are able to access the cross-State UI wage data.

Discussion: The Department appreciates the commenter's suggestions regarding data collection and analysis related to VR agencies' performance, MSG, and post-VR employment and earnings of VR participants. RSA has provided, and is continuing to provide, tools and technical assistance to VR agencies to help improve the completeness and accuracy of data reported by VR agencies. These tools and technical assistance include RSA–911 policy directives, RSA and Workforce Innovation Technical Assistance Center (WINTAC) training series on MSG and credential attainment, and exit and post-exit data elements. RSA believes that the technical assistance centers will further respond to VR agency personnel's needs in conducting data collection and analyses related to VR agencies' performance employment outcomes of individuals with disabilities, including MSG and post-VR employment and earnings data addressed by the commenter.

Changes: None.

Comment: None.

Discussion: After further review of the project requirements, we did not want to limit the dissemination of the summative findings to only the fifth year of the grant, as there are formative findings throughout the grant period, while the technical assistance is occurring, that could be shared with a larger audience. We are interested in these additional presentations to give centers more opportunities to share about successes and challenges that they have experienced in order to better inform the work of the field in an incremental and progressive manner. Accordingly we are revising Project Requirement (7) under Priority 1 and Project Requirement (6) under Priority 2, as well as Additional Application Requirement (b)(6) under Priorities 1 and 2, to provide that the centers must engage in dissemination activities in all years of the grant period, with a special focus in the fifth year, rather than in the fifth year alone.

Changes: We have revised Project Requirement (7) under Priority 1 and Project Requirement (6) under Priority 2, as well as Additional Application Requirement (b)(6) under Priorities 1 and 2, to require the centers to present at a national conference or regional forums or specialized meetings throughout the grant period, with special focus in the fifth year of the grant, to disseminate the centers' summative findings and results.

Definitions

Comment: One commenter noted that in the proposed priority the terms ''fiscal management'' and ''resource management'' are both used. This commenter asked for clarification on what these two terms relate to and suggested that RSA define each of the terms to distinguish the key differences between the two.

Discussion: For these priorities, ''resource management'' refers to the efficient and effective development of a VR agency's resources when they are needed. Such resources may include financial resources, agency personnel skills, community rehabilitation resources, or information technology, including information technology for individuals with disabilities. ''Fiscal management'' refers to the practice of applying general management principles to the financial resources of the agency or organization. Such financial resources may include planning, organizing, directing, and controlling financial activities such as the procurement and utilization of funds of the organization. We believe that the key differences between the two terms are explained in the eight bullets at the end of Priority 1 that provide several examples of effective resource management. Therefore, a definition is not required.

Changes: None.

Final Priorities

Priority 1

Vocational Rehabilitation Technical Assistance Center for Quality Management

The purpose of this priority is to fund a cooperative agreement to establish a Vocational Rehabilitation Technical Assistance Center for Quality Management (VRTAC–QM).

The VRTAC–QM will provide intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance to State VR agencies on quality management strategies that will enable VR agencies to improve service delivery to, and employment outcomes achieved by, individuals with disabilities. For States that request intensive training and technical assistance, the training and technical assistance will upgrade and increase the competencies, skills,

and knowledge of VR personnel, enabling them to assess current VR program performance and to identify the strengths, weaknesses, opportunities for improvement, and threats (SWOT) that impact the effectiveness of VR agency service delivery and the quality of employment outcomes. This SWOT assessment will be based on a review of a wide variety of information sources, including, but not limited to, RSA's monitoring findings and recommendations; State audit reports; consumer feedback provided in public hearings and through consumer satisfaction surveys; results of comprehensive statewide needs assessments; and input from workforce development partners, community rehabilitation programs, and other VR stakeholders. Based on SWOT assessments, the center and VR agency personnel will develop individualized intensive training and technical assistance agreements designed to provide personnel with skills and strategies they need to address the weaknesses identified in the SWOT assessments to improve service delivery and employment outcomes for individuals with disabilities. The center will also provide VR agency personnel with technical assistance on evaluating whether the quality management strategies they adopt lead to increasing the percentage of participants who achieve an MSG and exit the program with an employment outcome and to modify those strategies, if necessary, to achieve continuous program improvement. In addition to the intensive training and technical assistance, the VRTAC–QM also will provide targeted training and technical assistance and universal training and technical assistance to State VR agencies on a broad range of quality management strategies and practices, both programmatic and fiscal, to address needs common to many agencies.

With regard to program management and performance, the VRTAC–QM's training and technical assistance will support the assessment, development, and enhancement of staff knowledge, skills, and abilities to perform the following functions in order to improve service delivery and employment outcomes for individuals with disabilities:

- Analyzing the State VR agency's comprehensive system of personnel development to identify strengths and weaknesses in staff's ability to understand and address factors affecting program performance and designing management strategies to address these deficits.
- Analyzing case service data to identify trends and inconsistencies in program performance, and developing strategies to improve the effectiveness and timeliness of services provided, including addressing inconsistencies in the quality and quantity of employment outcomes achieved by various groups of individuals with disabilities served by the program.
- Understanding statutory and regulatory requirements related to performance management, including calculations for the common performance measures required under WIOA and factors that may be affecting the agency's performance on these measures.
- Conducting quality assurance and performance improvement, including the use of data for performance management systems and the implementation of the common performance measures required by WIOA.
- Strategic planning to address aspects of the SWOT assessment that pose challenges and barriers to improving service delivery and employment outcomes for individuals with disabilities, particularly students and youth with disabilities and individuals with significant and the most significant disabilities.
- Implementing effective and efficient policies for delivering pre-employment transition services under section 113, VR services under section 103(a), and supported employment services under title VI of the Rehabilitation Act.
- Understanding the relationship to important outcomes of various cost containment measures, such as implementing an order of selection giving priority for services to individuals with the most significant disabilities, establishing a financial needs test for various services, implementing policies for consumer participation in the cost of services, and implementing the requirement to seek comparable services and benefits for certain services, among others.

Under the VR program, agencies must comply with several complex Federal fiscal requirements related to maintenance of effort, reallotment, reservation of funds for pre-employment transition services, and match, among others. VR agencies must understand, track, assess, and adjust, when necessary, program activities to meet these requirements while maximizing program outcomes. Additionally, the lack of knowledge and skills in fiscal and resource management can negatively affect the ability of VR agency personnel to meet consumer needs, for example, necessitating the implementation of orders of selection limiting the numbers of eligible individuals served in the VR program. With regard to effective resource management, the training and technical assistance will support the assessment, development, and enhancement of staff knowledge, skills, and abilities to ensure that—

- Resources, including program funds and personnel, are being used for allowable purposes and innovative employment strategies and supports that maximize employment outcomes for individuals with disabilities, including students and youth with disabilities and individuals with significant and the most significant disabilities;
- Programs have sound internal controls and reliable reporting systems upon which to base fiscal and programmatic decision-making to support attainment of program goals and objectives, including those related to increasing the numbers and qualifications of service delivery personnel; and
- Resources, including program funds and personnel, are maximized for program needs.

The following are examples of activities the VRTAC–QM may undertake to address weaknesses in resource management:

- Assess grantee financial management processes used to support attainment of fiscal and programmatic outcomes (for example, whether an agency's fiscal processes support the accurate tracking and reporting of non-Federal funds to maximize the drawdown of Federal award funds to support attainment of employment outcomes). The assessment will be used to identify areas for improvement in fiscal processes that will assist the agency in meeting program goals.
- Assess personnel training and technical assistance needs to identify gaps in fiscal knowledge, skills, and abilities that prevent the agency from effective and efficient resource utilization necessary to achieve employment outcomes.
- Provide intensive training and technical assistance on financial planning to maximize program resources and attainment of program goals and objectives, maximizing opportunities for funds matching, avoiding potential maintenance of effort and match penalties, and meeting the reservation of funds requirement for pre-employment transition services in order to increase resources available for service delivery.
- Provide technical assistance on implementing Federal, State, and program fiscal requirements, including

internal controls, in an efficient and effective manner to reduce unnecessary burden and to focus efforts on program outcomes.

• Provide technical assistance on the identification, collection, and analysis of program and fiscal data necessary for program management and maximizing available resources to support consumer services.

Priority 2

Vocational Rehabilitation Technical Assistance Center for Quality Employment

The purpose of this priority is to fund a cooperative agreement to establish a Vocational Rehabilitation Technical Assistance Center for Quality Employment (VRTAC–QE).

The purpose of the VRTAC–QE is to upgrade and increase the competencies, skills, and knowledge of VR personnel to implement and sustain employment strategies and supporting practices that enable individuals with disabilities to achieve quality employment and career advancement, particularly competitive integrated employment as defined in the Rehabilitation Act. The center will include strategies and practices that meet the needs and promote the quality employment of individuals with significant and the most significant disabilities, students and youth with disabilities, and traditionally underserved populations. The VRTAC–QE will implement a coordinated plan to provide intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance to State VR agencies on a broad range of employment strategies and supporting practices.

Employment strategies for consideration include, but are not limited to, the following:

(a) Career pathways education, training, and supports in high-demand occupations, including those in science, technology, engineering, and mathematics (STEM) fields.

(b) Registered and industry-recognized apprenticeships, pre-apprenticeships, and on-the-job training.

(c) Supported employment and customized employment.

(d) Customized training and credential programs to meet employer demand.

(e) Self-employment and entrepreneurship, including services available under the Randolph-Sheppard Vending Facility Program.

(f) Business engagement and employer supports, including dual customer models such as Progressive Employment.

Supporting practices for consideration include, but are not limited to, the following:

(1) Practices to enhance the employment capacity of individuals with the most significant disabilities receiving supported employment services, such as the Individual Placement and Support model.

(2) Pre-employment transition services that prepare students with disabilities and transition services that prepare youth with disabilities to identify career interests through work-based learning and early career exploration opportunities, including internships and job shadowing, with a focus on high-demand and STEM careers.

(3) Career counseling techniques and resources, including labor market information tools such as Career Index Plus.

(4) Strategies involving workforce development partners, community rehabilitation programs, and other community-based organizations to provide the comprehensive support services that individuals with significant and the most significant disabilities need to succeed, such as the Integrated Resource Teams model.

(5) Approaches that encourage VR clients to enter and remain engaged in the VR process, such as rapid engagement, motivational interviewing, benefits counseling, and financial empowerment training, and vehicles such as the Achieving a Better Life Experience (ABLE) tax-free accounts for individuals with disabilities.

(6) Community outreach strategies to expand the pool of potential VR applicants and referral sources, including traditionally underserved populations.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Department establishes the following requirements for these priorities. We may apply these requirements in any year in which these priorities are in effect.

Project Requirements of Priority 1

To meet the requirements of this priority, the VRTAC–QM must, at a minimum, conduct one or more of the following activities:

(1) Establish a committee on quality management of State VR programs that meets at least semi-annually to obtain individual advice and recommendations for the project.

The committee must include, but is not limited to, individuals with disabilities, representatives from State VR agencies, representatives from community rehabilitation programs, stakeholders, and individuals with subject matter expertise in improving outcomes through effective program and resource management and in employment strategies for people with disabilities. At a minimum, the committee members will provide individual input and recommendations pertaining to the implementation of the project and the project evaluation and quality assurance plan.

(2) Establish a state-of-the-art website and information technology (IT) platform for communicating with State VR agencies and ensure that all products produced by the VRTAC–QM and posted on the website meet government and industry-recognized standards for accessibility.

The website will become a key training and technical assistance delivery vehicle; a major communication center for the VRTAC–QM and State VR agencies; and the central repository of information about quality management strategies and practices that will form the basis for intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance.

(3) Complete a comprehensive review of programmatic and fiscal quality management strategies and practices for VR services for individuals with disabilities to achieve employment

outcomes and develop an overarching training and technical assistance plan for the project. Both the review and the plan must be made available to the public, ensuring applicable privacy requirements are met.

The purpose of the review is to identify those strategies and practices for inclusion in VRTAC–QM's overarching training and technical assistance plan. The center will develop an analytical framework and selection criteria against which to evaluate potential strategies and practices. The analysis will focus on: State VR agency needs and priorities, up-to-date information on quality management strategies and practices that have proven to be effective in the field of rehabilitation as well as other public and private sectors of the economy that may have applicability to the management of VR agencies, and quantitative and qualitative research on the effectiveness of the identified program and resource management strategies and practices leading to improved service delivery and employment outcomes for individuals with disabilities.

Sources of information used for this review may include: State VR agency interviews and consultations; information from such sources as the RSA–911 Case Service Report aggregate data, general labor market data and information, Unified or Combined State Plans, and RSA monitoring reports; and information and resources generated by technical assistance centers funded by the U.S. Departments of Education, Labor, and Health and Human Services.

The overarching training and technical assistance plan must include, at a minimum—

(a) Quality management strategies and practices that result in improved service delivery and employment outcomes for individuals with disabilities, including the rationale for their selection;

(b) Conceptual framework for the selected strategies and practices, including key assumptions, expectations, and presumed relationships or linkages among strategies and practices;

(c) Nature and scope of the intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance to be provided in support of the selected strategies and practices; and

(d) Protocols and timelines for requesting and obtaining training and technical assistance.

(4) Provide intensive training and technical assistance to State VR agencies.

Intensive training and technical assistance will be provided to increase State VR agencies' capacity to adopt, expand, or sustain programmatic and fiscal quality management strategies and practices that improve the quality of service delivery and employment outcomes. Intensive training and technical assistance will be provided on-site, over an extended period, under the terms of signed intensive training and technical assistance agreements between the VRTAC–QM and the participating State VR agencies. Numerical targets for the number of intensive training and technical assistance agreements will be included in the cooperative agreement between RSA and the VRTAC–QM. Agreements will reflect the participating VR agencies' needs and priorities, goals, and objectives. They must include the following components:

(a) Quality management strategies and practices to be implemented by the State VR agency and that result in improved service delivery and employment outcomes.

(b) Nature and scope of the training and technical assistance to be provided by the VRTAC–QM.

(c) Roles and responsibilities of the VRTAC–QM, State VR agency, other workforce development partners, community rehabilitation programs, and other partners, including the commitment of resources.

(d) Logic model [1] that includes: Performance outcomes, targets, and baselines; project activities, inputs, and outputs; and data collection and analysis commitments.

The intensive training and technical assistance agreements will be developed based on the VRTAC–QM and participating VR agency's review and analysis of such information sources as Unified or Combined State Plans; RSA–911 and other performance data; general labor market data and information; RSA monitoring reports; State audit reports; and a review of pertinent Federal, State, and local resources in the State, including existing employment and training programs.

(5) Provide targeted training and technical assistance and universal training and technical assistance on programmatic and fiscal quality management strategies and practices that lead to effective and efficient service delivery and quality employment outcomes.

(6) Coordinate training and technical assistance with other technical assistance centers.

The VRTAC–QM must coordinate the provision of training and technical assistance with the Vocational Rehabilitation Technical Assistance Center for Quality Employment and other RSA-funded technical assistance and training centers. This coordination is particularly critical when developing intensive training and technical assistance agreements with the VR agencies to avoid confusion and duplication of efforts. The VRTAC–QM must also coordinate with other technical assistance centers funded by the U.S. Departments of Education, Labor, and Health and Human Services.

(7) Present at a national conference or regional forums or specialized meetings throughout the grant period, with special focus in the fifth year of the grant to disseminate the VRTAC–QM's summative findings and results.

The primary objectives are to help State VR agencies to expand and sustain their VRTAC–QM programmatic and fiscal management strategies and practices that result in improved service delivery and employment outcomes by promoting an exchange of ideas and experiences with other participating VR agencies and to encourage other State VR agencies to consider adopting VRTAC–QM strategies and practices. In addition, the VRTAC–QM will explore cost-effective approaches such as virtual convenings to engage VR agencies and partners who may be unable to attend in-person meetings.

(8) Develop a plan for an evaluation, including a timeline for the evaluation and measurement benchmarks, that will assess the effect of the center's training and technical assistance on the service delivery and employment outcomes achieved by the VR agencies that received the center's services. This should be done through an analysis of the quality, relevance, and usefulness of VRTAC–QM training and technical assistance activities designed to improve State VR agencies' program and resource management and lead to improved service delivery and achievement of high-quality employment outcomes and career advancement.

Project Requirements of Priority 2

To meet the requirements of this priority, the VRTAC–QE must, at a minimum, conduct one or more of the following activities:

(1) Establish a state-of-the-art website and IT platform for communicating with

[1] ''Logic model'' (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

State VR agencies and ensure that all products produced by the VRTAC–QE and posted on the website meet government and industry-recognized standards for accessibility.

The website will become a key training and technical assistance delivery vehicle; a major communication center for the VRTAC–QE, State VR agencies, workforce development partners, and other professionals; and the central repository of information about employment strategies and practices that will form the basis for intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance.

(2) Complete a comprehensive review of effective strategies and practices leading to quality employment for individuals with disabilities and develop an overarching training and technical assistance plan for the project. Both the review and the plan must be made available to the public, ensuring applicable privacy requirements are met.

The purpose of the review is to identify employment strategies and supporting practices for inclusion in VRTAC–QE's overarching training and technical assistance plan. The center will develop an analytical framework and selection criteria against which to evaluate potential strategies and practices. The analysis will focus on: State VR agency needs and priorities; up-to-date information on national trends, barriers, challenges, and opportunities regarding quality employment for individuals with disabilities, including factors leading to successful employment of individuals with significant and the most significant disabilities, students and youth with disabilities, and traditionally underserved populations; and quantitative and qualitative research on the effectiveness of the identified strategies and practices.

Sources of information for this review may include, but are not limited to, State VR agency interviews and consultations; analyses of aggregate RSA–911 Case Service Report data, Unified or Combined State Plans, and RSA monitoring reports; information and tools generated by RSA's vocational rehabilitation technical assistance centers and special demonstration projects, available on the National Clearinghouse of Rehabilitation Training Materials website; and other resources funded by the U.S. Departments of Education, Labor, and Health and Human Services, and institutions of higher education.

The overarching training and technical assistance plan must include, at a minimum—

(a) Employment strategies and supporting practices, including the rationale for their selection;

(b) Conceptual framework for the selected strategies and practices, including key assumptions, expectations, and presumed relationships or linkages among strategies and practices;

(c) Nature and scope of the intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance to be provided in support of the selected strategies and practices; and

(d) Protocols and timelines for requesting and obtaining training and technical assistance.

(3) Provide intensive training and technical assistance to State VR agencies.

Intensive training and technical assistance will be provided to increase the capacity of State VR agencies to adopt, expand, or sustain employment strategies and supporting practices that improve the quality of employment outcomes. Intensive training and technical assistance will be provided on-site, over an extended period, under the terms of signed intensive training and technical assistance agreements between the VRTAC–QE and the participating State VR agencies. Numerical targets for the number of intensive training and technical assistance agreements will be included in the cooperative agreement between RSA and the VRTAC–QE. Agreements will reflect the participating VR agencies' needs and priorities, goals, and objectives. They must include the following components:

(a) Employment strategies and supporting practices to be implemented by the State VR agency.

(b) Nature and scope of the training and technical assistance to be provided by the VRTAC–QE.

(c) Roles and responsibilities of the VRTAC–QE, State VR agency, workforce development partners, community rehabilitation programs, and other partners, including the commitment of resources.

(d) Logic model [2] that includes: State-specific performance outcomes, targets, and baselines; project activities, inputs, and outputs; and data collection and analysis commitments.

The intensive training and technical assistance agreements will be developed based on the VRTAC–QE and participating VR agency's review and analysis of such information sources as Unified or Combined State Plans; RSA–911 and other performance data; RSA monitoring reports; relevant labor market information; and a review of pertinent Federal, State, and local resources in the State, including existing employment and training programs.

Intensive training and technical assistance will be implemented in coordination with, and leveraging the resources of, State and local workforce development partners and other parties specified in the intensive training and technical assistance agreement.

(4) Provide targeted training and technical assistance meeting the identified needs of a limited number of State VR agencies, as well as universal training and technical assistance broadly available to all State VR agencies and their partners.

(5) Coordinate training and technical assistance with other technical assistance centers.

The VRTAC–QE must coordinate the provision of training and technical assistance with the Vocational Rehabilitation Technical Assistance Center for Quality Management and other RSA-funded training and technical assistance investments. This coordination is particularly critical when developing intensive training and technical assistance agreements with the VR agencies to avoid confusion and duplication of efforts. The VRTAC–QE must also coordinate with other training and technical assistance resources funded by the U.S. Departments of Education, Labor, and Health and Human Services, and other pertinent Federal or State organizations, and institutions of higher education, as appropriate.

(6) Disseminate VRTAC–QE summative findings and results through a national conference or regional forums or specialized meetings throughout the grant period, with special focus in the fifth year of the grant. The primary objectives are to help State VR agencies to expand and sustain their VRTAC–QE strategies and practices and to encourage other State VR agencies to consider adopting some VRTAC–QE strategies and practices by promoting an exchange of ideas and experiences with other participating VR agencies. To maximize the dissemination of project findings and results throughout the

[2] "Logic model" (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

grant period, with special focus in the fifth year, the VRTAC–QE will explore cost-effective approaches such as virtual convenings to engage VR agencies and partners who may be unable to attend in-person meetings.

(7) Develop a plan for an evaluation, including a timeline for the evaluation and measurement benchmarks, that will assess VRTAC–QE employment strategies and supporting activities' effect on VR participants' employment outcomes and career advancement. The evaluation will also assess the quality, relevance, and usefulness of the VRTAC–QE's training and technical assistance in improving State VR agencies' ability to identify and implement the appropriate strategies and practices.

Application Requirements

The following application requirements apply to both Priority 1 and Priority 2. The Department encourages innovative approaches to meet these requirements. Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Quality of the Evaluation Plan,'' how the proposed project will meet the evaluation requirements of the priority. Applicants must describe the anticipated implementation steps, milestones, and timelines for the development of a logic model for the project. The logic model must include data elements, inputs, activities, outputs, and short-term and long-term performance indicators regarding—

(1) Quantitative outcomes resulting from the program management or employment strategies and practices, including—

(i) Quality and timeliness of the VR processes and services;

(ii) Number and quality of employment outcomes;

(iii) VR participants' employment or career-readiness;

(iv) Cost-effectiveness; and

(v) Sustainability;

(2) Quality, relevance, and usefulness of the project's training and technical assistance activities;

(3) Quantitative or qualitative insights about the relationship between strategies, practices, and training and technical assistance activities on critical outcomes for VR personnel, VR clients, and key partners, including through—

(i) Pre- and post-training assessments;

(ii) Comparison groups;

(iii) Focus groups; or

(iv) Success stories.

(b) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how the applicant will ensure that—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have historically been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) Projects will be operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws;

(3) Key project personnel, consultants, and subcontractors have the qualifications and experience to meet all the requirements of the priority, including expertise in—

(i) Programmatic areas addressed in the Project Requirements section of the priority;

(ii) Program and resource management and oversight;

(iii) Knowledge translation and dissemination, including the effective use of communication technologies; and

(iv) Project evaluation leading to continuous improvement, including qualitative and quantitative assessments;

(4) The applicant and key partners have adequate resources to carry out the proposed project activities, and achieve anticipated project outcomes and impact on the VR services to individuals with disabilities, including assurances that the proposed allocation of human and financial resources for project evaluation will be enough to meet the requirements in section (a) of the application requirement regarding the ''Quality of the Evaluation Plan,'' above; and

(5) The proposed costs are reasonable in relation to the anticipated results and benefits.

(c) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how the applicant will ensure that—

(1) The project's intended outcomes, including implementation of the evaluation plan, will be achieved on time and within budget, through—

(i) Clearly defined responsibilities of key project personnel, consultants, and contractors, as applicable;

(ii) Procedures to track and ensure completion of the action steps, timelines, and milestones established for key project activities, requirements, and deliverables, in accordance with the cooperative agreement between RSA and the applicant;

(iii) Internal monitoring processes to ensure that the project is being implemented in accordance with an established project performance plan, including timelines and milestones; and

(iv) Financial and budgetary oversight processes to ensure timely obligations and reporting of grant funds, in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 and the terms and conditions of the Federal award;

(2) The allocation of key project personnel, consultants, and contractors—including levels of effort of key personnel—will be appropriate and adequate to achieve the project's intended outcomes, including an assurance that key personnel will have enough availability to ensure timely communications with stakeholders and RSA;

(3) The proposed management plan will ensure that the products and services are of high quality, relevance, and usefulness, in both content and delivery; and

(4) The proposed project will benefit from a diversity of perspectives, including those of State and local personnel, providers, researchers, and policy makers, among others, in its development and operation.

Additional Application Requirements for Priority 1

The following application requirements apply only to priority 1 (VRTAC–QM). The Department encourages innovative approaches to meet these requirements. Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will increase State VR agencies' capacity to improve the quality of VR services and employment outcomes for individuals with disabilities by enabling VR agencies to develop and implement efficient and effective program and resource management techniques leading to increases in the numbers and improved skills of VR counselors and other service delivery personnel. To meet this requirement, the applicant must demonstrate—

(1) Knowledge about State VR program challenges, opportunities, barriers, and trends regarding program and resource management or quality employment outcomes for individuals with disabilities including those with significant and the most significant disabilities, students and youth with disabilities, and traditionally underserved populations;

(2) Knowledge about Federal, State, and nongovernment initiatives to promote program and resource management and quality employment

outcomes for individuals with disabilities, particularly in response to requirements under WIOA;

(3) The proposed project's potential to contribute to these Federal, State, and nongovernment initiatives by assisting State VR agencies in equipping personnel with the necessary skills and training to implement the substantive provisions of the Rehabilitation Act introduced by WIOA that are designed to improve the quality of employment outcomes for individuals with disabilities; and

(4) How the proposed project will increase State VR agencies' capacity to implement program and resource management strategies leading to improved VR services, employment outcomes, and career advancement opportunities for individuals with disabilities.

(b) Demonstrate, in the narrative section of the application, under ''Quality of Project Services,'' how the proposed project will achieve the goals, objectives, and intended outcomes of this priority. To meet this requirement, the applicant must describe its plan for implementing the project, including major implementation activities, timelines, and milestones (particularly for the initial fiscal year), as well as key assumptions and expectations, presumed relationships or linkages among variables, and underlying rationale and empirical support, for the following Project Requirements of the priority:

(1) State-of-the-art website. Applicants must describe how the website will serve as an effective communication center, training and technical assistance delivery vehicle, and repository of information about quality management or employment strategies and practices, including—

(i) Expected features and capabilities, including information-delivery and stakeholder-convening technologies; and

(ii) Anticipated uses of such features and capabilities in support of the project goals and objectives.

(2) Comprehensive review. Applicants must describe how the comprehensive review will provide the factual basis for the project training and technical assistance plan. At a minimum, the comprehensive review must include—

(i) Input from State VR agencies about their needs, priorities, and innovative approaches to program and resource management that lead to improved service delivery;

(ii) Information regarding the latest—

(A) National trends, barriers, challenges, and opportunities;

(B) Effective and efficient program and resource management strategies, techniques, and practices that may be applicable to State VR agencies; and

(C) Additional information that the applicant deems relevant; and

(iii) An analytical framework for assessing the collected information and selecting the program and resource management strategies and practices for inclusion in the training and technical assistance plans.

(3) Provision of intensive training and technical assistance. Applicants must describe how the intensive training and technical assistance agreements will increase State VR agencies' capacity to improve the State VR agencies' performance and quality employment outcomes for individuals with disabilities, through State-appropriate—

(i) Program and resource management;

(ii) Federal, State, and local partnerships; and

(iii) Performance outcomes, outputs, inputs, targets, baselines, and data collection requirements.

(4) Provision of targeted training and technical assistance and universal training and technical assistance. Applicants must describe how each training and technical assistance modality (targeted or universal) will help State VR agencies to adopt, expand, and sustain program and resource management practices. For each training and technical assistance modality, describe—

(i) Topics, activities, and products;

(ii) Intended audience and outreach strategies;

(iii) Content delivery and dissemination methods; and

(iv) Steps to ensure quality, relevance, and usefulness.

(5) Coordination. The applicant must describe how it will maximize coordination between the VRTAC–QE and the VRTAC–QM and seek opportunities to coordinate with other training and technical assistance investments, including those funded by the U.S. Departments of Education, Labor, and Health and Human Services, in the provision of training and technical assistance to State VR agencies.

(6) National conference, regional forums, or specialized meetings throughout the grant period, with special focus in the fifth year of the grant performance period. Applicants must describe how the project will disseminate its summative findings and results, including cost-effective approaches such as virtual convenings to engage State VR agencies and other potential Federal, State, local, and nongovernment partners, including—

(i) Types of events (*e.g.,* conferences, forums, specialized meetings);

(ii) Target audience (*e.g.,* by event type, types of stakeholders with a variety of roles and sectors); and

(iii) Convening modes (in-person, virtual).

(c) Demonstrate, in the narrative section of the application under ''Quality of the Evaluation Plan,'' the applicant's capacity and experience in addressing the State VR agencies' training and technical assistance needs in the areas of program and resource management, including but not limited to strategic planning and performance improvement leading to performance improvement, including SWOT assessment related to implementing strategies that ensure education funds are spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

Additional Application Requirements for Priority 2

The following application requirements apply only to Priority 2 (VRTAC–QE). The Department encourages innovative approaches to meet these requirements. Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will increase State VR agencies' capacity to improve the quality of VR services and employment outcomes for individuals with disabilities by enabling VR agencies to develop and implement innovative employment and support strategies that are designed to improve employment outcomes and career advancement for individuals with disabilities. To meet this requirement, the applicant must demonstrate—

(1) Knowledge about State VR program challenges, opportunities, barriers, and trends regarding program and resource management or quality employment outcomes for individuals with disabilities including those with significant and the most significant disabilities, students and youth with disabilities, and traditionally underserved populations;

(2) Knowledge about Federal, State, and nongovernment initiatives to promote program and resource management and quality employment outcomes for individuals with disabilities, particularly in response to requirements under WIOA;

(3) The proposed project's potential to contribute to these Federal, State, and nongovernment initiatives by assisting State VR agencies in equipping

personnel with the necessary skills and training to implement the substantive provisions of the Rehabilitation Act introduced by WIOA that are designed to improve the quality of employment outcomes for individuals with disabilities; and

(4) How the proposed project will increase State VR agencies' capacity to implement employment strategies and supporting practices leading to improved VR services, employment outcomes, and career advancement opportunities for individuals with disabilities

(b) Demonstrate, in the narrative section of the application, under ''Quality of Project Services,'' how the proposed project will achieve the goals, objectives, and intended outcomes of this priority. To meet this requirement, the applicant must describe its plan for implementing the project, including major implementation activities, timelines, and milestones (particularly for the initial fiscal year), as well as key assumptions and expectations, presumed relationships or linkages among variables, and underlying rationale and empirical support, for the following Project Requirements of the priority:

(1) State-of-the-art website. Applicants must describe how the website will serve as an effective communication center, training and technical assistance delivery vehicle, and repository of information about quality management or employment strategies and practices, including—

(i) Expected features and capabilities, including information-delivery and stakeholder-convening technologies; and

(ii) Anticipated uses of such features and capabilities in support of the project goals and objectives.

(2) Comprehensive review. Applicants must describe how the comprehensive review will provide the factual basis for the project training and technical assistance plan. At a minimum, the comprehensive review must include—

(i) Input from State VR agencies about their needs, priorities, and innovative approaches to program and resource management that lead to quality employment and career-readiness that lead to quality employment outcomes;

(ii) Information regarding the latest—

(A) National trends, barriers, challenges, and opportunities;

(B) Effective employment strategies and practices that prepare individuals with disabilities to compete in the global economy and designed to create or expand innovative and affordable paths to relevant careers through postsecondary credentials or job-ready skills; and

(C) Additional information that the applicant deems relevant; and

(iii) An analytical framework for assessing the collected information and selecting the employment and career-readiness strategies and practices for inclusion in the training and technical assistance plans.

(3) Provision of intensive training and technical assistance. Applicants must describe how the intensive training and technical assistance agreements will increase State VR agencies' capacity to improve the State VR agencies' performance and quality employment outcomes for individuals with disabilities, through State-appropriate—

(i) Employment strategies and supporting practices;

(ii) Federal, State, and local partnerships; and

(iii) Performance outcomes, outputs, inputs, targets, baselines, and data collection requirements.

(4) Provision of targeted training and technical assistance and universal training and technical assistance. Applicants must describe how each training and technical assistance modality (targeted or universal) will help State VR agencies to adopt, expand, and sustain employment strategies and practices that improve employment outcomes and career advancement opportunities for eligible VR participants. For each training and technical assistance modality, describe—

(i) Topics, activities, and products;

(ii) Intended audience and outreach strategies;

(iii) Content delivery and dissemination methods; and

(iv) Steps to ensure quality, relevance, and usefulness.

(5) Coordination. The applicant must describe how it will maximize coordination between the VRTAC–QE and the VRTAC–QM and seek opportunities to coordinate with other technical assistance centers, including those funded by the U.S. Departments of Education, Labor, and Health and Human Services, in the provision of training and technical assistance to State VR agencies.

(6) National conference, regional forums, or specialized meetings throughout the grant period, with special focus in the fifth year of the grant performance period. Applicants must describe how the project will disseminate its summative findings and results, including cost-effective approaches such as virtual convenings to engage State VR agencies and other potential Federal, State, local, and nongovernment partners, including—

(i) Types of events (*e.g.,* conferences, forums, specialized meetings);

(ii) Target audience (*e.g.,* by event type, types of stakeholders with a variety of roles and sectors); and

(iii) Convening modes (in-person, virtual).

Final Definitions

The Department establishes the following definitions for use with the VRTAC–QM and VRTAC–QE priorities to ensure that applicants have a clear understanding of how we are using these terms.

Intensive training and technical assistance means training and technical assistance provided to State VR agencies and State VR agency personnel primarily on-site or through remote delivery, as needed and appropriate, over an extended period. Intensive training and technical assistance is based on an ongoing relationship between the training and technical assistance center staff and State VR agencies and State VR agency personnel under the terms of a signed intensive training and technical assistance agreement.

Targeted training and technical assistance means training and technical assistance based on needs common to one or more State VR agencies and State VR agency personnel on a time-limited basis and with limited commitment of training and technical assistance center resources. Targeted training and technical assistance are delivered through virtual or in-person methods tailored to the identified needs of the participating State VR agencies and State VR agency personnel.

Universal training and technical assistance means training and technical assistance broadly available to State VR agencies and State VR agency personnel and other interested parties through their own initiative, resulting in minimal interaction with training and technical assistance center staff. Universal training and technical assistance includes generalized presentations, products, and related activities available through a website or through brief contacts with the training and technical assistance center staff.

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, and definitions, we invite

applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because this regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final priorities, requirements, and definitions only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

Commissioner, Rehabilitation Services Administration, Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–16685 Filed 7–30–20; 4:15 pm]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2019–0495 FRL–10009–78]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (19–5.B)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances which are the subject of premanufacture notices (PMNs). This action requires persons to

notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this rule. The required notification initiates EPA's evaluation of the chemical under the conditions of use within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the Significant New Use Notice (SNUN), made an appropriate determination on the SNUN, and has taken such actions as are required as a result of that determination.

DATES: This rule is effective on October 2, 2020. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on August 17, 2020.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and Orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by the docket identification (ID) number listed at the top of this document, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

II. Background

A. What action is the Agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for chemical substances which were the subject of PMNs P–17–324, P–18–109, P–18–276, P–18–358, P–18–384, and P–19–24. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

Previously, in the **Federal Register** of September 11, 2019 (84 FR 47923) (FRL–9999–27), EPA proposed SNURs for these chemical substances and established the record for these SNURs in the docket under docket ID number EPA–HQ–OPPT–2019–0495. That docket includes information considered by the Agency in developing the proposed and final rules, including public comments and EPA's responses to the public comments received.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same significant new use notice (SNUN) requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register,** a statement of EPA's findings.

III. Significant New Use Determination

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit. During its review of these chemicals, EPA identified certain conditions of use that are not intended by the submitters, but reasonably foreseen to occur. EPA is finalizing its proposed designation of those reasonably foreseen conditions of use as well as certain other circumstances of use as significant new uses.

IV. Public Comments on Proposed Rule and EPA Responses

EPA received public comments from two identifying entities on the proposed rule. The Agency's responses are presented in the Response to Public Comments document that is available in the docket for this rule. In response to public comment, EPA has modified the significant new use in the SNUR at 40 CFR 721.11379 to refer more generally to the manufacture of 6-lithium halide scintillation crystals.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed SNUR (see Unit II.A.), EPA provided the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Potentially Useful Information.
- CFR citation assigned in the regulatory text section of these rules.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the rules, may be claimed as CBI.

The chemical substances that are the subject of the SNURs addressed in this document completed premanufacture review. In addition to those conditions of use intended by the submitter, EPA has identified certain other reasonably foreseen conditions of use as well as other circumstances of use. EPA has preliminarily determined that the chemicals under their intended conditions of use are not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use for these chemicals. EPA is designating these reasonably foreseen and other circumstances of use as significant new uses. As a result, those significant new uses cannot occur without first going through a separate, subsequent EPA review and determination process associated with the SNUN.

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are the subject of these SNURs and as further discussed in Unit IV. of the proposed rule, EPA identified certain reasonably foreseen conditions of use as well as certain other circumstances of use different from the intended conditions of use identified in the PMNs and determined that those changes could result in changes in the type or form of exposure to the chemical substances and/or increased exposures to the chemical substances and/or changes in the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of the chemical substances.

B. Objectives

EPA is issuing these SNURs because the Agency wants:

- To receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use before the significant new use may commence. The Agency will either determine under TSCA section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

EPA designated September 4, 2019 (the date of web posting of the proposed rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach has been to ensure that a person could not defeat a SNUR by initiating a significant new use before the effective date of the final rule.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of that date, that person will have to cease any such activity upon the effective date of the final rule. To resume their activities, that person would have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4 (15 U.S.C. 2603), then TSCA section 5(b)(1)(A) (15 U.S.C. 2604(b)(1)(A)) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed rule lists potentially useful information for all SNURs listed in this document. Descriptions are provided for informational purposes. The information identified in Unit IV. of the proposed rule will be potentially useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance.

EPA strongly encourages persons, before performing any testing, to consult with the Agency. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

The potentially useful information described in Unit IV. of the proposed rule may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2019–0495.

XII. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action establishes SNURs for several new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers

and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, EPA has concluded that no small or large entities presently engage in such activities.

A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, EPA received 7 SNUNs in Federal fiscal year (FY) 2013, 13 in FY2014, 6 in FY2015, 10 in FY2016, 14 in FY2017, and 11 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

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

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act (CRA)

Pursuant to the CRA (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 7, 2020.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons stated in the preamble, the EPA amends 40 CFR parts 9 and 721 as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add entries for §§ 721.11375 through 721.11380 in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11375	2070–0012
721.11376	2070–0012
721.11377	2070–0012
721.11378	2070–0012
721.11379	2070–0012
721.11380	2070–0012

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add §§ 721.11375 through 721.11380 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

Sec.

* * * * *

721.11375 2,4-Hexadien-1-ol, 1-acetate, (2E,4E)-.
721.11376 2-Alkenoic acid, 2-alkyl-, alkyl ester, polymer with 2-(dialkylamino)alkyl 2-alkyl-2-alkenoate, alkyl 2-alkyl-2-alkenoate and a-(2-alkyl-1-oxo-2-alken-1-yl)-o-alkoxypoly(oxy-1,2-alkanediyl), [(1-alkoxy-2-alkyl-1-alken-1-yl)oxy]trialkylsilane-initiated (generic).
721.11377 Benzenesulfonamide, N-[2-[[(phenylamino)carbonyl]amino] phenyl]-.
721.11378 1H-Imidazole-1-propanenitrile, 2-ethyl-ar-methyl-.
721.11379 Lithium, isotope of mass 6.
721.11380 Silsesquioxanes, 3-(dimethyloctadecylammonio)propyl Me Pr, polymers with silicic acid (H_4SiO_4) tetra-Et ester, (2-hydroxyethoxy)- and methoxy-terminated, chlorides.

§ 721.11375 2,4-Hexadien-1-ol, 1-acetate, (2E,4E)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2,4-hexadien-1-ol, 1-acetate, (2E,4E)- (PMN P–17–324, CAS No. 57006–69–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=24.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11376 2-Alkenoic acid, 2-alkyl-, alkyl ester, polymer with 2-(dialkylamino)alkyl 2-alkyl-2-alkenoate, alkyl 2-alkyl-2-alkenoate and a-(2-alkyl-1-oxo-2-alken-1-yl)-o-alkoxypoly(oxy-1,2-alkanediyl), [(1-alkoxy-2-alkyl-1-alken-1-yl)oxy]trialkylsilane-initiated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2-alkenoic acid, 2-alkyl-, alkyl ester, polymer with 2-(dialkylamino)alkyl 2-alkyl-2-alkenoate, alkyl 2-alkyl-2-alkenoate and a-(2-alkyl-1-oxo-2-alken-1-yl)-o-alkoxypoly(oxy-1,2-alkanediyl), [(1-alkoxy-2-alkyl-1-alken-1-yl)oxy]trialkylsilane-initiated (PMN P–18–109) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the chemical substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=14.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11377 Benzenesulfonamide, N-[2-[[(phenylamino)carbonyl]amino]phenyl]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzenesulfonamide, N-[2-[[(phenylamino)carbonyl] amino]phenyl]- (PMN P–18–276, CAS No. 215917–77–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the chemical substance for other than as a developer for thermal paper.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11378 1H-Imidazole-1-propanenitrile,2-ethyl-ar-methyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1H-imidazole-1-propanenitrile,2-ethyl-

ar-methyl- (PMN P–18–358, CAS No. 568591–00–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1). It is a significant new use to use the chemical substance for other than as a curing agent within carbon fiber reinforced plastics prepreg or a curing agent in industrial adhesives for electronics.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11379 Lithium, isotope of mass 6.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as lithium, isotope of mass 6 (P–18–384, CASRN 14258–72–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, Commercial, and consumer activities.* It is a significant new use to manufacture, process or use the chemical substance without the workplace engineering controls described in the PMN. It is a significant new use to use the chemical substance other than as a starting material for manufacture of 6-Lithium halide scintillation crystals for use in radiation detection.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 8.5.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11380 Silsesquioxanes, 3-(dimethyloctadecylammonio)propyl Me Pr, polymers with silicic acid (H_4SiO_4) tetra-Et ester, (2-hydroxyethoxy)- and methoxy-terminated, chlorides.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as silsesquioxanes, 3-(dimethyloctadecylammonio)propyl Me Pr, polymers with silicic acid (H_4SiO_4) tetra-Et ester, (2-hydroxyethoxy)- and methoxy-terminated, chlorides. (PMN P–19–24, CAS No. 35501–23–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the substance other than as an asphalt additive or asphalt emulsion additive. It is a significant new use to use the chemical substance as an asphalt additive in a manner that results in inhalation exposure to respirable particles or droplets containing the chemical substance.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=8.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2020–15014 Filed 7–31–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1539 and 1552

[EPA–HQ–OARM–2018–0743; FRL–10011–94–OMS]

Environmental Protection Agency Acquisition Regulation (EPAAR); Open Source Software

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is adding a new clause to the EPAAR addressing open source software requirements, including EPA's ability to share open source software developed under its procurements.

DATES: This final rule is effective on August 3, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OARM–2018–0743. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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 electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Valentino, Policy, Training, and Oversight Division, Office of Acquisition Solutions (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–4522; email address: *valentino.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The EPA is writing a new EPAAR clause to address open source software requirements at EPA, so that the EPA can share custom-developed code as open source code developed under its procurements, in accordance with Office of Management and Budget's (OMB) Memorandum M–16–21, *Federal Source Code Policy: Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software.* In meeting the requirements of Memorandum M–16–21 the EPA will be providing an enterprise code inventory indicating if the new code (source code or code) was custom-developed for, or by, the agency; or if the code is available for Federal reuse; or if the code is available publicly as open source code; or if the code cannot be made available due to specific exceptions. On October 18, 2019 (84 FR 55894) EPA sought comments on the proposed rule and received four comments. One commenter stated that a single location to access open-source code would be easier to access and manage. The EPA agrees, and participates in the *https://code.gov/* platform provided by the General Services Administration (GSA) to host open-source code. Another commenter stated that protecting our nation's computer systems should be a high

priority, and the EPA agrees. The EPA also agrees with the commenter who stated that this rule strikes a balance between government benefit and risk. The EPA addressed the broad final comment by providing procedures at *https://www.usa.gov/complaint-against-government* that outlines how to file complaints.

II. Final Rule

The final rule creates EPA Acquisition Regulation (EPAAR) Part 1539, *Acquisition of Information Technology,* and adds Subpart 1539.2, *Open Source Software;* and § 1539.2071, *Contract clause.* EPAAR Subpart 1552.2, *Texts of Provisions and Clauses,* is amended by adding EPAAR § 1552.239–71, *Open Source Software.*

1. EPAAR Subpart 1539.2 adds the new subpart.
2. EPAAR § 1539.2071 adds the prescription for use of § 1552.239–71 in all procurements where open-source software development/custom development of software will be required.
3. EPAAR § 1552.239–71, *Open Source Software,* provides the terms and conditions for open source software code development and use.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* No information is collected under this action.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's final rule on small entities, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action creates a new EPAAR clause and does not impose requirements involving capital investment, implementing procedures, or record keeping. This rule will not have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector.

This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications as specified in Executive Order 13175.

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

Executive Order 13045, entitled ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

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

This final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution of Use'' (66 FR 28335 (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) (15 U.S.C 272 note) of NTTA, Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTA directs EPA to provide Congress, through OMB,

explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order (E.O.) 12898 (59 FR 7629 (February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rulemaking does not involve human health or environmental effects.

List of Subjects in 48 CFR Parts 1539 and 1552

Environmental protection, Government procurement, Reporting and recordkeeping requirements.

Kimberly Patrick,

Director, Office of Acquisition Solutions.

For the reasons set forth in the preamble, EPA adds 48 CFR part 1539 and amends 48 CFR part 1552 as follows:

■ 1. Add part 1539 to read as follows:

PART 1539—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 1539.2—Open Source Software

Sec.
1539.2071 Contract clause

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

Subpart 1539.2—Open Source Software

§ 1539.2071 Contract clause.

(a) Contracting Officers shall use clause 1552.239–71, *Open Source Software,* for all procurements where open-source software development/custom development of software will be required; including, but not limited to, multi-agency contracts, Federal Supply Schedule orders, Governmentwide Acquisition Contracts, interagency agreements, cooperative agreements and student services contracts.

(b) In addition to clause 1552.239–71, Contracting Officers must also select the appropriate version * of Federal Acquisition Regulation (FAR) clause 52.227–14, *Rights in Data—General,* to include in the subject procurement in accordance with FAR 27.409.

(* *Important note: Alternate IV of clause 52.227–14 is NOT suitable for open-source software procurement use because it gives the contractor blanket permission to assert copyright.*)

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Authority: The authority citations for part 1552 continue to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

■ 5. Amend Subpart 1552.2, *Texts of Provisions and Clauses,* by adding § 1552.239–71 to read as follows:

§ 1552.239–71 Open Source Software.

As prescribed in § 1539.2071, insert the following clause:

Open Source Software (AUG 2020)

(a) *Definitions.*

''Custom-Developed Code'' means code that is first produced in the performance of a federal contract or is otherwise fully funded by the federal government. It includes code, or segregable portions of code, for which the government could obtain unlimited rights under Federal Acquisition Regulation (FAR) Part 27 and relevant agency FAR Supplements. Custom-developed code also includes code developed by agency employees as part of their official duties. Custom-developed code may include, but is not limited to, code written for software projects, modules, plugins, scripts, middleware and Application Programming Interfaces (API); it does not, however, include code that is truly exploratory or disposable in nature, such as that written by a developer experimenting with a new language or library.

''Open Source Software (OSS)'' means software that can be accessed, used, modified and shared by anyone. OSS is often distributed under licenses that comply with the definition of ''Open Source'' provided by the Open Source Initiative at *https://opensource.org/osd* or equivalent, and/or that meet the definition of ''Free Software'' provided by the Free Software Foundation at: *https://www.gnu.org/philosophy/free-sw.html* or equivalent.

''Software'' means: (i) Computer programs that comprise a series of instructions, rules, routines or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas and related material that would enable the computer program to be produced, created or compiled. Software does not include computer databases or computer software documentation.

''Source Code'' means computer commands written in a computer programming language that is meant to be read by people. Generally, source code is a higher-level representation of computer commands written by people, but must be assembled, interpreted or compiled before a computer can execute the code as a program.

(b)(1) *Policy.* It is the EPA policy that new custom-developed code be made broadly available for reuse across the federal government, subject to the exceptions provided in (b)(3). The policy does not apply retroactively so it does not require existing custom-developed code also be made available for Government-wide reuse or as OSS. However, making such code available for government-wide reuse or as OSS, to the extent practicable, is strongly encouraged. The EPA also supports the Office of Management and Budget's (OMB) Federal Source Code Policy provided in *OMB Memorandum M–16–21, Federal Source Code Policy: Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software,* by:

(i) Providing an enterprise code inventory (*e.g.,* code.json file) that lists new and applicable custom-developed code for, or by, the EPA;

(ii) Indicating whether the code is available for Federal reuse; or

(iii) Indicating if the code is available publicly as OSS.

(2) *Exemption:* Source code developed for National Security Systems (NSS), as defined in *40 U.S.C. 11103*, is exempt from the requirements herein.

(3) *Exceptions:* Exceptions may be applied in specific instances to exempt EPA from sharing custom-developed code with other government agencies. Any exceptions used must be approved and documented by the Chief Information Officer (CIO) or his or her designee for the purposes of ensuring effective oversight and management of IT resources. For excepted software, EPA must provide OMB a brief narrative justification for each exception, with redactions as appropriate. Applicable exceptions are as follows:

(i) The sharing of the source code is restricted by law or regulation, including—but not limited to—patent or intellectual property law, the Export Asset Regulations, the International Traffic in Arms Regulation and the federal laws and regulations governing classified information.

(ii) The sharing of the source code would create an identifiable risk to the detriment of national security, confidentiality of government information or individual privacy.

(iii) The sharing of the source code would create an identifiable risk to the stability, security or integrity of EPA's systems or personnel.

(iv) The sharing of the source code would create an identifiable risk to EPA mission, programs or operations.

(v) The CIO believes it is in the national interest to exempt sharing the source code.

(c) The Contractor shall deliver to the Contracting Officer (CO) or Contracting Officer's Representative (COR) the underlying source code, license file, related files, build instructions, software user's guides, automated test suites, and other associated documentation as applicable.

(d) In accordance with OMB Memorandum M–16–21 the Government asserts its unlimited rights—including rights to reproduction, reuse, modification and distribution of the custom source code, associated documentation, and related files—for reuse across the federal government and as open source software for the public. These unlimited rights described above attach to all code furnished in the performance of the contract, unless the parties expressly agree otherwise in the contract.

(e) The Contractor is prohibited from reselling code developed under this contract without express written consent of the EPA Contracting Officer. The Contractor must provide at least 30 days advance notice if it intends to resell code developed under this contract.

(f) Technical guidance for EPA's OSS Policy should conform with the ''EPA's Open Source Code Guidance'' that will be maintained by the Office of Mission Support (OMS) at *https://developer.epa.gov/guide/open-source-code/* or equivalent.

(g) The Contractor shall identify all deliverables and asserted restrictions as follows:

(1) The Contractor shall use open source license either:

(i) Identified in the contract, or

(ii) developed using one of the following licenses: (a) Creative Commons Zero (CC0); (b) MIT license; (c) GNU General Public License version 3 (GPL v3); (4) Lesser General Public License 2.1 (LGPL–2.1); (5) Apache 2.0 license; or (6) other open source license subject to Agency approval.

(2) The Contractor shall provide a copy of the proposed commercial license agreement to the Contracting Officer prior to contracting for commercial data/software.

(3) The Contractor shall identify any data that will be delivered with restrictions.

(4) The Contractor shall deliver the data package as specified by the EPA.

(5) The Contractor shall deliver the source code to the EPA-specified version control repository and source code management system.

(h) The Contractor shall comply with software and data rights requirements and provide all licenses for software dependencies as follows:

(1) The Contractor shall ensure all deliverables are appropriately marked with the applicable restrictive legends.

(2) The EPA is deemed to have received unlimited rights when data or software is delivered by the Contractor with restrictive markings omitted.

(3) If the delivery is made with restrictive markings that are not authorized by the contract, then the marking is characterized as ''nonconforming.'' In accordance with Federal Acquisition Regulation (FAR) 46.407, *Nonconforming supplies or services,* the Contractor will be given the chance to correct or replace the nonconforming supplies within the required delivery schedule. If the Contractor is unable to deliver conforming supplies, then the EPA is deemed to have received unlimited rights to the nonconforming supplies.

(i) The Contractor shall include this clause in all subcontracts that include custom-developed code requirements.

(End of clause)

[FR Doc. 2020–15772 Filed 7–31–20; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 85, No. 149
Monday, August 3, 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–2020–0677; Product Identifier 2020–NM–099–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2019–23–03, which applies to certain Dassault Aviation Model FALCON 900EX airplanes. AD 2019–23–03 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and/or airworthiness limitations. Since the FAA issued AD 2019–23–03, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require those maintenance or inspection program revisions, and would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 17, 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 EASA material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.*

For Dassault service information identified in the proposed AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *https://www.dassaultfalcon.com.*

You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0677.

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–2020–0677; 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: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3226; email: *tom.rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0677; Product Identifier 2020–NM–099–AD'' at the beginning of your 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, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received by the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this NPRM because of those comments.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Any commentary that the FAA receives which is not

specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA issued AD 2019–23–03, Amendment 39–19796 (84 FR 67171, December 9, 2019) (''AD 2019–23–03''), for certain Dassault Aviation Model FALCON 900EX airplanes. AD 2019–23–03 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2019–23–03 to address, among other things, fatigue cracking and damage in principal structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane.

AD 2019–23–03 specifies that accomplishing the actions required by paragraph (g) or (i) of that AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) for Dassault Aviation Model 900EX airplanes, serial number (S/N) 97 and S/Ns 120 and higher.

Actions Since AD 2019–23–03 Was Issued

Since the FAA issued AD 2019–23–03, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0117, dated May 20, 2020 (''EASA AD 2020–0117'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FALCON 900EX airplanes. EASA AD 2020–0117 superseded EASA AD 2019–0134 (which corresponds to FAA AD 2019–23–03). Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after October 2, 2019 must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address, among other things, fatigue cracking and damage in principal structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0117 describes procedures for maintenance tasks and airworthiness limitations.

This proposed AD would also require Chapter 5–40, Airworthiness Limitations, Revision 11, dated September 2018, of the Dassault Falcon 900EX EASy, Falcon 900LX, and Falcon 900DX Maintenance Manual, which the Director of the Federal Register approved for incorporation by reference as of January 13, 2020 (84 FR 67171, December 9, 2019).

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA has evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would retain the requirements of AD 2019–23–03. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2020–0117 described previously, as incorporated by reference. Any differences with EASA AD 2020–0117 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (m)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0117 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0117 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD.

Service information specified in EASA AD 2020–0117 that is required for compliance with EASA AD 2020–0117 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0677 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness

limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

Costs of Compliance

The FAA estimates that this proposed AD affects 97 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–23–03 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

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 removing Airworthiness Directive (AD) 2019–23–03, Amendment 39–19796 (84 FR 67171, December 9, 2019), and adding the following new AD:

Dassault Aviation: Docket No. FAA–2020–0677; Product Identifier 2020–NM–099–AD.

(a) Comments Due Date

The FAA must receive comments by September 17, 2020.

(b) Affected ADs

(1) This AD replaces AD 2019–23–03, Amendment 39–19796 (84 FR 67171, December 9, 2019) (''AD 2019–23–03'').

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (''AD 2010–26–05'').

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 900EX airplanes, serial number (S/N) 97 and S/Ns 120 and higher, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 2, 2019.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address, among other things, fatigue cracking and damage in principal structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2019–23–03, with no changes. Within 90 days after January 13, 2020 (the effective date of AD 2019–23–03), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, Revision 11, dated September 2018, of the Dassault Falcon 900EX EASy, Falcon 900LX, and Falcon 900DX Maintenance Manual. The initial compliance times for accomplishing the actions are at the times specified in Chapter 5–40, Airworthiness Limitations, Revision 11, dated September 2018, of the Dassault Falcon 900EX EASy, Falcon 900LX, and Falcon 900DX Maintenance Manual, or 90 days after the effective date of this AD, whichever occurs later, except as provided by paragraphs (g)(1) through (4) of this AD. Accomplishing the maintenance or inspection program revision required by paragraph (i) of this AD terminates the requirements of this paragraph.

(1) The term ''LDG'' in the ''First Inspection'' column of any table in the service information means total airplane landings.

(2) The term ''FH'' in the ''First Inspection'' column of any table in the service information means total flight hours.

(3) The term ''FC'' in the ''First Inspection'' column of any table in the service information means total flight cycles.

(4) The term ''M'' in the ''First Inspection'' column of any table in the service information means months since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(h) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (j) of AD 2019–23–03, with a new exception. Except as required by paragraph (i) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in paragraph (m)(1) of this AD.

(i) New Maintenance or Inspection Program Revision

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0117, dated May 20, 2020 (''EASA AD 2020–0117''). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2020–0117

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0117 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0117 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2020–0117 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0117 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2020–0117, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0117 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0117 does not apply to this AD.

(k) New Provisions for Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0117.

(l) Terminating Actions for Certain Actions in AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (i) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model FALCON 900EX airplanes, 900EX airplanes, S/N 97 and S/Ns 120 and higher.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (n)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(n) Related Information

(1) For information about EASA AD 2020–0117, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0677.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3226; email: *tom.rodriguez@faa.gov.*

Issued on July 27, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–16629 Filed 7–31–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0678; Product Identifier 2020–NM–098–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2019–24–11, which applies to certain Dassault Aviation Model FALCON 900EX airplanes. AD 2019–24–11 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2019–24–11, the FAA determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require those maintenance or inspection program revisions, and would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 17, 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 EASA material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.*

For Dassault service information identified in the proposed AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *https://www.dassaultfalcon.com.*

You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0678.

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–2020–0678; 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: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3226; email: *tom.rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0678; Product Identifier 2020–NM–098–AD'' at the beginning of your 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, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received by the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this NPRM because of those comments.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA issued AD 2019–24–11, Amendment 39–19814 (84 FR 69997, December 20, 2019) (''AD 2019–24–11''), which applies to certain Dassault Aviation Model FALCON 900EX airplanes. AD 2019–24–11 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2019–24–11 to address reduced structural integrity of the airplane.

AD 2019–24–11 specifies that accomplishing the actions required by paragraph (g) or (i) of that AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) for Dassault Aviation Model FALCON 900EX airplanes, serial numbers 1 through 96 inclusive, and serial numbers 98 through 119 inclusive.

Actions Since AD 2019–24–11 Was Issued

Since the FAA issued AD 2019–24–11, the FAA determined that new or more restrictive airworthiness limitations are necessary.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0116, dated May 20, 2020 (''EASA AD 2020–0116'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FALCON 900EX airplanes. EASA AD 2020–0116 superseded EASA AD 2019–0133 (which corresponds to FAA AD 2019–24–11).

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address reduced structural integrity of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0116 describes new or more restrictive maintenance tasks and airworthiness limitations.

This proposed AD would also require Chapter 5–40, Airworthiness Limitations, Revision 16, dated September 2018, of the Dassault FALCON 900EX Maintenance Manual, which the Director of the Federal Register approved for incorporation by reference as of January 24, 2020 (84 FR 69997, December 20, 2019).

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would retain the requirements of AD 2019–24–11. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2020–0116 described previously, as incorporated by reference. Any differences with EASA AD 2020–0116 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (m)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding

FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0116 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0116 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD.

Service information specified in EASA AD 2020–0116 that is required for compliance with EASA AD 2020–0116 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0678 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

Costs of Compliance

The FAA estimates that this proposed AD affects 72 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–24–11 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

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 removing Airworthiness Directive (AD) 2019–24–11, Amendment 39–19814 (84 FR 69997, December 20, 2019), and adding the following new AD:

Dassault Aviation: Docket No. FAA–2020–0678; Product Identifier 2020–NM–098–AD.

(a) Comments Due Date

The FAA must receive comments by September 17, 2020.

(b) Affected ADs

(1) This AD replaces AD 2019–24–11, Amendment 39–19814 (84 FR 69997, December 20, 2019) (''AD 2019–24–11'').

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (''AD 2010–26–05'').

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 900EX airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0116, dated May 20, 2020 (''EASA AD 2020–0116'').

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2019–24–11, with no changes. Within 90 days after January 24, 2020 (the effective date AD 2019–24–11), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40,

Airworthiness Limitations, Revision 16, dated September 2018, of the Dassault FALCON 900EX Maintenance Manual. The initial compliance times for accomplishing the actions are at the times specified in Chapter 5–40, Airworthiness Limitations, Revision 16, dated September 2018, or 90 days after the January 24, 2020, whichever occurs later, except as provided by paragraphs (g)(1) through (4) of this AD. Accomplishing the maintenance or inspection program revision required by paragraph (i) of this AD terminates the requirements of this paragraph.

(1) The term ''LDG'' in the ''First Inspection'' column of any table in the service information means total airplane landings.

(2) The term ''FH'' in the ''First Inspection'' column of any table in the service information means total flight hours.

(3) The term ''FC'' in the ''First Inspection'' column of any table in the service information means total flight cycles.

(4) The term ''M'' in the ''First Inspection'' column of any table in the service information means months since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(h) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (j) of AD 2019–24–11, with a new exception. Except as required by paragraph (i) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (m)(1) of this AD.

(i) New Maintenance or Inspection Program Revision

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0116. Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2020–0116

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0116 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0116 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2020–0116 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0116 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2020–0116, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0116 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0116 does not apply to this AD.

(k) New Provisions for Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0116.

(l) Terminating Actions for Certain Actions in AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (i) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model FALCON 900EX airplanes, serial numbers 1 through 96 inclusive, and serial numbers 98 through 119 inclusive.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (n)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(n) Related Information

(1) For information about EASA AD 2020–0116, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0678.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

Issued on July 27, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–16628 Filed 7–31–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2018–N–4268]

RIN 0910–AH66

Submission of Food and Drug Administration Import Data in the Automated Commercial Environment for Veterinary Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we), with the Department of the Treasury's concurrence, is proposing to amend its regulations to require that certain data elements be submitted for veterinary devices that are being imported or offered for import in the Automated Commercial Environment (ACE) or any other electronic data interchange (EDI) system authorized by U.S. Customs and Border Protection (CBP), in order for CBP to process the filing and to help FDA in determining the admissibility of that veterinary device. The proposed rule would make the submission of the general data elements currently required to be submitted in ACE for other FDA-regulated products at the time of entry also required in ACE for veterinary devices being imported or offered for import into the United States. This proposed rule would increase effective and efficient admissibility review by FDA of those entry lines containing a veterinary device, which will protect public health by allowing the Agency to focus its limited resources on FDA-regulated products that may be associated with a greater public health risk.

DATES: Submit either electronic or written comments on the proposed rule

by October 19, 2020. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 (PRA) by September 2, 2020.

ADDRESSES: 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 October 19, 2020; the *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 19, 2020; or 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–2018–N–4268 for ''Submission of Food and Drug Administration Import Data in the Automated Commercial Environment for Veterinary Devices.'' 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 office 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.

Submit comments on information collection issues under the PRA to the Office of Management and Budget (OMB) in the following ways:

• Fax to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or email to *oira_submission@omb.eop.gov.* All comments should be identified with the title, ''Importer's Entry Notice—OMB Control Number 0910–0046—Revision.''

FOR FURTHER INFORMATION CONTACT: *With regard to the proposed rule:* Randall Gnatt, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–7231, *Randall.Gnatt@fda.hhs.gov. With regard to the information collection:* Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
A. Purpose of the Proposed Rule
B. Summary of the Major Provisions of the Proposed Rule
C. Legal Authority
D. Costs and Benefits
II. Table of Abbreviations/Commonly Used Acronyms in This Document
III. Background
IV. Legal Authority
V. Description of the Proposed Rule
VI. Proposed Effective Date
VII. Economic Analysis of Impacts
VIII. Analysis of Environmental Impact
IX. Paperwork Reduction Act of 1995
X. Federalism
XI. Consultation and Coordination With Indian Tribal Governments
XII. References

I. Executive Summary

A. Purpose of the Proposed Rule

For veterinary devices being imported or offered for import into the United States via ACE or any other EDI system authorized by the CBP, this proposed rule would require the submission of certain data elements material to FDA's process of making decisions on admissibility. This action would facilitate automated ''May Proceed'' determinations by FDA for those veterinary devices that present a low risk to public health which, in turn, would allow the Agency to focus our limited resources on those FDA-regulated products that may be associated with a greater public health risk.

B. Summary of the Major Provisions of the Proposed Rule

FDA proposes to revise subpart D of part 1 of 21 CFR chapter I (21 CFR part 1), which was added by a final rule issued by the Agency on November 29, 2016 (81 FR 85854), to establish requirements for the electronic filing of certain data elements for FDA-regulated products in ACE or any other EDI

system authorized by CBP. That final rule took effect on December 29, 2016.

This proposed rule would make the data elements that are required to be submitted for other FDA-regulated products in § 1.72 (21 CFR 1.72) also mandatory for the electronic filing of entries containing a veterinary device: (1) FDA Country of Production; (2) complete FDA Product Code; (3) full intended use code; (4) and telephone number and email address of the importer of record. Submission of these data elements in ACE would help FDA to more effectively and efficiently make admissibility determinations for veterinary devices by increasing the opportunity for automated ''May Proceed'' of these entries by FDA's Operational and Administrative System for Import Support (OASIS). These data elements are currently required to be submitted for the electronic filing of entries containing food contact substances, drugs, biological products, HCT/Ps, medical devices for human use, radiation-emitting electronic products, cosmetics, and tobacco products.

C. Legal Authority

The legal authority for this proposed rule includes sections 701 and 801 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 371 and 381, respectively).

D. Costs and Benefits

Cost savings would result from increased efficiency in, and streamlining of, FDA's imports admissibility process. These cost savings to the industry and FDA cannot be quantified because FDA currently lacks data to do so. Potential benefits to consumers, that we are similarly unable to quantify, would result from a reduction in the number of non-compliant veterinary device imports reaching U.S. consumers and from compliant imported veterinary devices reaching U.S. consumers faster.

The FDA has estimated the annualized costs of complying with this proposed regulation to be between $0.028 million and $0.073 million per year (using 3 and 7 percent discount rates). These costs were already previously inadvertently included and the benefits were discussed in the regulatory impact analysis (RIA) for the ''Submission of Food and Drug Administration Import Data in the Automated Commercial Environment'' final rule (Ref. 2). We tentatively conclude that this proposed rule would have no additional costs beyond the costs that were included in that RIA (Ref. 2).

II. Table of Abbreviations/Commonly Used Acronyms in This Document

Abbreviation/acronym	What it means
ACE	Automated Commercial Environment or any other CBP-authorized EDI system.
ACE filer	The person who is authorized to submit an electronic import entry for an FDA-regulated product in ACE.
ACS	Automated Commercial System—the predecessor CBP-authorized EDI system to ACE.
Agency	U.S. Food and Drug Administration.
CBP	U.S. Customs and Border Protection.
EDI	Electronic Data Interchange.
FDA	U.S. Food and Drug Administration.
FD&C Act	Federal Food, Drug and Cosmetic Act.
HCT/P	Human cells, tissues, or cellular or tissue-based products.
ITDS	International Trade Data System.
OASIS	FDA's Operational and Administrative System for Import Support.
RIA	Regulatory Impact Analysis.
PRA	Paperwork Reduction Act of 1995.
We, Our, Us	U.S. Food and Drug Administration.

III. Background

ACE is a commercial trade processing system operated by CBP that is designed to implement the International Trade Data System (ITDS), automate import and export processing, enhance border security, and foster U.S. economic security through lawful international trade and policy. FDA is a Partner Government Agency for purposes of submission of import data in ACE. As of July 23, 2016 (81 FR 32339), ACE became the sole EDI system authorized by CBP for entry of FDA-regulated articles into the United States.

On November 29, 2016 (81 FR 85854), FDA issued a final rule entitled ''Submission of Food and Drug Administration Import Data in the Automated Commercial Environment'' (the ACE final rule), which added subpart D to part 1 to require that certain data elements material to our import admissibility review be submitted in ACE at the time of entry. This proposed rule would add veterinary devices to the list of other FDA-regulated products being imported or offered for import for which the data elements required under § 1.72 must be submitted in ACE at the time of entry. The data elements in § 1.72 are FDA Country of Production, complete FDA Product Code, full intended use code, and telephone number and email address of the importer of record.

A veterinary device is a ''device'' as defined in section 201(h) of the FD&C Act (21 U.S.C. 321(h)) that is intended for use in animals. Section 201(h) of the FD&C Act defines ''device'' as an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is: (1) Recognized in the official National Formulary, or the U.S. Pharmacopeia, or any supplement to them; (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals; or (3) intended to affect the structure or any function of the body of man or other animals, and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

Manufacturers and distributors of veterinary devices are responsible for ensuring that these devices are safe, effective, and properly labeled. Under section 801(a) of the FD&C Act, FDA may refuse admission of veterinary devices being imported or offered for import that appear to be adulterated or misbranded. Devices, including veterinary devices, are subject to the adulteration provisions of section 501 of the FD&C Act (21 U.S.C. 351) and the misbranding provisions of section 502 of the FD&C Act (21 U.S.C. 352). We have determined that the data elements required to be submitted in ACE at the time of entry under § 1.72 are material to our import admissibility review of

veterinary devices. We expect that receipt of this information will increase the opportunity for automated ''May Proceed'' determinations by us for those veterinary devices that present a low public health risk which, in turn, would allow the Agency to focus our limited resources on those FDA-regulated products that may be associated with a greater public health risk.

ACE electronically transmits the entry data submitted by a filer at the time of entry to OASIS via an electronic interface. The entry is then initially screened by FDA using FDA's Predictive Risk-based Evaluation for Dynamic Import Compliance Targeting, a risk-based electronic screening tool for OASIS, to determine if automated or manual review of the entry is appropriate. An automated ''May Proceed'' determination is much faster and less resource intensive for FDA and the importer than a manual ''May Proceed'' determination. An automated ''May Proceed'' does not constitute a determination by FDA about the article's compliance status, and it does not preclude FDA action at a later time. If the initial electronic review indicates that manual further review is appropriate, FDA personnel will review the entry information submitted by the ACE filer and may request additional information to make an admissibility determination and/or may examine or sample the FDA-regulated article.

ACE also allows importers to submit optional information relevant to FDA's admissibility determination on veterinary devices. We strongly encourage the submission of the optional data elements in ACE at the time of entry if the importer of an FDA-regulated product is interested in an expedited admissibility review on its products by the Agency (see the FDA Supplemental Guidance which includes the optional data elements published at: *https://www.fda.gov/downloads/ForIndustry/ImportProgram/UCM459926.pdf).* Accurate and complete information submitted by a filer increases the likelihood that an entry line will receive an automated ''May Proceed'' determination from FDA.

IV. Legal Authority

FDA has the legal authority under the FD&C Act to regulate the importation of veterinary devices into the United States (sections 701 and 801 of the FD&C Act). Section 701(a) of the FD&C Act authorizes the Agency to issue regulations for the efficient enforcement of the FD&C Act, while section 701(b) of the FD&C Act authorizes FDA and the Department of the Treasury to jointly prescribe regulations for the efficient enforcement of section 801 of the FD&C Act. This proposed rule is being jointly prescribed by FDA and the Department of the Treasury.

V. Description of the Proposed Rule

We are proposing to amend § 1.72 to make that section applicable to veterinary devices, as defined in proposed § 1.71. In addition, § 1.75 would be amended to include the requirement that the information in § 1.72 must be submitted in ACE at the time of entry for veterinary devices being imported or offered for import into the United States.

As explained in the Notice of Proposed Rulemaking entitled ''Submission of Food and Drug Administration Import Data in the Automated Commercial Environment'' published in the **Federal Register** of July 1, 2016 (81 FR 43155), CBP collected the data elements FDA Country of Production and the complete FDA Product Code to assist FDA in making admissibility decisions for FDA-regulated products. The FDA Country of Production data element identifies the country where an FDA-regulated article last underwent any manufacturing or processing but only if such manufacturing or processing was of more than a minor, negligible, or insignificant nature. The complete FDA Product Code data element is an alphanumeric code that we use for classification and analysis of regulated products. The FDA Product Code builder application allows ACE filers to locate or build the appropriate FDA Product Code. The complete FDA Product Code must be consistent with the invoice description submitted in ACE at the time of entry (§ 1.72(a)(2)). The FDA Product Code builder application is currently available on FDA's website at *https://www.accessdata.fda.gov/scripts/ora/pcb/.*

A full intended use code consists of a base code that designates the general use intended for the article and a subcode, if applicable, that designates the specific use intended for the article. Filers may submit the intended use code ''UNK,'' representing ''unknown,'' at the time of entry (81 FR 85854 at 85859–85860).

The email address and telephone number for the importer of record is also being required. This information will enable us to contact that person with any questions about the import entry as well as send notices of FDA actions, such as detention or refusal, electronically to that person (81 FR 43155 at 43161).

Section 1.75 codifies additional information that is required at the time of filing entry in ACE for animal drugs being imported or offered for import beyond that listed in § 1.72. The proposed rule would amend § 1.75 to include veterinary devices by: (1) Revising the section title to ''Animal drugs and veterinary devices''; (2) redesignating current § 1.75(a), (b), (c), and (d) to § 1.75(a)(1), (2), (3), and (4); and (3) adding § 1.75(b) Veterinary devices. Section 1.75(b) proposes that no additional information is required beyond that listed in § 1.72 for veterinary devices. Current § 1.75(d), redesignated to § 1.75(a)(4) by the proposed rule, if finalized, would be amended by adding the word ''file'' where the section refers to the ''investigational new animal drug number'' and by replacing the word ''application'' with ''file'' where the section refers to ''investigational new animal drug application.'' The section would thus use the more appropriate terminology ''investigational new animal drug file number'' and ''investigational new animal drug file,'' which would be consistent with the terminology used in other FDA regulations.

VI. Proposed Effective Date

We propose that any final rule based on this proposal become effective 30 days after the date on which it is published in the **Federal Register**.

VII. Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' We believe that this proposed rule is not an economically significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. This

proposed rule would simply extend to veterinary devices the submission of the data elements that are currently required for other FDA-regulated imports covered under the ACE final rule (Ref. 1). The RIA for the ACE final rule estimates that: (1) Small businesses will be affected by that final rule in the same way as non-small businesses and that (2) small businesses would bear the costs, but would also enjoy most of the benefits (Ref. 2). According to FDA's internal data (Ref. 3), there are no businesses that solely specialize on importing veterinary devices into the United States. Because no additional businesses would be impacted by this proposed rule, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $156 million, using the most current (2019) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

For veterinary devices being imported or offered for import into the United States, and where entry is electronically filed in ACE or any other EDI system authorized by CBP, this proposed rule would require the submission of certain data elements material to FDA's process of making decisions on admissibility. This proposed rule therefore would simply extend to veterinary devices the submission of the data elements that are currently required for other products by § 1.72.

The costs of this proposed rule were inadvertently included and the benefits were discussed in the RIA for the ACE final rule (Ref. 2). More specifically, one data category that was used in the RIA of the ACE final rule included both animal drug import lines and veterinary device import lines and should have only included animal drug import lines. As a result of inadvertently including veterinary device import lines in the RIA of the ACE final rule, the costs of the ACE final rule were overestimated by $0.028 million to $0.073 million per year (using 3 and 7 percent discount rates) (table 1). These costs to industry [1] included the costs of preparing the required information for each import entry, checking data quality, and completing and submitting the electronic entry submission. We tentatively conclude that this proposed rule has no additional costs beyond the costs that were included in the RIA of the ACE final rule (Ref. 2).

Annualized over a 20-year horizon, the costs of complying with this proposed regulation are between $0.029 million and $0.073 million per year with the best estimate of $0.051 million per year at a 3 percent discount rate; these costs are between $0.028 million and $0.071 million per year with the best estimate of $0.049 million per year at a 7 percent discount rate (table 1).

TABLE 1—SUMMARY OF COSTS, BENEFITS, AND DISTRIBUTIONAL EFFECTS OF THE PROPOSED RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized, $millions/year	.....	.....	.....	.....	7	20	
					3	20	
Annualized Quantified	.....	.....	.....	.....	7	20	
					3	20	
Qualitative	Potential time reduction for veterinary device import entry processing by FDA; more efficient use of FDA's internal resources; potential increase in predictability of the import process for veterinary devices; potentially fewer veterinary device imports being held; potentially shorter timeframes for imported veterinary devices being held pending a final admissibility decision; potentially fewer recalls of imported veterinary devices; potential reduction in the number of violative veterinary devices entering the United States and reaching U.S. consumers; compliant imported veterinary devices potentially reaching U.S. consumers faster.						
Costs:							
Annualized Monetized, $millions/year	$0.049	$0.028	$0.071	2015	7	20	
	$0.051	$0.029	$0.073	2015	3	20	
Annualized Quantified	.....	.....	.....	.....	7	20	
					3	20	
Qualitative							
Transfers:							

[1] We assume that the importer would bear the actual burden of the ACE final rule even if the importer, for example, hires a customs broker to complete some of the tasks in order to comply with this regulation.

TABLE 1—SUMMARY OF COSTS, BENEFITS, AND DISTRIBUTIONAL EFFECTS OF THE PROPOSED RULE—Continued

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Federal Annualized Monetized, $millions/year	.....	.....	.....	.....	7 3	20 20	
	From:			To:			
Other Annualized Monetized $millions/year	.....	.....	.....	.....	7 3	20 20	
	From:			To:			

Effects:
State, Local or Tribal Government: No significant effect
Small Business: Small businesses would be affected by this proposed rule, if finalized, in the same way as non-small businesses. Businesses that are affected by this rule are the same businesses as some of the importers affected by the ACE final rule because there are no businesses that solely specialize on importing veterinary devices into the United States. Small businesses that import veterinary devices would bear the costs of this rule, but also enjoy most of the benefits. We estimate that providing several additional data elements to FDA via ACE in exchange for a potentially more efficient import admissibility review process would not cause a significant impact on a substantial number of small entities. Benefits that we were not able to quantify arise from improved prevention of risks to public health from non-compliant veterinary device imports and increased efficiency and streamlining of the overall import process of veterinary devices; these benefits are presumed to be positive.
Wages: N/A.
Growth: N/A.

We are unable at this time to quantify exact resource savings to the Agency and cost savings to the industry because of the lack of data about certain industry practices and uncertainty about future changes in the usual and customary business practices, import volumes, and incoming data quality.

In line with Executive Order 13771, in table 2 we estimate present and annualized values of costs and cost savings over an infinite time horizon. The present value of costs are approximately $0.77 million, discounted at 7 percent over an infinite time horizon, with a lower bound of approximately $0.45 million and an upper bound of approximately $1.12 million. The annualized costs of the proposed rule are approximately $0.054 million, discounted at 7 percent over an infinite time horizon, with a lower bound of approximately $0.031 million and an upper bound of approximately $0.078 million. Discounted at 3 percent over an infinite time horizon, the net present value of the costs of this proposed rule are approximately $2.03 million, with a lower bound of approximately $1.18 million and an upper bound of approximately $2.93 million. The annualized costs of the proposed rule are approximately $0.061 million, discounted at 3 percent over an infinite time horizon, with a lower bound of approximately $0.035 million and an upper bound of approximately $0.088 million. The proposed rule, if finalized as proposed, is expected to be an Executive Order 13771 regulatory action.

TABLE 2—SUMMARY OF EXECUTIVE ORDER 13771 COSTS

	Lower bound (7%)	Primary (7%)	Upper bound (7%)	Lower bound (3%)	Primary (3%)	Upper bound (3%)
Present Value of Costs	$449,016	$772,586	$1,117,741	$1,178,755	$2,027,690	$2,933,639
Present Value of Cost Savings	Not Quantified			Not Quantified		
Present Value of Net Cost Savings	Not Quantified			Not Quantified		
Annualized Costs	$31,438	$54,081	$78,248	$35,363	$60,831	$88,009
Annualized Cost Savings	Not Quantified			Not Quantified		
Annualized Net Cost Savings	Not Quantified			Not Quantified		

Next, we qualitatively discuss the cost savings, the benefits, and the costs of this proposed rule that were previously discussed in the RIA of the ACE final rule (Ref. 2) and would also apply to veterinary devices covered by this proposed rule. The cost savings to both the industry and FDA that we are unable to quantify would potentially arise from the reduced time of import entry processing for veterinary devices, fewer veterinary device imports being held, and a shorter timeframe between the time of veterinary device import entry transmission and a final

admissibility decision by FDA. Such time savings would arise as a result of increased efficiency in FDA's imports admissibility process.

Without this proposed rule, the amount of information provided by veterinary device import entry filers would be sub-optimal; the information material to FDA's determination of admissibility on an imported veterinary device would be collected only if and to the extent it is voluntarily provided by filers. In order to operate more efficiently and to make risk-based admissibility decisions potentially faster for all veterinary device import entries, FDA needs certain data elements. A manual review of a veterinary device entry line on average takes about 24 hours (Ref. 3), whereas an automated ''May Proceed'' outcome may take only minutes. Therefore, increasing the number of automated ''May Proceed'' outcomes results in time and cost savings to both FDA and industry. By requiring import entry filers to submit data elements mandated by this proposed rule into ACE, FDA intends to further streamline review of import entry declarations for veterinary devices and to facilitate a more efficient use of FDA's internal resources.

Potential benefits to consumers from this proposed rule that we are similarly unable to quantify would result from a reduction in the number of non-compliant veterinary device imports reaching U.S. consumers and from compliant imported veterinary devices reaching U.S. consumers faster. There have been recalls of imported veterinary devices in the past. For example, in 2016 there were three recalls of imported veterinary devices (Ref. 3). The potential health risk could be avoided if non-compliant veterinary devices are prevented from entering the U.S. market in the first place. FDA anticipates that requiring the data elements to be submitted in ACE for veterinary devices would reduce the number of violative veterinary devices entering the United States and consequently reaching American consumers. In some, but not in all cases, defects or adulteration of veterinary devices that are being imported or offered for import into the United States could be discovered upon a manual review that would be triggered as a result of information submitted in ACE.

In the RIA of the ACE final rule, we estimated that the costs to both domestic and foreign entities of complying with the rule as based largely on the amount of additional time it will take firms to: (1) Have an administrative worker prepare the additional information required for each import line; (2) have the owner or manager in charge confirm the information is correct; and (3) have an administrative worker complete the entry declarations using software that is connected to ACE. We also projected that the annual number of FDA-regulated import lines and the number of lines covered by the ACE final rule and therefore by this proposed rule would continue to grow at a rate of between 0 and 10 percent per year, with the most likely rate of 2.45 percent per year, resulting in increasing total annual costs to industry.

The estimated costs, cost savings, and benefits of the proposed rule are summarized in table 3. The lower and upper estimates are at the 5 and 95 percent confidence interval, respectively. The present discounted value of total costs over 20 years is $0.753 million at a 3 percent discount rate and $0.517 million at a 7 percent discount rate (table 3).

TABLE 3—SUMMARY OF ESTIMATED COSTS, COST SAVINGS, AND BENEFITS OF THE PROPOSED RULE

	Discount rate (%)	Lower estimate	Primary estimate	Upper estimate
Year 1 Costs		$27,007	$46,457	$67,213
Year 2 Costs		22,381	38,503	55,702
Year 3 Costs		23,120	39,774	57,540
Year 4 Costs		23,883	41,086	59,439
Year 5 Costs		24,671	42,441	61,400
Year 6 Costs		25,485	43,840	63,427
Year 7 Costs		26,326	45,290	65,520
Year 8 Costs		27,195	46,783	67,682
Year 9 Costs		28,092	48,324	69,915
Year 10 Costs		29,020	49,924	72,223
Year 11 Costs		29,977	51,571	74,606
Year 12 Costs		30,966	53,274	77,068
Year 13 Costs		31,988	55,026	79,611
Year 14 Costs		33,044	56,849	82,238
Year 15 Costs		34,134	58,724	84,952
Year 16 Costs		35,261	60,660	87,756
Year 17 Costs		36,424	62,654	90,652
Year 18 Costs		37,626	64,726	93,643
Year 19 Costs		38,868	66,871	96,733
Year 20 Costs		40,151	69,065	99,926
Total Costs		605,621	1,041,842	1,507,246
Present Discounted Value of Costs	3	437,739	753,036	1,089,427
Present Discounted Value of Costs	7	300,891	517,619	748,846
Annualized Costs	3	29,423	50,616	73,227
Annualized Costs	7	28,402	48,860	70,686
Total Benefits		Not Quantified		
Present Discounted Value of Benefits		Not Quantified		
Annualized Benefits		Not Quantified		
Total Cost Savings		Not Quantified		

TABLE 3—SUMMARY OF ESTIMATED COSTS, COST SAVINGS, AND BENEFITS OF THE PROPOSED RULE—Continued

	Discount rate (%)	Lower estimate	Primary estimate	Upper estimate
Present Discounted Value of Cost Savings		Not Quantified		
Annualized Cost Savings		Not Quantified		

Regulatory Flexibility Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities consistent with statutory objectives. Because no additional business would be impacted by this proposed rule (Ref. 3), we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Importers that are impacted by this proposed rule are the same businesses as some of the importers impacted by the ACE final rule (Ref. 1). The impacts on these small businesses are already discussed in the Regulatory Flexibility Analysis for the ACE final rule (Ref. 2).

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the PRA (44 U.S.C. 3501–3521). A description of these provisions is given in the *Description* section of this document with an estimate of the one-time and recurring reporting burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Importer's Entry Notice—OMB Control Number 0910–0046—Revision.

Description: This proposed rule would require that certain data elements material to our import admissibility review of veterinary devices be submitted in ACE or any other CBP-authorized EDI system, at the time of entry. This action would facilitate automated ''May Proceed'' determinations by us for those veterinary devices that present a low risk to public health which, in turn, would allow the Agency to focus our limited resources on those FDA-regulated products that may be associated with a greater public health risk.

Description of Respondents: Respondents to the information collection provisions of this proposed rule are those domestic and foreign importers of medical devices that import or offer to import veterinary devices into the United States and ACE filers.

Reporting: As of July 23, 2016, ACE became the sole EDI system authorized by CBP for the electronic filing of entries of FDA-regulated articles into the United States. FDA proposes to revise subpart D of part 1 of chapter I, which was recently added by the ACE final rule, to establish requirements for the electronic filing of entries of FDA-regulated products in ACE or any other EDI system authorized by CBP. That final rule took effect on December 29, 2016.

Currently, importers of certain FDA-regulated products must submit the general data elements in § 1.72 at the time of entry in ACE. We use the information collected to initially screen and review FDA-regulated products being imported or offered for import into the United States for admissibility in order to prevent violative FDA-regulated products from entering the United States. This proposed rule would make the data elements that are required to be submitted for FDA-regulated products pursuant to § 1.72 also mandatory for the electronic filing of entries containing a veterinary device: FDA Country of Production; complete FDA Product Code; full intended use code; and telephone number and email address of the importer of record. Submission of these data elements in ACE would help us to more effectively and efficiently make admissibility determinations for veterinary devices by increasing the opportunity for an automated ''May Proceed'' of these entries by FDA's OASIS.

Although veterinary devices were not included in the ACE final rule, veterinary devices were included in its RIA, as aggregate data for both animal drugs and devices was included in the analysis. As a result of inadvertently including veterinary device import lines in the RIA of the ACE final rule, the information collection burden estimates of the ACE final rule likewise incorporated the importation of veterinary devices.

As stated above, the analysis of the collection of information and its related burden on respondents for the ACE final rule incorporated the one-time and recurring burden related to importation of veterinary devices by medical devices importers; thus, for this proposed rule there is no additional estimated burden beyond the burden hours that were included in the PRA section of the ACE final rule. We are, however, revising the information collection approved under OMB control number 0910–0046 to identify the subset of burden specific to the import entries for veterinary devices by importers of medical devices for the purpose of allowing stakeholders to comment on this subset.

The portion of the annual recurring reporting burden of this collection of information specific to importers of medical devices that import veterinary devices is estimated as follows:

TABLE 4—ESTIMATED ANNUAL RECURRING REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent (approximate)	Total annual responses	Average burden per response (in hours)	Total hours
Preparing the required information (applies to unique lines only).	654	0.60	392	0.03889 (2.333 minutes)	15
Quality checks and data submission into ACE	206	123.74	25,490	0.01944 (1.166 minutes)	496
Total Hours	.....	.....	.....	.....	511

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We adopt the average burden per response estimates reported in table 4 from the analysis in the ACE final rule (81 FR 85854 at 85869). To estimate the number of respondents, number of responses per respondent, and total annual responses reported in table 4, we have used the relevant assumptions and estimates discussed in Section VI. Economic Analysis of Impacts. Other key assumptions in the RIA for the ACE final rule (Ref. 2) and for this proposed rule that affect our estimate of the annual recurring reporting burden are:

- Average burden per response for preparing the required information that applies to *unique product-manufacturer import lines only* (81 FR 85854 at 85869). It is estimated to take between 0.0167 hours (1 minute) and 0.0667 (4 minutes), with the best estimate of 0.03889 hours (2.333 minutes).
- Average burden per response for quality checks and data submission into ACE applies to *all veterinary lines.* It is estimated to take between 0.0083 hours (0.5 minute) and 0.0333 hours (2 minutes) with the best estimate of 0.01944 hours (1.166 minutes).

TABLE 5—ESTIMATED ONE TIME REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent (approximate)	Total annual responses	Average burden per response (in hours)	Total hours
First year adjusting to new requirements that will result in an average of 25 percent more time for quality checks and submission into ACE.	206	119.74	24,667	0.00486 (0.29 minutes) ..	120

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 5 shows the subset of the estimated one time (*i.e.,* occurring only in the first year) reporting burden associated specifically with the importation of veterinary medical devices by medical device importers. We adopt the average burden per response estimates reported in table 5 from the analysis in the ACE final rule (81 FR 85854 at 85869). We expect that, in the first year, respondents would be required to adjust to new requirements that will result in an average of 25 percent more time for quality checks and submission into ACE, for a total of 120 hours. Table 2 from the analysis in the ACE final rule (81 FR 85854 at 85869) also included an estimate of the time needed for review and familiarization with the rule. We have not included that estimate in this analysis because all importers of medical devices that import veterinary medical devices also import human medical devices, which are covered in the ACE final rule; thus, they are already familiar with those requirements.

If this rule is finalized as proposed, we estimate the subset of burden specific to the import entries for veterinary devices approved under OMB control number 0910–0046 to be 631 hours in the first year (511 recurring hours + 120 one-time hours) and 511 hours recurring after the first year.

To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**). All comments should be identified with the title of the information collection. In compliance with the PRA (44 U.S.C. 3407(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. These requirements will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of these requirements in the **Federal Register**.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule does not contain policies that 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. Accordingly, we conclude that the proposed rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would 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. The Agency solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XII. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**) and are available

for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA. Submission of Food and Drug Administration Import Data in the Automated Commercial Environment. **Federal Register** (Docket No. FDA–2016–N–1487). Online November 29, 2016. Cited: January 31, 2017. *https://www.federalregister.gov/documents/2016/11/29/2016-28582/submission-of-food-and-drug-administration-import-data-in-the-automated-commercial-environment.*
2. FDA. Submission of Food and Drug Administration Import Data in the Automated Commercial Environment (Final Rule) Regulatory Impact Analysis. Economic Impact Analyses of FDA Regulations. Online November 29, 2016. Cited: January 31, 2017. *https://www.fda.gov/AboutFDA/Reports ManualsForms/Reports/Economic Analyses/ucm530862.htm.*
3. FDA. Office of Regulatory Affairs Reporting, Analysis, and Decision Support System (ORADSS). 2015–2017 data.

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 1 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

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

Authority: 15 U.S.C. 1333, 1453, 1454, 1455, 4402; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 342, 343, 350c, 350d, 350e, 350j, 350k, 352, 355, 360b, 360ccc, 360ccc–1, 360ccc–2, 362, 371, 373, 374, 379j–31, 381, 382, 384a, 384b, 384d, 387, 387a, 387c, 393; 42 U.S.C. 216, 241, 243, 262, 264, 271; Pub. L. 107–188, 116 Stat. 594, 668–69; Pub. L. 111–353, 124 Stat. 3885, 3889.

■ 2. Amend § 1.71 by adding in alphabetical order the definition for ''Veterinary device'' to read as follows:

§ 1.71 Definitions.

* * * * *

Veterinary device means a device as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act, that is intended for use in animals.

* * * * *

■ 3. Revise § 1.72 introductory text to read as follows:

§ 1.72 Data elements that must be submitted in ACE for articles regulated by FDA.

General. When filing an entry in ACE, the ACE filer shall submit the following information for food contact substances, drugs, biological products, HCT/Ps, medical devices, veterinary devices, radiation-emitting electronic products, cosmetics, and tobacco products.

* * * * *

■ 4. Revise § 1.75 to read as follows:

§ 1.75 Animal drugs and veterinary devices.

(a) *Animal drugs.* In addition to the data required to be submitted in § 1.72, an ACE filer must submit the following information at the time of filing entry in ACE for animal drugs:

(1) *Registration and listing.* For a drug intended for animal use, the Drug Registration Number and the Drug Listing Number if the foreign establishment where the drug was manufactured, prepared, propagated, compounded, or processed before being imported or offered for import into the United States is required to register and list the drug under part 207 of this chapter. For the purposes of this section, the Drug Registration Number that must be submitted in ACE at the time of entry is the Unique Facility Identifier of the foreign establishment where the animal drug was manufactured, prepared, propagated, compounded, or processed before being imported or offered for import into the United States. The Unique Facility Identifier is the identifier submitted by a registrant in accordance with the system specified under section 510(b) of the Federal Food, Drug, and Cosmetic Act. For the purposes of this section, the Drug Listing Number is the National Drug Code number of the animal drug article being imported or offered for import.

(2) *New animal drug application number.* For a drug intended for animal use that is the subject of an approved application under section 512 of the Federal Food, Drug, and Cosmetic Act, the number of the new animal drug application or abbreviated new animal drug application. For a drug intended for animal use that is the subject of a conditionally approved application under section 571 of the Federal Food, Drug, and Cosmetic Act, the application number for the conditionally approved new animal drug.

(3) *Veterinary minor species index file number.* For a drug intended for use in animals that is the subject of an Index listing under section 572 of the Federal Food, Drug, and Cosmetic Act, the Minor Species Index File number of the new animal drug on the Index of Legally Marketed Unapproved New Animal Drugs for Minor Species.

(4) *Investigational new animal drug file number.* For a drug intended for animal use that is the subject of an investigational new animal drug or generic investigational new animal drug file under part 511 of this chapter, the number of the investigational new animal drug or generic investigational new animal drug file.

(b) *Veterinary devices.* An ACE filer must submit the data specified in § 1.72 at the time of filing entry in ACE for veterinary devices.

Dated: July 2, 2020.

Stephen M. Hahn,

Commissioner of Food and Drugs.

In concurrence with FDA:

Dated: July 2, 2020.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy), Department of the Treasury.

[FR Doc. 2020–15571 Filed 7–31–20; 8:45 am]

BILLING CODE 4164–01–P

POSTAL SERVICE

39 CFR Part 113

New Mailing Standards for the Separation of Hazardous Materials

AGENCY: Postal Service™.

ACTION: Proposed revision; request for comment.

SUMMARY: The Postal Service proposes to amend Publication 52, *Hazardous, Restricted, and Perishable Mail* (Pub 52), to incorporate requirements for mailers to separate all air-eligible hazardous material (HAZMAT) from surface only transportation HAZMAT shipments and other non-HAZMAT items when tendering mail to the Postal Service in the domestic mail. Air eligible products, services or classes include Priority Mail Express®, Priority Mail®, First-Class Package Service®, Priority Mail Return Service® or First-Class Package Return Service® and surface only transportation are mail using Parcel Select®, Parcel Select Lightweight®, USPS Retail Ground®, or USPS Ground Return Service ®. Additionally, the Postal Service for consistency will incorporate the current standard operating procedures for separation as it pertains to acceptance and dispatch personnel.

DATES: We must receive your comments on or before September 2, 2020.

ADDRESSES: Mail or deliver written comments to the Manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''HAZMAT Separation''. Faxed comments will not be accepted. 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.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review Monday through Friday, 9 a.m. to 4 p.m. by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy (202) 268–6592 or Mary Collins (202) 268–5551.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing to amend PUB 52 with the provisions described below and, once adopted, will incorporate the revised PUB 52 by reference into part 113. You may view the text of the proposed edits to PUB 52 at: *https://pe.usps.com/.*

Air carriers are required to review HAZMAT shipments and complete HAZMAT checklists at the time of acceptance to mitigate risk to aviation. The Postal Service tenders mail, including packages containing both non-hazardous and hazardous materials to its contracted air carriers in sealed containers. Due to the sealed nature of the containers, air carriers are often unaware of the specific hazardous materials they are accepting and transporting. In order to facilitate the review of tendered items, certain air carriers require the Postal Service to separate HAZMAT mail from non-HAZMAT mail and tender the items at a specific time of day.

The Postal Service HAZMAT standard operating procedures state air-eligible HAZMAT must be separated with appropriate documentation from other non-HAZMAT mail for air transportation. The proposed change will require mailers to separate all air-eligible HAZMAT prior to acceptance to allow these pieces to flow in a more efficient manner and prevent co-mingled packages of surface only transportation HAZMAT and non-HAZMAT mail when tendered to air carriers.

Brittany Johnson,

Attorney, Federal Compliance.

[FR Doc. 2020–15774 Filed 7–31–20; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0268; FRL–10011–85–Region 3]

Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone NAAQS Second Maintenance Plan for the Franklin County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the Commonwealth's plan, submitted by the Pennsylvania Department of Environmental Protection (DEP), for maintaining the 1997 8-hour ozone national ambient air quality standard (NAAQS) (referred to as the ''1997 ozone NAAQS'') in the Franklin County, Pennsylvania area (Franklin County Area). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 2, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0268 at *https://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David Talley, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2117. Mr. Talley can also be reached via electronic mail at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 10, 2020, DEP submitted a revision to the Pennsylvania SIP to incorporate a plan for maintaining the 1997 ozone NAAQS in the Franklin County Area through July 25, 2027, in accordance with CAA section 175A.

I. Background

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. 44 FR 8202 (February 8, 1979). On July 18, 1997 (62 FR 38856),[1] EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. EPA set the 1997 ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 30, 2004 (69 FR 23858), EPA designated Franklin County as nonattainment for the 1997 ozone NAAQS.

Once a nonattainment area has three years of complete and certified air quality data that has been determined to attain the NAAQS, and the area has met

[1] In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone standards and tightened them by lowering the level for both to 0.70 ppm. 80 FR 65292 (October 26, 2015).

the other criteria outlined in CAA section 107(d)(3)(E),[2] the state can submit a request to EPA to redesignate the area to attainment. Areas that have been redesignated by EPA from nonattainment to attainment are referred to as ''maintenance areas.'' One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the standard for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance as well as contingency measures as necessary to assure that violations of the standard will be promptly corrected.

On July 25, 2007 (72 FR 40746 effective July 25, 2007), EPA approved a redesignation request (and maintenance plan) from DEP for the Franklin County Area. In accordance with section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years.

EPA's final implementation rule for the 2008 ozone NAAQS revoked the 1997 ozone NAAQS and provided that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 ozone NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[3] However, in *South Coast Air Quality Management District* v. *EPA*[4] (South Coast II), the United States Court of Appeals for the District of Columbia (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 ozone standard, second maintenance plans were not required for ''orphan maintenance areas,'' (*i.e.,* areas like Franklin County) that had been redesignated to attainment for the 1997 ozone NAAQS and were designated attainment for the 2008 ozone NAAQS. Thus, states with these ''orphan maintenance areas'' under the 1997 ozone NAAQS must submit maintenance plans for the second maintenance period.

As previously discussed, CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. The 1992 Calcagni Memo[5] provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). See 1992 Calcagni Memo at p. 9. EPA further clarified in three subsequent guidance memos describing ''limited maintenance plans'' (LMPs)[6] that the requirements of CAA section 175A could be met by demonstrating that the area's design value[7] was well below the NAAQS and that the historical stability of the area's air quality levels showed that the area was unlikely to violate the NAAQS in the future. Specifically, EPA believes that if the most recent air quality design value for the area is at a level that is below 85% of the standard, or in this case below 0.071 ppm, then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Accordingly, on March 10, 2020, DEP submitted an LMP for the Franklin County Area, following EPA's LMP guidance and demonstrating that the area will maintain the 1997 ozone NAAQS through July 25, 2027, *i.e.,* through the entire 20-year maintenance period.

II. Summary of SIP Revision and EPA Analysis

DEP's March 10, 2020 SIP submittal outlines a plan for continued maintenance of the 1997 ozone NAAQS which addresses the criteria set forth in the 1992 Calcagni Memo as follows.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive and accurate inventory of actual emissions for an attainment year which identifies the level of emissions in the area which is sufficient to maintain the NAAQS. The inventory should be developed consistent with EPA's most recent guidance. For ozone, the inventory should be based on typical summer day's emissions of oxides of nitrogen (NO_X) and volatile organic compounds (VOC), the precursors to ozone formation. In the first maintenance plan for the Franklin County Area, DEP used 2004 for the attainment year inventory, because 2004 was one of the years in the 2003–2005 three-year period when the area first attained the 1997 ozone NAAQS.[8] The Franklin County Area continued to monitor attainment of the 1997 ozone NAAQS in 2014. Therefore, the emissions inventory from 2014 represents emissions levels conducive to continued attainment (*i.e.,* maintenance) of the NAAQS. Thus, DEP is using 2014 as representing attainment level emissions for its second maintenance plan. Pennsylvania used 2014 summer day emissions from EPA's 2014 version 7.0 modeling platform as the basis for the 2014 inventory presented in Table 1.[9]

TABLE 1—2014 TYPICAL SUMMER DAY NO_X AND VOC EMISSIONS FOR THE FRANKLIN COUNTY AREA

[Tons/day]

Source category	NO_X emissions	VOC emissions
Point	0.70	0.76
Nonpoint	1.86	6.24
Onroad	10.45	4.21
Nonroad	1.58	1.53
Total	14.59	12.74

The data shown in Table 1 is based on the 2014 National Emissions Inventory (NEI) version 2.[10] The inventory

[2] The requirements of CAA section 107(d)(3)(E) include attainment of the NAAQS, full approval under section 110(k) of the applicable SIP, determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[3] See 80 FR 12315 (March 6, 2015).

[4] 882 F.3d 1138 (D.C. Cir. 2018).

[5] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (1992 Calcagni Memo).

[6] See ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001.

[7] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

[8] For more information, see EPA's May 30, 2007 document proposing to redesignate the Franklin County Area to attainment for the 1997 ozone NAAQS (72 FR 29914).

[9] For more information, visit *https://www.epa.gov/sites/production/files/2018-11/ozone_1997_naaqs_emiss_inv_data_nov_19_2018_0.xlsx.*

[10] The NEI is a comprehensive and detailed estimate of air emissions of criteria pollutants,

Continued

addresses four anthropogenic emission source categories: Stationary (point) sources, stationary nonpoint (area) sources, nonroad mobile, and onroad mobile sources. Point sources are stationary sources that have the potential to emit (PTE) more than 100 tons per year (tpy) of VOC, or more than 50 tpy of NO_X, and which are required to obtain an operating permit. Data are collected for each source at a facility and reported to DEP. Examples of point sources include kraft mills, electrical generating units (EGUs), and pharmaceutical factories. Nonpoint sources include emissions from equipment, operations, and activities that are numerous and in total have significant emissions. Examples include emissions from commercial and consumer products, portable fuel containers, home heating, repair and refinishing operations, and crematories. The onroad emissions sector includes emissions from engines used primarily to propel equipment on highways and other roads, including passenger vehicles, motorcycles, and heavy-duty diesel trucks. The nonroad emissions sector includes emissions from engines that are not primarily used to propel transportation equipment, such as generators, forklifts, and marine pleasure craft. EPA reviewed the emissions inventory submitted by DEP and proposes to conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

B. Maintenance Demonstration

In order to attain the 1997 ozone NAAQS, the three-year average of the fourth-highest daily average ozone concentrations (design value, or ''DV'') at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the DV is 0.084 ppm or below. CAA section 175A requires a demonstration that the area will continue to maintain the NAAQS throughout the duration of the requisite maintenance period. Consistent with the prior guidance documents discussed previously in this document as well as EPA's November 20, 2018 ''Resource Document for 1997 Ozone NAAQS Areas: Supporting Information for States Developing Maintenance Plans'' (2018 Resource Document),[11] EPA believes that if the most recent DV for the area is well below the NAAQS (*e.g.,* below 85%, or in this case below 0.071 ppm), the section 175A demonstration requirement has been met, provided that Prevention of Significant Deterioration (PSD) requirements, any control measures already in the SIP, and any Federal measures remain in place through the end of the second 10-year maintenance period (absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance).

For the purposes of demonstrating continued maintenance with the 1997 ozone NAAQS, DEP provided 3-year DVs for the Franklin County Area from 2007 to 2018. This includes DVs for 2005–2007, 2006–2008, 2007–2009, 2008–2010, 2009–2011, 2010–2012, 2011–2013, 2012–2014, 2013–2015, 2014–2016, 2015–2017, and 2016–2018, which are shown in Table 2.[12] In addition, EPA has reviewed the most recent ambient air quality monitoring data for ozone in the Franklin County Area, as submitted by Pennsylvania and recorded in EPA's Air Quality System (AQS). The most recent DV (*i.e.,* 2017–2019) is also shown in Table 2.[13] There is one ambient air quality monitor located in the Franklin County Area (AQS Site ID 42–055–0001).

TABLE 2—1997 OZONE NAAQS DESIGN VALUES (ppm) FOR THE FRANKLIN COUNTY AREA

2005–2007	2006–2008	2007–2009	2008–2010	2009–2011	2010–2012	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	2017–2019
0.072	0.072	0.069	0.067	0.065	0.068	0.068	0.067	0.064	0.060	0.059	0.059	0.059

As can be seen in Table 2, DVs in the Franklin County Area have been well below 85% of the 1997 ozone NAAQS (*i.e.,* 0.071 ppm) since the 2007–2009 design value. The most recent DV (*i.e.,* 2017–2019) in the Franklin County Area is 0.059 ppm, which is well below 85% of the 1997 ozone NAAQS.

Additionally, states can support the demonstration of continued maintenance by showing stable or improving air quality trends. According to EPA's 2018 Resource Document, several kinds of analyses can be performed by states wishing to make such a showing. One approach is to take the most recent DV for the area and add the maximum design value increase (over one or more consecutive years) that has been observed in the area over the past several years. A sum that does not exceed the level of the 1997 ozone NAAQS may be a good indicator of expected continued attainment. As shown in Table 2, the largest increases in DVs from 2007 to 2019 was 0.003 ppm, which occurred between the 2009–2011 (0.065 ppm) and 2010–2012 (0.068 ppm) DVs. Adding 0.003 ppm to the most recent DV of 0.059 ppm results in 0.062 ppm, a sum that is still below the 1997 ozone NAAQS.

The Franklin County Area has maintained air quality levels well below the 1997 ozone NAAQS since the Area first attained the NAAQS in 2005.[14] Additional supporting information that the area is expected to continue to maintain the standard can be found in projections of future year DVs that EPA recently completed to assist states with the development of interstate transport SIPs for the 2015 8-hour ozone NAAQS. Those projections, made for the year 2023, show that the DV for the Franklin County Area is expected to be 53.2 parts per billion (ppb).[15] Therefore, EPA proposes to determine that future

criteria precursors, and hazardous air pollutants from air emissions sources. The NEI is released every three years based primarily upon data provided by State, Local, and Tribal air agencies for sources in their jurisdictions and supplemented by data developed by EPA.

[11] This resource document is included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0268 and is also available at *https://www.epa.gov/sites/production/files/2018-11/documents/ozone_1997_naaqs_lmp_resource_document_nov_20_2018.pdf.*

[12] See also Table II–2 of DEP's March 10, 2020 submittal, included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0268.

[13] This data is also included in the docket for this rulemaking available online at *http://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0268 and is also available at *https://www.epa.gov/air-trends/air-quality-design-values#report.*

[14] As explained in EPA's May 30, 2007 document proposing to redesignate the Franklin County Area as attainment for the 1997 ozone NAAQS (72 FR 29914), the 2003–2005 DV for the Franklin County Area was 0.075 ppm.

[15] See U.S. EPA, ''Air Quality Modeling Technical Support Document for the Updated 2023 Projected Ozone Design Values'', Office of Air Quality Planning and Standards, dated June 2018, available at *https://www.epa.gov/airmarkets/air-quality-modeling-technical-support-document-updated-2023-projected-ozone-design.*

violations of the 1997 ozone NAAQS in the Franklin County Area are unlikely.

C. Continued Air Quality Monitoring and Verification of Continued Attainment

Once an area has been redesignated to attainment, the state remains obligated to maintain an air quality network in accordance with 40 CFR part 58, in order to verify the area's attainment status. In the March 10, 2020 submittal, DEP commits to continue to operate their air monitoring network in accordance with 40 CFR part 58. DEP also commits to track the attainment status of the Franklin County Area for the 1997 ozone NAAQS through the review of air quality and emissions data during the second maintenance period. This includes an annual evaluation of vehicles miles traveled (VMT) and stationary source emissions data compared to the assumptions included in the LMP. DEP also states that it will evaluate the periodic (*i.e.,* every three years) emission inventories prepared under EPA's Air Emission Reporting Requirements (40 CFR part 51, subpart A). Based on these evaluations, DEP will consider whether any further emission control measures should be implemented for the Franklin County Area. EPA has analyzed the commitments in DEP's submittal and is proposing to determine that they meet the requirements for continued air quality monitoring and verification of continued attainment.

D. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must require that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. See section 175(A)(d) of the CAA.

DEP's March 10, 2020 submittal includes a contingency plan for the Franklin County Area. In the event that the fourth highest eight-hour ozone concentrations at a monitor in the Franklin County Area exceeds 84 ppb for two consecutive years, but prior to an actual violation of the NAAQS, DEP will evaluate whether additional local emission control measures should be implemented that may prevent a violation of the NAAQS.[16] After analyzing the conditions causing the excessive ozone levels, evaluating the effectiveness of potential corrective measures, and considering the potential effects of federal, state, and local measures that have been adopted but not yet implemented, DEP will begin the process of implementing selected measures so that they can be implemented as expeditiously as practicable following a violation of the NAAQS. In the event of a violation, DEP commits to adopting additional emission reduction measures as expeditiously as practicable in accordance with the schedule included in the contingency plan as well as the CAA and applicable Pennsylvania statutory requirements.

DEP will use the following criteria when considering additional emission reduction measures to adopt to address a violation of the 1997 ozone NAAQS in the Franklin County Area: (1) Air quality analysis indicating the nature of the violation, including the cause, location, and source; (2) emission reduction potential, including extent to which emission generating sources occur in the nonattainment area; (3) timeliness of implementation in terms of the potential to return the area to attainment as expeditiously as practicable; and (4) costs, equity, and cost-effectiveness. The measures DEP would consider pursuing for adoption in the Franklin County Area include, but are not limited to, those summarized in Table 3. If additional emission reductions are necessary, DEP commits to adopt additional emission reduction measures to attain and maintain the 1997 ozone NAAQS.

TABLE 3—FRANKLIN COUNTY AREA SECOND MAINTENANCE PLAN CONTINGENCY MEASURES

Non-Regulatory Measures:
Voluntary diesel engine ''chip reflash'' (installation software to correct the defeat device option on certain heavy-duty diesel engines).
Diesel retrofit (including replacement, repowering or alternative fuel use) for public or private local onroad or offroad fleets.
Idling reduction technology for Class 2 yard locomotives.
Idling reduction technologies or strategies for truck stops, warehouses, and other freight-handling facilities.
Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
Additional promotion of alternative fuel (*e.g.,* biodiesel) for home heating and agricultural use.
Regulatory Measures:[17]
Additional control on consumer products.[18]
Additional controls on portable fuel containers.[19]

The contingency plan includes schedules for the adoption and implementation of both non-regulatory and regulatory contingency measures, which are summarized in Tables 4 and 5, respectively.

[16] A violation of the NAAQS occurs when an area's 3-year design value exceeds the NAAQS.

[17] These regulatory measures were considered potential cost-effective and timely control strategies by the Ozone Transport Commission (OTC) as well as the Mid-Atlantic Regional Air Management Association and the Mid-Atlantic/Northeast Visibility Union. The OTC is a multi-state organization responsible for developing regional solutions to ground-level ozone pollution in the Northeast and Mid-Atlantic, including the development of model rules that member states may adopt. OTC member states include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia. For more information on the OTC, visit *https://otcair.org/index.asp.* To view the model rules developed by the OTC, including those for consumer products and portable fuel containers, visit *https://otcair.org/document.asp?fview=modelrules.*

[18] Pennsylvania's existing controls on consumer products are under 25 Pa. Code Chapter 130, Subchapters B and C (38 Pa.B. 5598). This contingency measure includes the adoption of additional controls on consumer products such as VOC limits for adhesive removers.

[19] Existing controls on portable fuel containers can be found under 40 CFR 59 subpart F—Control of Evaporative Emissions From New and In-Use Portable Fuel Containers.

TABLE 4—IMPLEMENTATION SCHEDULE FOR FRANKLIN COUNTY AREA NON-REGULATORY CONTINGENCY MEASURES

Time after triggering event	Action
Within 2 months	DEP will identify stakeholders for potential non-regulatory measures for further development.
Within 3 months	If funding is necessary, DEP will identify potential sources of funding and the timeframe for when funds would be available.
Within 9 months	If state loans or grants are required, DEP will enter into agreements with implementing organizations. DEP will also quantify projected emission benefits.
Within 12 months	DEP will submit revised SIP to EPA.
Within 12–24 months	DEP will implement strategies and projects.

TABLE 5—IMPLEMENTATION SCHEDULE FOR FRANKLIN COUNTY AREA REGULATORY CONTINGENCY MEASURES

Time after triggering event	Action
Within 1 month	DEP will submit request to begin regulatory development process.
Within 3 months	Request will be reviewed by the Air Quality Technical Advisory Committee (AQTAC), Citizens Advisory Council, and other advisory committees as appropriate.
Within 6 months	Environmental Quality Board (EQB) meeting/action.
Within 8 months	DEP will publish regulatory measure in the Pennsylvania Bulletin for comment as proposed rulemaking.
Within 10 months	DEP will hold a public hearing and comment period on proposed rulemaking.
Within 11 months	House and Senate Standing Committee and Independent Regulatory Review Commission (IRCC) comment on proposed rule.
Within 13 months	AQTAC, Citizens Advisory Council, and other committees will review responses to comment(s), if applicable, and the draft final rulemaking.
Within 16 months	EQB meeting/action.
Within 17 months	The IRCC will take action on final rulemaking.
Within 18 months	Attorney General's review/action.
Within 19 months	DEP will publish the regulatory measure as a final rulemaking in the Pennsylvania Bulletin and submit to EPA as a SIP revision. The regulation will become effective upon publication in the Pennsylvania Bulletin.

EPA proposes to find that the contingency plan included in DEP's March 10, 2020 submittal satisfies the pertinent requirements of CAA section 175A(d). EPA notes that while six of the potential contingency measures included in the Commonwealth's second maintenance plan are non-regulatory, their inclusion among other measures is overall SIP-strengthening, and their inclusion does not alter EPA's proposal to find the LMP is fully approvable. EPA also finds that the submittal acknowledges Pennsylvania's continuing requirement to implement all pollution control measures that were contained in the SIP before redesignation of the Franklin County Area to attainment.

E. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as ''that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions (40 CFR 93.101).''

Under the conformity rule, LMP areas may demonstrate conformity without a regional emission analysis (40 CFR 93.109(e)). However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determination, RTPs, TIPs, and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105 and 40 CFR 93.112) and transportation control measure implementation in the conformity rule provisions (40 CFR 93.113). Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, for projects to be approved, they must come from a currently conforming RTP and TIP (40 CFR 93.114 and 93.115). The Franklin County Area remains under the obligation to meet the applicable conformity requirements for the 1997 ozone NAAQS.

III. Proposed Action

EPA's review of DEP's March 10, 2020 submittal indicates that it meets all applicable CAA requirements, specifically the requirements of CAA section 175A. EPA is proposing to approve the second maintenance plan for the Franklin County Area as a revision to the Pennsylvania SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking, proposing approval of Pennsylvania's second maintenance plan for the Franklin County Area, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Dated: July 10, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–15648 Filed 7–31–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2019–0220; FRL–9999–38–Region 1]

Air Plan Approval; Massachusetts; Reasonably Available Control Technology for the 2008 and 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. The SIP revision consists of a demonstration that Massachusetts meets the requirements of reasonably available control technology (RACT) for the two precursors for ground-level ozone, oxides of nitrogen (NO_X) and volatile organic compounds (VOCs), set forth by the Clean Air Act (CAA or Act) with respect to the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQSs). Additionally, we are proposing approval of specific regulations that implement the RACT requirements by limiting air emissions of NO_X and VOC pollutants from sources within the Commonwealth. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before September 2, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2019–0220 at *https://www.regulations.gov,* or via email to *mackintosh.david@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: David L. Mackintosh, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail Code 05–2), Boston, MA 02109–3912, tel. 617–918–1584, email *Mackintosh.David@epa.gov.*

Table of Contents

I. Background
II. Summary of Massachusetts' SIP Revisions
III. EPA's Evaluation of the Submittals
  A. NO_X RACT for Major Sources
  B. Non-CTG VOC RACT for Major Sources
  C. CTG VOC RACT
IV. Proposed Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

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

I. Background

Massachusetts is part of the Ozone Transport Region (OTR) under Section

184(a) of the CAA. Sections 182(b)(2) and 184 of the CAA require states with ozone nonattainment areas that are classified as moderate or above, as well as areas in the OTR, to submit a SIP revision requiring the implementation of RACT for sources covered by a control techniques guideline (CTG) and for all major sources. A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[1] The CTGs usually identify a particular control level which EPA recommends as being RACT. States are required to address RACT for the source categories covered by CTGs through adoption of rules as part of the SIP.

On October 5, 2006 (71 FR 58745), EPA issued four new CTGs: Industrial Cleaning Solvents; Offset Lithographic Printing and Letterpress Printing; Flexible Package Printing; and Flat Wood Paneling Coatings, and applicable areas were required to address them by October 5, 2007. On October 9, 2007 (72 FR 57215), EPA issued three more CTGs: Paper, Film, and Foil Coatings; Large Appliance Coatings; and Metal Furniture Coatings, and applicable areas were required to address them by October 9, 2008. On October 7, 2008 (73 FR 58841), EPA issued an additional four CTGs: Miscellaneous Metal and Plastic Parts Coatings; Fiberglass Boat Manufacturing Materials; Miscellaneous Industrial Adhesives; and Automobile and Light-Duty Truck Assembly Coatings, and applicable areas were required to address them by October 7, 2009. Lastly, on Oct 27, 2016 (81 FR 74798), EPA issued a new CTG for the Oil and Natural Gas Industry, and applicable areas were required to address it by October 27, 2018.

On March 27, 2008 (73 FR 16436), EPA revised the health-based NAAQS for ozone to 0.075 parts per million (ppm), averaged over an 8-hour timeframe. EPA determined that the revised 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors and individuals with a pre-existing respiratory disease such as asthma.

[1] See Memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, U.S. EPA, to Regional Administrators, U.S. EPA, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas'' (Dec. 9, 1976); see also 44 FR 53761, 53762 (September 17, 1979).

On March 6, 2015 (80 FR 12264), EPA published a final rule outlining the obligations for areas in nonattainment with the 2008 ozone standard, as well as obligations for areas in the OTR. This rule, referred to as the ''2008 Ozone Implementation Rule,'' contains a description of EPA's expectations for states with RACT obligations, and required states in the OTR to certify RACT requirements by July 20, 2014. The 2008 Ozone Implementation Rule gives states several options for meeting RACT requirements for the 2008 ozone standard. States may (1) establish new or more stringent rules that meet RACT control levels for the 2008 standard; (2) certify, where appropriate, that previously adopted RACT rules approved by EPA under a prior ozone standard represent adequate RACT control levels for the 2008 ozone NAAQS; or (3) submit a negative declaration in instances where there are no sources in the state covered by a specific CTG source category. States may use these options alone or in combination to demonstrate compliance with RACT requirements.

On October 26, 2015 (80 FR 65291), EPA revised the health-based NAAQS for ozone, setting it at 0.070 ppm averaged over an 8-hour time frame. On December 6, 2018 (83 FR 62998), EPA published a final rule that outlines the obligations for areas in nonattainment with the 2015 ozone standard, as well as obligations for areas in the OTR. This rule, referred to as the ''2015 Ozone Implementation Rule,'' requires states in the OTR to certify RACT requirements by August 3, 2020.

On February 3, 2017 (82 FR 9158), EPA published a final rule finding that Massachusetts, as well as 14 other states and the District of Columbia, had failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 ozone NAAQS. With respect to Massachusetts, EPA found that the Commonwealth had failed to submit three required SIP elements: NO_X RACT for Major Sources; Non-CTG VOC RACT for Major Sources; and CTG VOC RACT. *Id.* at 9162. This finding became effective March 6, 2017, and started a SIP sanctions clock, which required the missing SIP elements to be submitted and deemed complete before September 6, 2018. *Id.* at 9160–61.

On May 18, 2020, EPA proposed to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts (see 85 FR 29678). The revision provides Massachusetts' determination, via a negative declaration, that there are no facilities within its borders subject to EPA's 2016 Control Technique Guideline (CTG) for the oil and gas industry. The comment period for this action closed on June 17, 2020. EPA's separate approval action on the Massachusetts negative declaration for the Oil and Natural Gas Industry, can also be found under Docket ID No. EPA–R01–OAR–2019–0220 at *https://www.regulations.gov.*

II. Summary of SIP Revisions

On October 18, 2018, Massachusetts submitted a SIP revision to address its RACT requirements set forth by the CAA for the 2008 and 2015 8-hour ozone NAAQSs (*i.e.,* RACT Certifications). On October 19, 2018, EPA determined Massachusetts' SIP submittal was administratively and technically complete for the 2008 ozone NAAQS. This completeness determination ended the offset sanctions identified in Clean Air Act Section 179(b)(2), which began on September 6, 2018, as described in the Findings of Failure to Submit SIP Submittals for the 2008 ozone NAAQS (82 FR 9158, February 3, 2017).

The Massachusetts RACT Certification submittal is based on (1) newly required RACT controls, for both major sources of NO_X and VOCs as well as for sources subject to CTGs, that have been implemented in Massachusetts, and will be part of the Massachusetts SIP upon final approval of this EPA action; (2) previously EPA-approved RACT controls which are not being revised in this action, including regulations and source-specific requirements, that represent RACT control levels under the 2008 and 2015 ozone NAAQSs; and (3) the fact that Massachusetts has no sources subject to RACT for several source categories, for which negative declarations are described in Section III.

Specifically, the Massachusetts October 2018 RACT SIP revision contains a certification that Massachusetts has met all RACT requirements for the 2008 and 2015 8-hour ozone NAAQSs and updates the SIP with the following changes to Title 310 Code of Massachusetts Regulations (CMR): revised section 7.00, Definitions; revised section 7.08(2), Municipal Waste Combustors; revised section 7.18, VOC RACT subsections (3) Metal Furniture Surface Coating, (5) Large Appliance Surface Coating, (11) Surface Coating of Miscellaneous Metal Parts and Products, (12) Packaging Rotogravure and Packaging Flexographic Printing, (14) Paper, Film and Foil Surface Coating, (21) Surface Coating of Plastic Parts, (24) Flat Wood Paneling Surface Coating, (25) Offset Lithographic Printing Letterpress

Printing; withdrawal of section 7.18(7), Automobile Surface Coating; adding 7.18, VOC RACT subsections (31) Industrial Cleaning Solvents and (32) Fiberglass Boat Manufacturing; and revised section 7.19, NO_X RACT subsections (2) General Provisions, (4) Large Boilers, (5) Medium-size Boilers, (6) Small Boilers, (7) Stationary Combustion Turbines, (8) Stationary Reciprocating Internal Combustion Engines, and (9) Municipal Waste Combustor Units.

On May 28, 2020, Massachusetts submitted a ''RACT SIP Revision'' to withdraw portions of the Massachusetts October 2018 RACT SIP revision and replace these portions with more recently adopted versions of the regulations. EPA determined Massachusetts' May 28, 2020 RACT SIP revision was administratively and technically complete on June 2, 2020. Massachusetts' May 28, 2020, RACT SIP revision adds an exemption for aerospace operations to subsection (31) Industrial Cleaning Solvents since aerospace cleaning operations are already subject to VOC controls in subsection (11) Surface Coating of Miscellaneous Metal Parts and Products. Aerospace coating operation requirements in subsection (11) Surface Coating of Miscellaneous Metal Parts and Products were also revised to be consistent with the coating limits last approved as RACT by EPA on October 9, 2013 (78 FR 54960), which are also consistent with the EPA Aerospace CTG issued June 6, 1994 (59 FR 29216). The May 28, 2020, RACT SIP revision also contains a number of miscellaneous changes and technical corrections, including an exemption for ''quality assurance/quality control cleaning activities in manufacturing processes'' in subsection (31) Industrial Cleaning Solvents, clarifications to provisions for alternative VOC emissions standards for surface coatings, and a revised definition of Paper, Film, and Foil Coating to better align with the EPA CTG. Massachusetts' May 28, 2020 RACT SIP revision also reaffirms that the requirements in the regulations as amended continue to constitute RACT in accordance with EPA guidance.

III. EPA's Evaluation of the Submittals

A. NO_X RACT for Major Sources

Massachusetts revised 310 CMR 7.19, Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X), to contain more stringent emission standards for large boilers, stationary combustion turbines, and stationary reciprocating internal combustion engines. Massachusetts evaluated other states' recent RACT regulations and analyzed emissions and operational profiles of combustion units at major source facilities in Massachusetts to determine RACT requirements for these categories. As part of its review, Massachusetts concluded that it was not reasonable for large boilers, turbines, and engines that operate infrequently to meet the more stringent emission limits. Therefore, the revised regulation exempts from the new emission standards large boilers and turbines with a three-year-average capacity factor less than ten percent. MassDEP's regulations already allow owners of engines that operate less than 1,000 hours in any 12-month period to make a specific combustion control adjustment to reduce NO_X rather than meet numerical emissions limits; this provision remains in the new RACT regulations.

Massachusetts also revised 310 CMR 7.08(2) and 7.19(9) to contain lower NO_X RACT emissions limits for large and small municipal waste combustors (MWCs), respectively. Under 310 CMR 7.08(2), the emissions standards for mass-burn waterwall and refuse-derived-fuel (RDF) stoker units is reduced from 205 and 250 parts per million (ppm) NO_X to 150 and 146 ppm, respectively. These facilities use a combination of selective non-catalytic reduction (SNCR) as well as combustion air staging to minimize NO_X emissions and ammonia slip. The revised emissions limits are consistent with the most stringent RACT regulations in nearby states. For small MWC units under 310 CMR 7.19(9), Massachusetts revised the emission limit to 167 ppm, which is a reasonable limit of NO_X emissions based on the inherent NO_X emissions performance and control technology limitations of refractory-wall modular mass-burn small MWC units.

These NO_X RACT revisions reduce NO_X emissions by lowering the maximum NO_X content of most sources compared to Massachusetts' previously-approved regulation. Therefore, the revised rule is expected to achieve equivalent or greater emissions reductions. Thus, revising the SIP to incorporate the revised rule will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. See CAA § 110(l).

Three source-specific requirements were previously approved into the Massachusetts SIP for NOx RACT. One of these facilities, Solutia, formerly Monsanto, 55 FR 5986 (2/21/1990), repowered its coal-fired boiler to natural gas-only fuel, which is subject to the newer control standards that are no less stringent than RACT. The remaining two facilities with EPA approved source-specific requirements are Oldcastle, formerly Medusa, 64 FR 48095 (9/2/1999) and Specialty Minerals 64 FR 48095 (9/2/1999). These two facilities continue to operate the same emissions units and EPA approved RACT controls.

After reviewing existing EPA-approved source-specific NO_X control requirements, revised regulations controlling NO_X sources, and the existing SIP approved regulations described in 40 CFR part 52.1120(c) EPA-approved regulations, the EPA agrees with Massachusetts' determination that requirements for major sources of NOx meet, or are more stringent than, RACT requirements. Herein, EPA proposes that the above controls represent RACT for these NO_X sources in Massachusetts for the 2008 and 2015 ozone standards.

B. Non-CTG VOC RACT for Major Sources

Massachusetts has eight major VOC emitting facilities subject to source-specific control requirements that were previously approved by EPA. One of these faculties, Duro Textile Printers, closed permanently in 2017. The remaining seven facilities with EPA approved source-specific requirements are: (1) Alliance Leather, formerly Barnet Corporation, 67 FR 62179 (10/4/2002); (2) Brittany Dyeing and Finishing 60 FR 12123 (3/6/1995); (3) Callaway, formerly Spalding Corporation, 54 FR 46894 (11/8/1989); (4) Erving Paper Mills 55 FR 5447 (2/15/1990); (5) Gillette 67 FR 62179 (10/4/2002); (6) Solutia, formerly Monsanto Chemical, 67 FR 62179 (10/4/2002); and (7) St. Gobain Abrasives, Inc., formerly Norton, 67 FR 62179 (10/4/2002). These sources continue to operate in the same manufacturing sectors and while some of these facilities have experienced physical and operational changes including new and reconfigured processes subject to Best Available Control Technology (BACT) as part of state minor New Source Review (NSR) permitting, the level of VOC control continues to be no less stringent than RACT.

After reviewing existing stationary VOC sources in Massachusetts, the EPA agrees with Massachusetts' determination that the requirements for major sources of VOC meet RACT requirements. EPA proposes that the seven operating facilities with source-specific requirements continue to represent RACT for major VOC sources in Massachusetts for the 2008 and 2015

ozone standards because no new control technologies are known to be reasonably available considering technological and economic feasibility for these sources since our last approval.

C. CTG VOC RACT

The revisions to 310 CMR 7.18, subsections (3) Metal Furniture Surface Coating, (5) Large Appliance Surface Coating, (11) Surface Coating of Miscellaneous Metal Parts and Products, and (21) Surface Coating of Plastic Parts contain updated work practices, coating application methods, and recordkeeping requirements for applicable facilities. The rules specifically list multiple types of approved coating applications methods; however, other coating application methods capable of achieving a transfer efficiency equivalent to, or better than, that provided by high-volume low-pressure (HVLP) spray application may also be used if approved by EPA. Control options permit equivalent emissions limits expressed in terms of mass of VOC per volume of solids as applied or the use of add-on controls. The coating limits in the revised regulations generally follow the recommendations in EPA's CTGs, with three notable category exceptions for metal parts coatings: Extreme high gloss topcoat; other substrate antifoulant coating; and antifouling sealer/tie. For these three categories, Massachusetts reviewed industry data and determined that for purposes of functionality, cost, and VOC emissions, the higher limits adopted for these three coating categories constitute RACT. Massachusetts' approach is consistent with the EPA guidance memorandum entitled ''Control Technique Guidelines for Miscellaneous Metal and Plastic Part Coatings—Industry Request for Reconsideration'' from Stephen Page to Air Branch Chiefs, Regions I–X, dated June 1, 2010. Massachusetts' new VOC coating limits are also lower than most of the previously SIP-approved limits. Although some specialty coatings limits are higher than previous limits, since the general use coating limit is lower and these coatings are more frequently used, coupled with the fact that the revised rule's applicability is broader, the revised rule reduces VOC emissions and will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. See CAA § 110(l). This analysis is also consistent with the March 17, 2011, EPA guidance memorandum entitled ''Approving SIP Revisions Addressing VOC RACT Requirements for Certain Coating Categories.''

The revisions to 310 CMR 7.18, subsections (12) Packaging Rotogravure and Packaging Flexographic Printing, (14) Paper, Film and Foil Surface Coating, and (25) Offset Lithographic Printing and Letterpress Printing are consist with the recommendations in EPA's CTGs. The revisions reduce VOC emissions by lowering applicability thresholds compared to Massachusetts' previously-approved regulation. The applicability thresholds for the work practices are revised to be the greater of 15 pounds of VOC per day or 3 tons per rolling 12-month period before application of control equipment. The applicability thresholds for the emission limits are now 25 tons of VOC per rolling 12-month period per printing line before application of control equipment. Therefore, the revised rules are expected to achieve equivalent or greater emissions reductions. Thus, revising the SIP to incorporate the revised rule will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. See CAA § 110(l).

The revisions to 310 CMR 7.18, subsection (24) Flat Wood Paneling Surface Coating are generally consistent with EPA's CTG for Flat Wood Paneling Coatings (EPA–453/R–06–004, September 2006). The applicability threshold of the greater of 15 pounds of VOC per day or 3 tons per rolling 12-month period before application of control equipment was revised to also consider associated cleaning operations. Applicable sources are required to limit VOC emissions by adding on a pollution control device with 90% efficiency or by limiting VOC content in coatings to 2.1 lbs of VOC per gallon of coating. The rule also requires record keeping and work practices for handling VOC-containing coatings, thinners, cleaning materials, and coatings-related waste materials. The revised rule reduces VOC emissions by lowering the maximum VOC content of most coatings, compared to Massachusetts' previously-approved regulation. Therefore, the revised rule is expected to achieve equivalent or greater emissions reductions. Thus, revising the SIP to incorporate the revised rule will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. See CAA § 110(l).

The addition of 310 CMR 7.18, subsection (31) Industrial Cleaning Solvents creates a new regulation, which generally applies to any facility with emissions from industrial cleaning solvents greater than 15 pounds of VOC per day or 3 tons per rolling 12-month period, before application of control equipment. The regulation contains work practices and three options for compliance with the VOC content of the industrial cleaning solvent: (1) Use of materials which meet the specific VOC content limitations in Table 310 CMR 7.18(31)(d)1; or (2) use of industrial cleaning solvents that have a VOC composite partial pressure equal to or less than eight mm Hg at 20 °C (68 °F); or (3) achievement of an overall VOC capture control efficiency of at least 85% by weight using add-on air pollution capture and control equipment.

The addition of 310 CMR 7.18, subsection (32) Fiberglass Boat Manufacturing creates a new regulation, which applies to any fiberglass boat manufacturing facility with emissions from manufacturing and cleaning operations greater than 15 pounds of VOC per day or 3 tons per rolling 12-month period, before the application of control equipment. The regulation includes work practices and four options for compliance with the monomer (the basic building block of fiberglass resins) VOC content limitations for open molding resins and gel coats, as follows: (1) Use materials which meet the specific VOC content limitations in Table 310 CMR 7.18(32)(E)1; (2) emissions of no more than a calculated weighted-average monomer VOC content for a specific category and application method; (3) emissions of no more than a calculated facility-wide emissions average VOC emissions cap; or (4) use of add-on air pollution capture and control equipment to emit no more than a numerical monomer VOC emission limitation that is determined for each facility.

Massachusetts has determined that there are no applicable stationary sources of VOC in Massachusetts for ten CTG categories: (1) Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds; (2) Leaks from Petroleum Refinery Equipment; (3) Manufacture of Synthesized Pharmaceutical Products; (4) Manufacture of Pneumatic Rubber Tires; (5) Large Petroleum Dry Cleaners; (6) Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins; (7) Equipment Leaks from Natural Gas/Gasoline Processing Plants; (8) Air Oxidation Processes; (9) Surface Coating of Automobiles and Light-Duty Trucks; and (10) Oil and Natural Gas Industry. These negative

declarations mean that Massachusetts has no applicable stationary sources of VOC that are covered by these CTGs.

Since Massachusetts is making a negative declaration with respect to the Automobiles and Light-Duty Truck Assembly Coatings CTG, they have requested 310 CRM 7.18, subsection (7) be withdrawn from the Massachusetts SIP. Since Massachusetts has certified there are no applicable sources, and new sources would be subject to minor new source review permitting, the withdrawal of the rule will have no effect on VOC emissions compared to currently-approved regulations. Thus, revising the SIP to withdraw the rule will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. See CAA § 110(l).

EPA has evaluated Massachusetts' CTG VOC regulations, which the Commonwealth certifies as meeting RACT for the 2008 and 2015 ozone standards, and EPA finds that the regulations are sufficiently consistent with recommendations in the respective EPA CTGs and are based on currently available technologically and economically feasible controls. Therefore, EPA proposes that the regulations being added and revised in this action, along with the past approved VOC CTG regulations, represent RACT in Massachusetts for the 2008 and 2015 ozone standards.

IV. Proposed Action

EPA is proposing to approve Massachusetts' SIP revision as meeting the Commonwealth's RACT obligations for the 2008 and 2015 8-hour ozone NAAQSs as set forth in sections 182(b) and 184(b)(2) of the CAA, and to add ''Massachusetts Reasonably Available Control Technology State Implementation Plan Revision for the 2008 and 2015 Ozone National Ambient Air Quality Standards'' dated October 18, 2018, and ''RACT SIP Revision'' dated May 28, 2020 to the Massachusetts SIP, which includes ten negative declarations for CTG source categories. EPA is proposing to approve 310 CMR changes to the Massachusetts SIP, as follows: revised section 7.00, Definitions; revised section 7.08(2), Municipal Waste Combustors; revised section 7.18, VOC RACT subsections (3) Metal Furniture Surface Coating, (5) Large Appliance Surface Coating, (11) Surface Coating of Miscellaneous Metal Parts and Products, (12) Packaging Rotogravure and Packaging Flexographic Printing, (14) Paper, Film and Foil Surface Coating, (21) Surface Coating of Plastic Parts, (24) Flat Wood Paneling Surface Coating, (25) Offset Lithographic Printing Letterpress Printing; withdrawal of 7.18, section (7) Automobile Surface Coating; addition of 7.18 VOC RACT, subsections (31) Industrial Cleaning Solvents and (32) Fiberglass Boat Manufacturing; revised section 7.19, NO_X RACT subsections (2) General Provisions, (4) Large Boilers, (5) Medium-size Boilers, (6) Small Boilers, (7) Stationary Combustion Turbines, (8) Stationary Reciprocating Internal Combustion Engines, and (9) Municipal Waste Combustor Units. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

V. Incorporation by Reference

In this document, EPA is proposing to amend regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing changes to the Massachusetts SIP as described in the Proposed Action section above. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant 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, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: July 16, 2020.

Dennis Deziel,

Regional Administrator,EPA Region 1.

[FR Doc. 2020–15807 Filed 7–31–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 85, No. 149

Monday, August 3, 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; Correction

July 29, 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 (1) 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; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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 September 2, 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.

Office of Communication

Title: Event Appearance Request for the Secretary or Members of his Staff.

Action: Notice: Correction.

OMB Control Number: 0506–0005.

Summary of Collection: The Office of Communication published a document in the **Federal Register** on July 29, 2020, Volume 85, page 45574, concerning a request for comments on the information collection ''Event Appearance Request for the Secretary or Members of his Staff '' OMB control number 0506–0006. The OMB control number 0506–0006 is incorrect. The correct OMB control number should be 0506–0005.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–16786 Filed 7–31–20; 8:45 am]

BILLING CODE 3410–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–939]

Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Continuation of Antidumping Duty Order

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 duty (AD) order on tow-behind lawn groomers and certain parts thereof (TBLGs) from the People's Republic of China (China) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order.

DATES: Applicable August 3, 2020.

FOR FURTHER INFORMATION CONTACT: Dakota Potts, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0223.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2009, Commerce published the AD *Order* on TBLGs from China.[1] On January 2, 2020, the ITC instituted its review of the *Order*.[2] Also on January 2, 2020, Commerce published the initiation of the second sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[3] Commerce received timely intent to participate in this review from Agri-Fab, Inc. (Agri-Fab), a domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i).[4] On January 31, 2020, Commerce received a complete and adequate substantive response from Agri-Fab within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] Commerce received no substantive responses from respondent interested parties. Pursuant to section 751(c)(3)(B) of the Act, Commerce conducted an expedited (120-day) sunset review of the *Order*.[6] On May 10, 2019, the ITC published its notice to conduct an expedited five-year review of the *Order*.[7]

As a result of its review, Commerce determined, pursuant to section 751(c)(1) of the Act, that revocation of the *Order* on TBLGs from China would likely lead to continuation or recurrence of dumping. Commerce therefore

[1] *See Antidumping Duty Order: Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China,* 74 FR 38395 (August 3, 2009) (*Order*).

[2] *See Certain Tow-Behind Lawn Groomers and Parts Thereof from China Institution of a Five-Year Review,* 85 FR 117 (January 2, 2020).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 67 (January 2, 2020).

[4] *See* Agri-Fab's Letter, ''Second Five-Year ('Sunset') Review of Antidumping Duty Order on Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from The People's Republic of China; Notice of Intent to Participate,'' dated January 16, 2020.

[5] *See* Agri-Fab's Letter, ''Second Five-Year ('Sunset') Review of Antidumping Duty Order on Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from The People's Republic of China; Agri-Fab's Response to Notice of Initiation,'' dated January 31, 2020.

[6] *See Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order,* 85 FR 26928 (May 6, 2020), and accompanying Issues and Decision Memorandum (Issues and Decision Memorandum).

[7] *See Tow-Behind Lawn Groomers from China; Scheduling of an Expedited Five-Year Review,* 85 FR 34464 (June 4, 2020).

notified the ITC of the magnitude of the margin of dumping rates likely to prevail should this *Order* be revoked.[8]

On July 15, 2020, the ITC published its determination that revocation of the *Order* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to section 751(c) of the Act.[9]

Scope of the Order

The merchandise covered by the order is certain non-motorized tow-behind lawn groomers, manufactured from any material, and certain parts thereof, from China.[10] The lawn groomers that are the subject of this order are currently classifiable in the Harmonized Tariff schedule of the United States (''HTSUS'') statistical reporting numbers 8432.41.0000, 8432.42.0000, 8432.80.0000, 8432.80.0010, 8432.90.0060, 8432.90.0081, 8479.89.9496, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in this order.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or recurrence of dumping and 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 this *Order* on TBLGs from China. U.S. Customs and Border Protection will continue to collect AD 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 this *Order* 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 this *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: July 24, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–16692 Filed 7–31–20; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See* Issues and Decision Memorandum.

[9] *See Certain Tow-Behind Lawn Groomers and Parts Thereof From China,* 85 FR 42919 (July 15, 2020); *see also* Tow-Behind Lawn Groomers from China, Inv. 731–TA–1153 (Review), USITC Publication 5089 (June 2020).

[10] The full scope of the *Order* is included in the Issues and Decision Memorandum.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–130]

Certain Walk-Behind Lawn Mowers and Parts Thereof From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable August 3, 2020.

FOR FURTHER INFORMATION CONTACT: Moses Song, 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.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 2020, the Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation on certain walk-behind lawn mowers and parts thereof from the People's Republic of China.[1] Currently, the preliminary determination is due no later than August 19, 2020.

Postponement of the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On July 22, 2020, MTD Products, Inc. (the petitioner) submitted a timely request that we fully postpone the preliminary CVD determination because: (1) Commerce has not yet issued supplemental questionnaires to respondents, and (2) additional time will be necessary to ensure that Commerce is able to sufficiently review all questionnaire responses and new factual information, and to conduct a thorough investigation.[2]

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, pursuant to section 703(c)(1)(A) of the Act, we are extending the due date for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* October 23, 2020. Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination will continue to be 75 days after the date of the preliminary determination.

Notification to Interested Parties

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(l).

Dated: July 24, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–16689 Filed 7–31–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 85 FR 37426 (June 22, 2020).

[2] *See* Petitioner's Letter, ''Antidumping Investigations on Certain Walk-Behind Lawn Mowers from the People's Republic of China and the Socialist Republic of Vietnam, and Countervailing Duties from the People's Republic of China: Petitioner's Request to Postpone the Preliminary Determination,'' dated July 22, 2020.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA283]

Determination of Overfishing or an Overfished Condition

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has found that Southern Atlantic red porgy is now subject to overfishing and remains overfished, the Western and Central North Pacific Ocean (WCNPO) stock of striped marlin remains both subject to overfishing and overfished, and the Western and Central Pacific Ocean (WCPO) stock of oceanic whitetip shark is now both subject to overfishing and overfished. NMFS, on behalf of the Secretary, notifies the appropriate regional fishery management council (Council) whenever it determines that overfishing is occurring, a stock is in an overfished condition, or a stock is approaching an overfished condition.

FOR FURTHER INFORMATION CONTACT: Regina Spallone, (301) 427–8568.

SUPPLEMENTARY INFORMATION: Pursuant to section 304(e)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2), NMFS, on behalf of the Secretary, must notify Councils, and publish in the **Federal Register**, whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

NMFS has determined that Southern Atlantic red porgy is subject to overfishing and remains overfished. This determination is based on the most recent assessment, completed in 2020, using data through 2017, which indicates that this stock is subject to overfishing because the fishing mortality is greater than the threshold and is overfished because the spawning stock biomass remains below the threshold. NMFS has notified the South Atlantic Fishery Management Council of the requirement to end overfishing immediately and rebuild this stock.

NMFS has determined that the WCNPO stock of striped marlin remains both subject to overfishing and overfished. This determination is based on a 2019 assessment by the Billfish Working Group of the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean, using data through 2017. Based on domestic status determination criteria, this stock is subject to overfishing because the fishing mortality rate is greater than the threshold and is overfished because the spawning biomass ratio remains below the threshold. NMFS has determined that section 304(i) of the Magnuson-Stevens Act applies because the overfishing of the WCNPO stock of striped marlin is due largely to excessive international fishing pressure, and because it has not been determined that management measures adopted by the Western and Central Pacific Fisheries Commission (WCPFC) will end overfishing and rebuild the stock. NMFS has informed the Western Pacific Fishery Management Council (Western Pacific Council) of its obligations for domestic and international management under Magnuson-Stevens Act section 304(i) to address domestic and international impacts.

NMFS has determined that the WCPO stock of oceanic whitetip shark is now both subject to overfishing and overfished. This determination is based on a 2019 assessment by the Shark Working Group of the WCPFC, using data through 2016. Based on domestic status determination criteria, this stock is subject to overfishing because the fishing mortality is greater than the threshold and is overfished because the spawning biomass is below the threshold. NMFS has determined that section 304(i) of the Magnuson-Stevens Act applies because the overfishing of the WCPO stock of oceanic whitetip shark is due largely to excessive international fishing pressure, and because it has not been determined that management measures adopted by the WCPFC will end overfishing and rebuild the stock. NMFS has informed the Western Pacific Council of its obligations for domestic and international management under Magnuson-Stevens Act section 304(i) to address domestic and international impacts.

Dated: July 29, 2020.

Jennifer M. Wallace,

Acting Director, Office of Sustainable FisheriesNational Marine Fisheries Service.

[FR Doc. 2020–16832 Filed 7–31–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA328]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council's is convening a meeting of its Groundfish Recreational Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Monday, August 17, 2020, beginning at 10 a.m.

ADDRESSES: All meeting participants and interested parties can register to join the webinar for the August 17 webinar: *https://attendee.gotowebinar.com/register/8456068360258733070.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA, 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The panel will meet to discuss the Conservation Law Foundation petition for rulemaking on Atlantic cod. They will receive an update on the development of Framework Adjustment 61 specifications and other measures and make recommendations to the Groundfish Committee, as appropriate. Other business will be discussed, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded.

Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 29, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–16787 Filed 7–31–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA329]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council is convening a meeting of its Groundfish Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Tuesday, August 18, 2020, beginning at 10 a.m.

ADDRESSES: All meeting participants and interested parties can register to join the webinar for the August 18 webinar: *https://attendee.gotowebinar.com/register/2711322415268770830.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The panel will meet to discuss the Conservation Law Foundation petition for rulemaking on Atlantic cod. They will receive an update on the development of Framework Adjustment 61 specifications and other measures and make recommendations to the Groundfish Committee, as appropriate. Other business will be discussed, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 29, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–16788 Filed 7–31–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV011]

2019 Marine Mammal Stock Assessment Reports

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; response to comments.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), NMFS has considered public comments for revisions of the 2019 marine mammal stock assessment reports (SARs). This notice announces the availability of 65 final 2019 SARs that were updated and finalized.

ADDRESSES: Electronic copies of SARs are available on the internet as regional compilations at the following address: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.*

FOR FURTHER INFORMATION CONTACT: Dr. Zachary Schakner, Office of Science and Technology, 301–427–8106, *Zachary.Schakner@noaa.gov;* Marcia Muto, 206–526–4026, *Marcia.Muto@noaa.gov,* regarding Alaska regional stock assessments; Elizabeth Josephson, 508–495–2362, *Elizabeth.Josephson@noaa.gov,* regarding Atlantic, Gulf of Mexico, and Caribbean regional stock assessments; or Jim Carretta, 858–546–7171, *Jim.Carretta@noaa.gov,* regarding Pacific regional stock assessments.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States, including the U.S. Exclusive Economic Zone. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury (M/SI) from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every three years for non-strategic stocks. The term ''strategic stock'' means a marine mammal stock: (A) For which the level of direct human-caused mortality exceeds the potential biological removal level or PBR (defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (OSP)); (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act (ESA) within the foreseeable future; or (C) which is listed as a threatened species or endangered species under the ESA. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined.

Prior to public review, the updated SARs under NMFS' jurisdiction are peer-reviewed within NMFS Fisheries Science Centers and by members of

three regional independent Scientific Review Groups (SRG), established under the MMPA to independently advise NMFS on information and uncertainties related to the status of marine mammals.

The period covered by the 2019 SARs is 2013–2017. NMFS reviewed all strategic stock SARs and updated 65 SARs representing 76 stocks in the Alaska, Atlantic, and Pacific regions to incorporate new information. The 2019 revisions consist primarily of updated or revised M/SI estimates, updated abundance estimates, including the application of an established capture-mark-recapture method to estimate the abundance of Gulf of Maine humpback whales, and the introduction of a new method for estimating cryptic mortality for Gulf of Maine humpback whales and North Atlantic right whales. One stock (Alaska ringed seal) changed in status from non-strategic to strategic, and four stocks (Western North Atlantic false killer whale and St. Andrew Bay, St. Joseph Bay, and West Bay common bottlenose dolphin stocks) changed in status from strategic to non-strategic. The revised draft reports were made available for public review and comment for 90 days (84 FR 65353, November 27, 2019). NMFS received comments on the draft 2019 SARs through February 27, 2020 and has revised the reports as necessary. This notice announces the availability of 65 final 2019 reports, which are available on NMFS' website (see **ADDRESSES**).

Comments and Responses

NMFS received letters containing comments on the draft 2019 SARs from the Marine Mammal Commission (Commission); Department of Fisheries and Oceans Canada (DFO); three non-governmental organizations (Center for Biological Diversity (CBD), Maine Lobstermen's Association, Inc. (MLA), and Whale and Dolphin Conservation (WDC)); and three individuals. Responses to substantive comments are below; comments on actions not related to the SARs are not included. Comments suggesting editorial or minor clarifying changes were incorporated in the reports, but they are not included in the summary of comments and responses. In some cases, NMFS' responses state that comments would be considered or incorporated in future revisions of the SARs rather than being incorporated into the final 2019 SARs.

Comments on National Issues

Minimum Population Estimates

Comment 1: The Commission reiterates their previous comment that section 117 of the MMPA requires inclusion of a minimum population estimate (Nmin), a key factor for effective management of marine mammal stocks using potential biological removal (PBR). Without an Nmin derived from recent data, PBR cannot be calculated and is considered ''unknown,'' which is useless for management purposes. Including the revised 2019 draft SARs, an Nmin estimate is lacking for 86 of the 252 identified stocks (or 34 percent). The Commission understands that a lack of resources (mainly access to vessel and aerial platforms from which surveys are conducted) is the primary hindrance to full assessment of all stocks. Nevertheless, the lack of data for over one third of the stocks recognized by NMFS is a serious shortcoming in meeting statutory obligations. The Commission appreciates the efforts NMFS has made to address this shortcoming by setting priorities across regions, coordinating requests for vessel time, and maximizing the data collected during these surveys (*e.g.,* Ballance *et al.* 2017). The Commission reiterates its recommendation that NMFS continue its efforts to prioritize and coordinate requests to secure the necessary survey resources across regions. In addition to these internal efforts, the Commission acknowledges and encourages NMFS' continued engagement and collaboration with other Federal agencies that also require basic information on marine mammal stocks, through programs like the Atlantic Marine Assessment Program for Protected Species and similar programs in the Gulf of Mexico and the Pacific. Further, the Commission also reiterates its recommendation that these marine assessment programs continue to include appropriate personnel, logistical capability, and vessel time to allow for photo-identification, biopsy sampling, satellite tagging and other efforts to augment and increase the value of the core line-transect survey data collected. These additional efforts will assist in delineating stock structure, confirming at-sea identification of cryptic species, and furthering understanding of marine mammal distribution, habitat use, and behavior, all of which are important for reaching the overall management goals of NMFS under the MMPA.

Response: We acknowledge the Commission's comment and will continue to address outdated Nmin estimates, as resources allow.

Humpback Whale Stocks

Comment 2: CBD and WDC comment that revisions to humpback whale stocks that would make them consistent with the 2016 rule listing distinct population segments (DPSs) are long overdue. They note the NMFS Procedure for ''Reviewing and Designating Stocks and Issuing Stock Assessment Reports under the Marine Mammal Protection Act'' says that a stock ''might be considered a high priority for possible revision if, for example: a. DPSs for the for the species to which the stock belongs have recently been recognized under the ESA, . . .'' CBD–WDC state that the California/Oregon/Washington humpback whale stock should be revised in the 2019 SARs and not wait another year. The second example in the NMFS Procedure for why a stock revision may be a high priority is that ''b. there are emerging and/or localized threats likely to affect the stock,'' which applies to the humpback whales off the U.S. West Coast because of entanglements. NMFS has documented ''a recent spike in entanglements, jumping from an annual average of 9 confirmed entangled large whales between 1982 and 2013, to an average of 41 confirmed entangled large whale reports between 2014 and 2017.'' CBD–WDC suggest that revising the stock definitions would better protect the humpback whale DPSs by lowering PBR.

Response: As noted by CBD–WDC, NMFS recently finalized ''Procedural Directive 02–204–03: Reviewing and Designating Stocks and Issuing Stock Assessment Reports under the Marine Mammal Protection Act'' (NMFS 2019). This Directive establishes a process for prioritizing stocks that should be considered for stock designation revisions, clarifies science and management roles in designating marine mammal stocks, emphasizes the definition of a stock as a management unit, provides guidance for determining whether multiple Demographically Independent Populations may be combined into one or more stocks for management purposes, and details the process by which stock designations are made and documented. The Directive also addresses how to designate stocks of marine mammals when DPSs of the species have been designated under the ESA.

Procedural Directive 02–204–03 became effective after the 2019 SARs were drafted. As detailed in the Directive, revising stock designations involves significant effort and, in some cases, may be ongoing for more than one SAR revision cycle. Given this, and our mandate to review and, where appropriate, revise SARs annually for strategic stocks, including those listed under the ESA, we are not able to revise stock designations for humpback whales in the 2019 SARs. However, for the reasons put forth by CBD–WDC among

others, we agree that humpback whale stocks, including the California/Oregon/Washington humpback whale stock, should be considered for stock designation revisions and our intent is address potential revised humpback whale stock designations in future SARs.

Comments on Alaska Issues

Alaska Native Subsistence Takes

Comment 3: The Commission reiterates that accurate information on the taking of marine mammals by Alaska Natives for subsistence and handicraft purposes is becoming increasingly important in light of the pace of climate changes in the Arctic and sub-Arctic regions. Over the past decade, the Commission has repeatedly recommended that NMFS, in collaboration with its co-management partners, improve its monitoring and reporting of subsistence hunting in Alaska. While there have been improvements in the number of communities reporting take levels for some ice seals in the SARs in recent years, the majority of communities that hunt or may hunt ice seals are still unaccounted for. The Commission continues to recommend that NMFS pursue additional mechanisms to gather reliable information on the numbers of marine mammals taken for subsistence and creating handicrafts, including by securing adequate funding for comprehensive surveys of subsistence use and Native hunting effort. At a minimum, the Commission encourages NMFS to consider statistical methods (*e.g.,* Nelson *et al.* 2019) that could provide a more complete assessment of take levels from subsistence hunting. Further, the Commission encourages NMFS to continue to provide updated information in the SARs whenever it becomes available, even if it pertains only to a limited number of villages or a subset of years. The Commission would welcome the opportunity to meet with NMFS to discuss progress, next steps, and any impediments to including more comprehensive data on take levels by Alaska Natives in future SARs.

Response: We agree that it would be beneficial to have more comprehensive information about the harvest numbers of species of Alaska marine mammals taken for subsistence purposes and for creating handicrafts. We provide co-management funding to Alaska Native organizations under section 119 of the MMPA, in part to monitor harvests and report harvest numbers. Within the constraints of appropriations, we will continue to work with our co-management partners to monitor subsistence harvests and make that information publicly accessible as it becomes available. Additionally, our intent is to include average statewide subsistence harvest estimates, based on a recently published analysis (Nelson *et al.* 2019), in the draft 2020 SARs for the ice-associated (spotted, bearded, ringed, and ribbon) seals.

Harbor Porpoise, Southeast Alaska

Comment 4: The Commission appreciates that NMFS has prioritized research on, and monitoring of, the Southeast Alaska (SEAK) harbor porpoise stock, but believes that more effort is required in three areas: Management planning, fisheries monitoring, and mitigation. The Commission recommended in its comments on the draft 2018 SARs that, under the requirements of the MMPA, NMFS form a take reduction team (TRT) to address the high level of incidental take by SEAK gillnet fisheries from this stock relative to PBR. NMFS responded that the MMPA allows the agency to prioritize its TRT efforts based on availability of funding and [that it is] currently implementing several other TRTs that address higher priority stocks and fisheries where the Take Reduction Plans (TRPs) are not yet meeting MMPA goals (*e.g.,* ESA-listed North Atlantic right whales, Hawaii pelagic false killer whales, and Northern and Southern North Carolina Estuarine System bottlenose dolphins). While the Commission is aware of this constraint and supports the allocation of funding to these TRTs as a priority, it notes that several other TRTs (Atlantic Trawl Gear, Harbor Porpoise (Atlantic), Pacific Offshore Cetacean, and Pelagic Longline) that were very active at times in the past are now meeting infrequently and often only via webinar, which suggests that funds might be available to establish a new TRT. The data reported in the draft 2019 SAR include a minimum estimated mean annual U.S. commercial fishery-related mortality and serious injury rate (34 porpoises) that exceeds the PBR (12) by nearly threefold. Given the small population size and an M/SI level that significantly exceeds the PBR for this stock, the Commission recommends that NMFS reconsider its funding priorities and establish a SEAK harbor porpoise TRT as part of the development of a take reduction plan to address bycatch of SEAK harbor porpoises by gillnet fisheries.

Response: NMFS continues to collect and analyze information needed to assess the SEAK harbor porpoise stock and to understand the interactions with commercial fisheries. In 2019, we conducted a vessel survey to assess distribution and abundance of harbor porpoise in inland waters of Southeast Alaska, including areas not previously surveyed. We are also continuing to evaluate population structure of harbor porpoise using environmental DNA techniques. The results of the analyses could be used to support future take reduction efforts.

We continue to implement several other TRTs that address higher priority stocks and fisheries where the TRPs are not yet meeting MMPA goals. Funds have been reallocated from TRTs that are no longer actively meeting (or meeting mainly via webinar), to support the continuing and emerging needs of the existing TRTs. In addition to convening meetings, TRT funds are used to support a variety of take reduction planning activities such as analyses to support rulemaking (*e.g.,* economic analyses), stock assessments (*e.g.,* abundance, distribution, genetics) and related analyses, increased or new observer coverage, fishing gear-related research, enforcement-related activities, and education and outreach. We continue to evaluate our priorities for convening TRTs and available funding on a regular basis.

Comment 5: The Commission appreciates the important strides that NMFS has made in the last year with the 2019 harbor porpoise survey that covered much of the range of the SEAK stock. The DNA samples collected will help determine whether the SEAK stock is composed of one or two populations, and the new data will significantly improve our understanding of the status of the stock(s). However, substantial uncertainty remains concerning the magnitude of the bycatch threat. What is known comes from an incomplete bycatch survey conducted by fisheries observers in 2012 and 2013. The Commission has urged NMFS to increase observer coverage of gillnet fisheries in Alaska, but so far, to little effect, primarily because priority shifts by NMFS defunded the Alaska Marine Mammal Observer Program, which produced the 2012–2013 bycatch estimates. The Commission is encouraged by the 2019 survey, and the data it provided to inform abundance estimates, stock structure, and the development of a fisheries monitoring plan. The Commission recommends that data collected during these surveys, along with fishing effort data, be used to identify areas for timely implementation of a fisheries observer program, in coordination with the State of Alaska. The fisheries of most interest and concern are those with the greatest

overlap between gillnets and harbor porpoises in Southeast Alaska.

Response: We are continuing to review the levels of harbor porpoise serious injury and mortality in Southeast Alaska, the new information on harbor porpoise abundance and stock structure, and information on the commercial fishery to evaluate whether and, if so, how best to implement a fishery observer program in Southeast Alaska.

Comment 6: The Commission notes that NMFS, in its response to the Commission's 2018 letter, pointed out that TRTs require a minimum amount of data and analyses to support TRT deliberations, and that it was working to gather the requisite data and analyses. The Commission recommends that NMFS provide a timeline for acquiring these data and analyses and an anticipated date for the initiation of a SEAK harbor porpoise TRT. The Commission recognizes that NMFS may lack the data and analyses typically needed to support a new TRT. However, the problem of harbor porpoise entanglement in gillnets is common and well-studied in many parts of the Northern Hemisphere, and it is well established that gillnet fisheries often represent a significant threat to harbor porpoise populations (see references in Reeves *et al.* 2013). It is widely recognized that wherever harbor porpoises and such fisheries co-occur, there will be entanglements. The use of pingers to deter harbor porpoises from gillnets has been widely implemented, in most cases with considerable success (*e.g.,* Kraus *et al.* 1997, Gearin *et al.* 1999, Trippel *et al.* 1999, Gönener & Bilgin 2009, Carlström *et al.* 2009, Dawson *et al.* 2013, Orphanides and Palka 2013, Larsen and Eigaard 2014, Zaharieva *et al.* 2019). Only in a few cases were pingers found to be ineffective at reducing harbor porpoise bycatch in gillnets. In some fisheries with harbor porpoise bycatch, the use of pingers is mandatory (*e.g.,* New England and throughout the European Union). Thus, experience throughout the species' range suggests that where gillnets are used bycatch is to be expected, and the use of pingers will likely reduce the bycatch rate significantly. Therefore, in the absence of TRT-mediated development of a take reduction plan, the Commission recommends that NMFS adopt a parsimonious approach and initiate the necessary information gathering and consultation necessary to promulgate regulations that would require the use of pingers by SEAK gillnet fisheries.

Response: We recognize that pingers have been used successfully to reduce harbor porpoise bycatch in many fisheries throughout the species' range. However, because pingers have not been effective everywhere they have been used, we need to be careful and thoughtful about requiring their use in any particular fishery.

Beluga Whale, Cook Inlet

Comment 7: CBD–WDC note that NMFS released a report with a new abundance estimate for Cook Inlet beluga whales dated December 2019. The report reveals that the population is ''estimated to be smaller and declining more quickly than previously thought.'' In the report, NMFS estimates that the population contains only 279 individual whales and is declining at a rate of roughly −2.3 percent per year, a significantly faster rate of decline than the prior estimate of −0.5 percent per year reflected in the draft Cook Inlet beluga whale SAR. With this ''new, more reliable methodology'' and ''more accurate'' approach, NMFS has also revised the 2016 abundance estimate, which it now states was likely around 293 animals rather than 328. CBD–WDC recommend that NMFS revise the Cook Inlet beluga whale SAR to reflect this updated information, as well as revise the PBR accordingly. CBD–WDC question the validity of any value of PBR other than zero for this species, given this small, vulnerable population's critically-imperiled status and sharply declining population.

Response: The revised abundance estimates and trend for the Cook Inlet beluga whale population, released in December 2019 (Wade *et al.* 2019), and revised estimates of minimum abundance and PBR will be reflected in the draft 2020 SAR.

An underlying assumption in the application of the PBR equation is that marine mammal stocks exhibit certain population dynamics. Specifically, it is assumed that a depleted stock will naturally grow toward OSP if sources of potential mortality are controlled. If, for unknown reasons, a stock's population dynamics do not conform to the underlying model for calculating PBR, NMFS' Guidelines for Assessing Marine Mammal Stocks (NMFS 2016) instruct SAR authors to calculate a PBR but to qualify it in the SAR.

In the 2019 SAR, the Cook Inlet beluga whale PBR is calculated using the most conservative recovery factor of 0.1, resulting in an estimate of approximately one whale every two years. The ''Status of Stock'' section describes how the depleted Cook Inlet beluga whale stock does not conform to the expected population dynamics assumed in the application of the PBR equation. However, it also notes that although there is currently no known direct human-caused mortality of the stock, even if the PBR level were taken, this would have little consequence on the overall population trend given the unexplained lack of increase.

Humpback Whale, Western North Pacific

Comment 8: CBD–WDC suggest that the Western North Pacific humpback whale SAR include conclusions from the new research from NMFS regarding humpback whales breeding in the Mariana Archipelago. Scientists learned that humpback whales do not pass through the Marianas on their way to other breeding areas, but instead are using these areas to mate and give birth.

Response: See response to Comment 2. Our intent is to consider this information in future SARs.

Comments on Atlantic Issues

Estimating Cryptic Mortality, Gulf of Maine Humpback Whales and North Atlantic Right Whales

Comment 9: The Commission is encouraged to see NMFS considering an approach for estimating cryptic mortality and incorporating the caveat within the ''Status of the Stock'' section of the SARs that, for example, observed M/SI estimates may account for only 20 percent of total estimated mortality for the Gulf of Maine stock of humpback whales. The Commission commends the agency's efforts to develop methods for estimating undetected mortality and its recognition that mortality estimates consisting only of observed deaths are biased low, a bias that all too frequently affects the assessed status of the stock. However, the Commission recommends that NMFS explain its methodology and reasoning in a peer-reviewed publication prior to including estimates of cryptic mortality in the SARs. The Commission also encourages NMFS to continue developing ways to summarize the uncertainties underlying M/SI data after discussions with the Atlantic Large Whale TRT and peer review.

Response: The topic of cryptic mortality is one that the agency has been advancing through constructive feedback with the Commission, the Atlantic SRG, and many partners over the past several years. For the Atlantic region, cryptic mortality was first introduced in the 2018 North Atlantic right whale (NARW) SAR. Based on feedback, the methods by which estimates were generated were expanded in the NARW SAR and added to the Gulf of Maine humpback whale SAR with the addition of annual mark-

recapture based population estimates. While the methods behind the point estimates were fully explained in the SAR, the agency has not attributed cryptic mortality estimates to a cause that might have management implications. The agency has sought guidance on this issue. Constructive dialogue occurred at the February 2020 Atlantic SRG meeting that resulted in an Atlantic SRG recommendation to NMFS that will be considered for the 2020 draft SAR, including a protocol for apportioning cryptic mortality estimates to potential anthropogenic sources, and a publication strategy to support the estimates. The agency feels it is appropriate to document the advancing approach of applying cryptic mortality in each year's SAR (conceptual introduction 2018, methodological expansion 2019, and addition of another species, management application, and supporting publication in 2020) to give stakeholders information about how the science is evolving, and early warnings of additional potential impacts to industry.

North Atlantic Right Whales

Comment 10: CBD–WDC reiterate that NMFS continues to rely on historic sightings data in the NARW report section on ''Stock Definition and Range,'' and suggest that this section include the significant changes in right whale distribution that have occurred since 2010, including the recent sightings of NARW#3845 (Mogul). CBD–WDC point out that NMFS continues to reference the sightings south of Nantucket and Martha's Vineyard as a ''late winter use'' when the agency declared Dynamic Management Areas in this region in nearly all months of 2019.

Response: We added the following text in the final 2019 report to make the changes in ranges more prominent: ''An important shift in habitat use patterns in 2010 was highlighted in an analysis of right whale acoustic presence along the U.S. Eastern seaboard from 2004 to 2014 (Davis *et al.* 2017). This shift was also reflected in visual survey data in the greater Gulf of Maine region.'' Wanderings of NARW#3845 (Mogul) were documented in 2018, outside the period of this report (2013–2017).

Comment 11: MLA recommends the ''Stock Definition and Range'' section of the NARW report reflect there are more than seven areas that have been identified where right whales are known to aggregate seasonally, which now include Nantucket Shoals and the Gulf of St. Lawrence. They suggest it would be more informative and understandable to readers if these recently identified seasonal aggregation areas were included in the same sentence with the seven previously known areas and not discussed separately in the SAR.

Response: Our intent is to address this issue in the 2020 SAR in such as manner as to reflect changes in our understanding of how right whales are using their habitat, moving away from the identification of individual high-use areas and focusing more on the broad-scale nature of whale presence.

Comment 12: CBD–WDC comment it is unclear how the Pace *et al.* (2017) model was used to determine a best available population size of 428 individuals for 2018 when the 2019 North Atlantic Right Whale Consortium Report Card determined the best estimate for the end of 2018 was 409 individuals, reportedly using the same model for the same year.

Response: The estimate produced by the Pace *et al.* (2017) model, presented at the North Atlantic Right Whale Consortium, is 428. The Consortium ''alters'' the methods of Pace *et al.* 2017, to subtract additional mortality that occurred after the endpoint for the model time frame for which the point estimate of 428 was generated. Because the Pace *et al.* (2017) method estimates all mortality, not just observed, the agency (through discussions with the Atlantic SRG) concluded it is only appropriate for the SAR to report the un-altered output of the Pace *et al.* (2017) model.

Comment 13: CBD–WDC reiterate their previous comment the ''Current Population Trend'' section of the NARW report should be updated given the recent precipitous decline in right whales. As NMFS declared an Unusual Mortality Event for this species since 2017, during which at least 30 right whale carcasses were documented, CBD–WDC question the only reference to a serious concern regarding carcass detection dates back to 2004 and 2005. They suggest retaining the figures in this section, abbreviating historic information, and using language taken from the Hayes *et al.* (2018) NOAA Tech Memo to more clearly assess the current status, including the recent population decline.

Response: We agree and have removed the paragraph highlighted. We added a statement that changing distributions have exposed the population to new sources of anthropogenic mortality and cited the Hayes *et al.* (2018) Tech Memo. Also, Figure 4 in the final 2019 NARW report was generated from the 2018 Tech Memo as additional background support for this issue.

Comment 14: CBD–WDC appreciate the updated information in the ''Current and Maximum net Productivity Rates'' section of the NARW report but believe this section is not fully reflective of current trends. For example, the document states that Corkeron *et al.* (2018) found that the calf count rate increased at 1.98 percent when considering the years 1990–2016. We do not dispute these data but note that Kraus *et al.* (2016) found that calving rates since 2010 have declined by nearly 40 percent. CBD–WDC continue to request that NMFS limit the historic data and focus on the current status of the species.

Response: The inclusion of data since 1990, in both the calving rate trend graph and in the discussion, is important in order to provide a longer-term context for the calving rate fluctuations. It highlights both the significance and contributing cause of the current decline.

Comment 15: CBD–WDC continue to question the use of an Nmin of 428 for NARW and whether any value of PBR other than zero is appropriate to use for this species when NMFS has determined the population is currently declining at 2.33 percent per year as a result of human causes.

Response: We follow the Guideline for Assessing Marine Mammal Stocks (NMFS 2016) in the calculation of PBR.

Comment 16: CBD–WDC reiterate that NMFS should consider limiting references to historic data and focus on more current impacts to the species. For example, the ''Background'' section of the NARW report states that 124 mortalities were recorded between 1970 and 2018, but the SAR does not indicate that nearly 40 percent (n=46) of those mortalities have occurred since 2012. Highlighting this variation is significant as it indicates that for 41 years, mortality rates averaged approximately two per year, but in the most recent 6 years, mortalities escalated to nearly eight per year, a 400 percent increase. CBD–WDC suggest NMFS re-examine its inclusion of the statement ''Young animals, ages 0–4 years, are apparently the most impacted portion of the population (Kraus 1990).'' These data are now decades old and more recent data should be evaluated to determine if it remains accurate.

Response: NMFS has removed the paragraph with older background information from the final 2019 NARW report. NMFS does not dispute the numbers discussed in the comment but must consider that the numbers are a function of two variables: The total number of mortalities and the agency's ability to detect those mortalities. Given this, it is possible for actual mortality to be much higher in years where few were

detected. To that end, NMFS has applied the output of the Pace *et al.* (2017) model to generate actual annual mortality estimates in the graph provided (Figure 5 of the final 2019 NARW report), which give a good representation of the variation in the observed mortality as well as the estimated total mortality over the 2000–2017 timespan. Given these data, it is inappropriate to estimate mortality rates solely from observed data. Discussion of the 1970 to 2018 dataset was included because that range was analyzed by Sharp *et al.* (2019). We have removed the Kraus *et al.* (1990) statement about young animals.

Comment 17: MLA comments the ''Background'' section of the NARW report is confusing as it contains potentially conflicting statements and fails to make clear the best available science. For example, in paragraph 2, with regard to human sources of mortality, there are two statements that imply different conclusions on the threats of entanglements and vessel strikes. The paragraph states, ''The principal factor believed to be retarding growth and recovery of the population is entanglement with fishing gear.'' It then cites data from 1970–2018, noting 124 recorded right whale mortalities of which ''26 (21.0 percent) resulted from vessel strikes, 26 (21.0 percent) were related to entanglement in fishing gear, and 54 (43.5 percent) were of unknown cause.'' Based on the data presented in this paragraph, the reader is likely to conclude that the best available science from Sharp *et al.* (2019) indicate that incidents attributed to vessel strike and entanglements are equal and would question why only entanglement would be singled out as the principal factor retarding the species' recovery. In addition, the reference to Figure 4 at the end of this paragraph correctly indicates that entanglement injuries have been increasing in recent years, but it ignores the potential implications of the latter data points on vessel strikes in 2016 and 2017, when one and five vessel strikes were observed, respectively. MLA notes this spike in vessel strikes is also of grave concern for right whale recovery and should not be minimized to imply that this source of human caused mortality and serious injury is not of concern.

Response: We note that Sharp *et al.* (2019) reviewed only detected mortalities, and only those in condition to be necropsied. Not only have numbers of detected carcasses been shown to be uncorrelated to actual mortality rates, but when serious injuries, which account for the bulk of the cryptic entanglements, are considered in addition to mortalities, entanglement far outweighs vessel strike as the principal factor retarding the species' recovery. We have added a clarifying sentence to the final 2019 NARW SAR.

We appreciate the detailed review by MLA but are hesitant to place too much emphasis on small variations in a highly-volatile system. The 2016 and 2017 data were included in the analysis of Figure 4, and the resulting trend line was flat (indicating no evidence of a trend, just volatile data). Should vessel strike mortality occur at higher rates in the coming years (as observed in 2019), it may be possible a trend will emerge, but that is outside of the time period of the 2019 report.

Comment 18: CBD–WDC continue to request NMFS consider sublethal effects of entanglement to North Atlantic right whales, which are known to have population-level impacts, as concluded by van der Hoop *et al.* (2017) and Pettis *et al.* (2017).

Response: NMFS is working to quantify sublethal effects on right whales. The data presented in Figure 3 of the NARW report support the hypothesis that they are occurring. However, confounding ecosystem changes that began in 2010 are additionally playing a role.

Comment 19: MLA notes the last sentence of the ''Fishery-Related Mortality and Serious Injury'' section of the NARW report states that the effectiveness of the Atlantic Large Whale Take Reduction Plan (ALWTRP) has yet to be evaluated. However, MLA has presented an analysis of NOAA's entanglement data to the agency which shows that entanglement cases attributed to the U.S. lobster fishery since the implementation of major modifications to the ALWTRP in 2009 and 2014 have declined by 89 percent since 2010 (from nine cases to only one), while entanglement cases attributed to gillnet or netting (unassigned by country) have nearly doubled (from four cases to seven). These data reflect the best available science on entanglement incidents in these fisheries and are used to calculate PBR. While these data do not account for entanglements that could not be traced to a fishery, they show a clear trend in known cases before 2010 when entanglements were regularly observed in U.S. lobster gear, and after 2010 when entanglements in U.S. lobster gear have become rare. MLA emphasizes these data are highly relevant and should be included in the report.

Response: As raised in the comment, the source of entanglement for the majority of cases goes undetermined. Because the mortalities with known causes are less than one-third of the estimated mortalities, making judgments based on these is not precautionary when other evidence such as the large number of injuries related to entanglement mortalities speaks to the seriousness of the entanglement problem. Specifically, the frequency of non-lethal entanglement injuries within the population is approximately 26 percent per year. For the period cited (2009–2014), that would indicate more than 500 entanglements occurred for which no linkage was made, belying the caution needed in attributing mortality to a particular source with such limited samples.

Comment 20: The Department of Fisheries and Oceans Canada (DFO) requests a description of the process used to determine gear origin of entanglements and first sighting information for North Atlantic right whales. DFO notes it is unclear who is confirming the North Atlantic right whale entanglement numbers/information for Canada, because some of the numbers for mortalities appear to reflect data from DFO, others are known to have been established/announced without confirmation from Canada, and some are unclear regarding the source of confirmation.

Response: NMFS has gear experts who conduct an analysis of gear type/origin when assigning to a particular fishery or country of origin. The data and deciding variables are shared with other experts for corroboration and cases are only closed when sufficient evidence is acquired. Gear information, when available, is provided by the NMFS Greater Atlantic Regional Fisheries Office (GARFO), the NMFS Southeast Regional Office, the Whale Release and Strandings group (WRS), Marine Animal Response Society (MARS), and DFO. NMFS considers any feedback it receives from these groups. First-sighting information is provided by entanglement and stranding networks and/or the population monitoring studies (New England Aquarium for North Atlantic right whales and Center for Coastal Studies for humpback whales).

Comment 21: DFO asks how non-U.S. Canadian entanglements are verified. For example, the 2014 sighting of entanglement ''South of SPM'' is assigned as having a first sighting in Canada. DFO notes the entanglement in 2014 of NARW #1131 is stated as first spotted in the U.S. but marked as first spotted in Canada—XC (Unassigned 1st sight in CN), is not accurate. If #1131 was first spotted in the U.S. but is assumed to have Canadian gear, it

should be marked CN, but if first spotted in the U.S. and it is unclear where the gear is from, it should be marked XU (Unassigned 1st sight in U.S.). DFO points out there are a few cases of entanglements or mortalities spotted first in the U.S. but through some unknown process were later reported as Canadian origin, with no official confirmation or involvement from Canada. For example, NARW #3694 (2016) was an unconfirmed entanglement for two years and then announced as Canadian in 2018.

Response: Canadian event data are provided to NMFS directly from MARS and WRS. Staff from MARS and WRS are consulted regarding determinations. Regarding NARW #1131, it was first sighted entangled at Latitude: 42.25770 N, Longitude: –66.21330 W, in the Northeast Channel, in Canadian waters, so XC is accurate. We have changed the location description to ''off Cape Sable Island, NS'' since that is the closest point of land instead of ''off Provincetown, MA.'' Gear from #3694 was identified as Canadian Snow Crab by GARFO, and this result was announced through an email to the Atlantic Large Whale TRT in April 2018.

Comment 22: MLA is concerned about the use of the ''first sight'' coding in Table 1 in the ''Other Mortality'' section of the NARW report when attributing M/SI to a country. Despite the clear language included in the SAR regarding the limitations of what this means, these data have proved confusing and have been misrepresented by NMFS in public presentations. In August 2019, and on many other occasions, NMFS staff have presented a graph of right whale serious injury and mortality based on whales first sighted in the U.S. as evidence necessitating additional whale conservation measures in the Northeast Trap/Pot fishery. The graph, entitled ''Right Whale Mortalities in U.S. Commercial Fisheries Still Exceed PBR,'' relies primarily on M/SI for right whales first sighted in the U.S. to make its case.

MLA recommends NMFS consider dropping this ''first sight'' code under country and replace it with a generic code to indicate that these entanglements cannot be assigned to a country. Given that NMFS has already adopted an interim policy to attribute the responsibility for risk from these unknown cases equally between the U.S. and Canada, this presentation of the data is now irrelevant. Furthermore, a generic coding would be more informative and less likely to be misrepresented.

Response: NMFS will consider this comment, as well as the evaluation from the November 2019 Center for Independent Experts review that included significant discussion of this topic, in consideration of changes for future SARs.

Comment 23: CBD–WDC request NMFS reconsider its evaluation of the following cases:

- 3/7/2013 #3692—The fluke of the whale was wounded by a vessel strike in 2013. In 2014, the right tip of the fluke had fallen off and the fluke wound had not healed. Lesions and an increased cyamid load were noted and the whale was reported as thin. There have been no additional resights since 2014;
- 7/12/2013 #3123—Female whale previously seen every year since birth (2001) but last seen in 2013 after an ad hoc disentanglement;
- 9/13/2015 #1306 (''Velcro'')—Based on the most recent sightings of this whale on August 16, 2016, there was no change in configuration of the entanglement. However, a marked decline in body condition was reported and the whale has not been resighted since 2016;
- 9/13/2015 Unknown—Unknown right whale located on Roseway Basin on September 13, 2015. The whale was sighted with most of its left fluke lobe missing or composed of necrotic tissue and a significant cyamid load. There have been no resights of this whale. Given that NMFS itself has determined that ''there has been no confirmed case of natural mortality in adult right whales in the past several decades,'' we believe NMFS should include this whale as a Serious Injury with a value of 1 against PBR;
- 6/18/2017 #3190—Carcass in GSL with suggested blunt force trauma. Since no whales are known to have died from natural causes, this whale should be prorated; and
- 8/9/2017 #2123—Carcass was not necropsied but, according to NMFS, ''photos indicated multiple linear impressions suggesting entanglement'' and this case should at least be prorated.

Response: NMFS thanks the reviewer for the detailed examination of individual cases. Several of the cases (3/7/2013 #3692 and 9/13/2015 #1306), while confirmed as having anthropogenic injuries, have health status on par with the non-injured population, and we are unable at this time to classify them as more than likely to die as a result of the injury. The entanglement case from 7/12/2013 (#3123) was classified as a prorated injury (0.75) since it has not been confirmed that the gear has been shed. No expert agreement is available on the injured whale documented on 9/13/2015 so, while likely human-caused and definitely serious, we are unable to account for it. The cases from 6/18/2017 (#3190) and 8/9/2017 (#2123) were both mortalities. NMFS currently has no mechanism to prorate carcasses, only injuries.

Comment 24: MLA comments that NARW #1142, sighted on 04/01/2014, was downgraded to a non-serious injury at the October 2018 Atlantic Large Whale TRT meeting. NMFS should confirm the status of this right whale as either serious injury or non-serious injury. If this animal has been downgraded to NSI, MLA suggests this should be reflected in the PBR calculation and summary tables.

Response: As was noted at the time, the determinations provided at the October 2018 Atlantic Large Whale TRT meeting were preliminary and subject to change. Additional sightings data indicate that #1142's health continued to decline, so it remains a serious injury.

Comment 25: MLA notes for the right whale M/SI which occurred in 2017, there are several cases in Table 1 in the ''Other Mortality'' section that were coded ''AE'' and ''CE'' in the ''gear type'' column, which do not match the associated codes in the legend. These codes appear to reference acute or chronic injuries, rather than the gear type associated with the case. Additionally, several of the 2017 vessel strikes have been erroneously assigned a gear type.

Response: We have corrected those typos in the final 2019 NARW report.

Comment 26: DFO comments it is unclear if there is a process to review entanglement injury scores if the same North Atlantic right whales are later observed as having shown signs of recovery. For example, once a serious injury is assigned, does it remain as a serious injury if the whale is later seen to have recovered or stabilized?

Response: Protocols for serious injury determinations are provided in the annual M/SI report and in the NMFS Serious Injury Determination Procedural directive (NMFS 2012). If an animal is re-sighted in a condition that warrants reevaluating a previously published determination, it will be addressed.

Comment 27: MLA notes the ''Status of Stock'' section of the NARW SAR states, ''The size of this stock is considered to be extremely low relative to OSP in the U.S.'' The MMPA was enacted to maintain marine mammal stocks at their OSP level and to restore depleted stocks. However, this critical metric is never quantified in the NARW SAR. Maine lobstermen constantly ask

about what is considered a sustainable population of right whales. MLA requests that OSP be quantified in the SAR and, if it cannot be, to explain why.

Response: OSP is defined by MMPA section 3(9), with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity [K] of the habitat and the health of the ecosystem of which they form a constituent element. (16 U.S.C. 1362(3)(9)). OSP is further defined by Federal regulations (50 CFR 216.3) as a population size that falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity level (MNPL) is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality. We have provided a graph in the NARW SAR (Figure 2) that depicts right whale population growth during 1990–2017. That graph indicates that population growth is decelerating and is at levels clearly lower than MNPL and, by definition, less than OSP. Until population growth begins to decelerate—due to density dependence, not deaths caused by human activities—then it would be inaccurate to attempt to fit a growth curve and estimate OSP from the population data.

For populations that are greatly reduced and endangered, it is best to consider the goals set forward in the ESA recovery plan documents. In this case, the 2005 North Atlantic Right Whale Recovery Plan lists the following criteria that must be met before the species can be considered for reclassifying to ''threatened'' under the ESA: (1) The population ecology (range, distribution, age structure, and gender ratios, etc.) and vital rates (age-specific survival, age-specific reproduction, and lifetime reproductive success) of right whales are indicative of an increasing population; (2) The population has increased for 35 years at an average rate of increase equal to or greater than 2 percent per year; (3) None of the known threats to Northern right whales (summarized in the five listing factors) are known to limit the population's growth rate; and (4) Given current and projected threats and environmental conditions, the right whale population has no more than a 1-percent chance of quasi-extinction in 100 years.

Humpback Whale, Gulf of Maine

Comment 28: CBD–WDC request that NMFS consider providing a distributional map that more accurately represents the coast-wide distribution of the Gulf of Maine stock of humpback whales, including in near-shore waters of the mid-Atlantic.

Response: The map is intended to represent the distribution of sightings that were used to generate past and current line-transect abundance estimates. We are in the process of converting all SAR maps to stock range depictions in future reports, but in the 2019 SAR, none of the stocks have range maps.

Undifferentiated Beaked Whales

Comment 29: The Commission notes several SARs for beaked whales in the North Atlantic were updated in 2019. Although a PBR cannot be calculated for individual stocks, each of these SARs includes a best estimate of abundance, Nmin, and PBR calculated for ''undifferentiated beaked whales,'' which includes four species of *Mesoplodon* and *Ziphius cavirostris.* In many areas of the world where long-term studies occur, photo-identification of individuals indicates some level of site-fidelity (*e.g.,* Baird 2019, Dinis *et al.* 2017, Forney *et al.* 2017, McSweeney *et al.* 2007), suggesting that many of these species have complex population structure. Designating a single ''western North Atlantic stock'' for each species may not reflect their stock structure. This shortcoming is compounded when abundance and PBR are reported for ''undifferentiated beaked whales,'' combining all five species. While the Commission is encouraged to see NMFS making efforts to obtain accurate species identifications at sea (particularly through techniques such as eDNA, photo-documentation, unmanned aerial vehicles, and acoustic monitoring), the Commission recommends that NMFS reconsider whether including an abundance estimate, Nmin, and PBR for ''undifferentiated beaked whales'' is meaningful for effective management of these stocks and revise the SARs accordingly if appropriate. Part of this evaluation should consider how the data are likely to be used by those who rely on and cite the information provided in the SARs.

Response: Taking the Commission's recommendation, and that of the Atlantic SRG, we have reworked the abundance estimate groupings in the final 2019 SAR to be able to report separate estimates for Cuvier's beaked whales and *Mesoplodon* beaked whales. We will continue efforts to differentiate between the different species of *Mesoplodon* beaked whales to eventually report estimates for each species.

Comments on Pacific Issues

Southern Resident Killer Whales

Comment 30: CBD–WDC appreciate the updates made to clarify differentiation of killer whale populations in the Eastern North Pacific and to align terms used in the SAR with those commonly used today (*e.g.,* ecotypes). However, we note that despite the availability of significantly more information about coastal distribution and habitat use by the Southern Resident killer whale (SRKW) population, the paragraph in the ''Stock Definition and Geographic Range'' section describing coastal sightings and habitat of the SRKWs remains relatively unchanged since at least 2014, with the most recent citation from 2013. NMFS recently issued a proposed rule to revise the SRKW critical habitat designation to include coastal waters from Washington to Point Sur, California, and included a substantial summary of the data collected by the agency itself to support the revision.

CBD–WDC request that NMFS update the paragraph describing coastal distribution and include the more recent references available in the Biological Report that accompanies the proposed critical habitat rule, including updated information from satellite tag deployments and more recent data from passive acoustic monitoring. Coastal habitat use is thoroughly described and confirmed in other NMFS SRKW material, including recent recovery documents and status updates, and we urge NMFS to describe the coastal range of the SRKWs with similar confidence in the SAR, instead of retaining the description of ''uncertain'' coastal habitat use from 2013.

CBD–WDC also ask that NMFS note that while the SRKWs historically utilized the inland waters of Washington and southern British Columbia (the Salish Sea) in the late spring and summer, the seasonality of their presence is changing, and they have not been seen regularly or reliably during the summer in recent years. SRKW use of the Salish Sea has been highly variable since 2013, with a historically late return to the area in both 2018 and 2019. We recommend these recent observed changes in habitat use be included in the SRKW SAR.

Response: NMFS has updated the geographic range language in the final 2019 SRKW SAR.

Comment 31: CBD–WDC comment the Center for Whale Research (CWR) conducts the annual census for the SRKWs and typically provides updates on July 1st and December 31st of each year. As noted above, the changes in seasonal habitat use by the SRKWs has resulted in late returns to the Salish Sea and has complicated the census process, with some or all of the population no longer seen before the July 1st reporting deadline. While we appreciate established use of this system to achieve both estimates of abundance and a minimum population estimate, the increasing difficulty of completing a full census by July 1st introduces uncertainty as the status of all individuals in the population cannot be confirmed. For example, in 2019 none of the SRKW population had been seen in the Salish Sea by the July 1st census date, and while CWR noted three whales as ''missing'' following an initial encounter in July, sightings were so infrequent that those three whales—a matriarch and two adult males—were not officially declared deceased for over a month. Given the extremely small size of the SRKW population, unconfirmed status of even one individual is significant. CBD–WDC ask that NMFS update its protocol for including the most recent population estimate for SRKWs, since using census numbers from the previous summer (*e.g.,* July 2018) reflects a population abundance more than a year and a half out of date, and the biannual census may no longer be an accurate count for the population. We urge NMFS to include the most recent full count from CWR in the SAR, regardless of the date that count was reached.

As of fall of 2019, the SRKW population consisted of 71 individuals (not including two new calves born in December 2018 and May 2019, following established protocol of waiting one year before adding to the census count).

Given the grave concerns for the survival of the SRKW population and their precipitous decline in recent years, CBD–WDC ask that NMFS clearly state the decline observed following the ''peak census count of 99 animals in 1995,'' with average decrease per year, and specifically for the time period included in this SAR. Recent population viability assessments completed in both the U.S. and Canada should be used to describe the current population trend and future outlook.

Response: The comment on the reporting period for annual census values was addressed in the response to public comments on final 2018 SARs (84 FR 28489, June 19, 2019). The response is reiterated here: ''The Center for Whale Research is under contract to NMFS and provides a population estimate on July 1st of each year. Since the beginning of the Center for Whale Research's study in 1976, July 1st was used as the date for the population estimate. Although additional effort in the fall months in recent years has occasionally allowed for a population estimate of December 31st, for some years sighting data of all three pods may not exist for most or all of the fall months. For the sake of consistency, we will continue to use the census data from July 1st. We do provide an update to the SRG at their annual meeting of any changes (births/deaths) since the SAR was filed.''

We have added language to the final 2019 SRKW SAR noting the annual percent decline observed in the population since the peak count in 1995.

Comment 32: CBD–WDC comment that growth rates and productivity in different Resident killer whale populations may be affected by variability in diet, environmental conditions, and habitat range. Alaskan Resident killer whales consume Chinook salmon, similar to Northern and Southern Resident killer whales but appear to have a more diverse diet and benefit from larger and healthier salmon runs.

Different environmental conditions, including prey availability, pollution, and disturbance levels may impact their resulting annual growth rate. To better reflect the habitat conditions and diet of SRKWs and the resulting maximum net productivity, CBD–WDC suggest that NMFS use the same growth rates and estimated net productivity rates as are used for Northern Resident killer whales. This population is closer to SRKWs in prey preference and availability as well as environmental conditions, and shares a similar history in exploitation for captive display. The maximum net productivity rate for Northern Resident killer whales has been updated and is now estimated to be 2.9 percent. Using the same rate for SRKWs yields a PBR of 0.11 (1 animal every 9 years) for a population level of 75 whales as included in the current version of the SAR; or a PBR of 0.10 (1 animal every 10 years) if the more recent population estimate of 71 is used.

Response: This comment was addressed in the response to public comments on final 2018 Stock Assessments (84 FR 28489, June 19, 2019). We intend to evaluate other maximum rates of increase for killer whale populations and continue to consult with the Pacific SRG regarding potential changes to the SRKW SAR moving forward. We retain the currently-used Rmax value from the published study of Matkin *et al.* (2014) in the final 2019 SAR. The retention of the current Rmax value results in no appreciable difference in the calculated PBR compared with the Rmax value proposed by the commenter.

Comment 33: CBD–WDC disagree with NMFS that the total non-fishery human-caused mortality for the SRKW stock for the past five years (2013–2017) is zero. NMFS notes in the SRKW SAR the death of a young adult male, L95, from a fungal infection introduced by a satellite tag. While the infection was determined to be the cause of death for L95, we argue that human activity exacerbated this infection and contributed to the introduction of the fungus into L95's bloodstream, hastening his death. Additionally, the death of J34, from blunt force trauma consistent with vessel strike (as noted in the SAR), should be included as another human-caused mortality and attributed as vessel strike mortality. Both NMFS and DFO have established this death as ''likely from ship impact'' in other material and communications, which should be reflected here for consistency. Of note, the DFO necropsy report was written in 2017, not 2019, and CDC–WDC recommend the citation be corrected. For a population in a highly vulnerable state, deaths with a high likelihood of being caused by human activity should be noted as such.

Response: NMFS has updated the language in the final 2019 SRKW SAR to explicitly treat these deaths as human-caused. The necropsy report and expert panel review for L95 and necropsy report for J34 indicate human-related causes as likely factors in the mortality of these animals. The DFO necropsy report citation was updated in 2019 and the citation date is correct.

Comment 34: CBD–WDC request that NMFS reflect the level of research that has established the preference for Chinook salmon of SRKWs and remove the phrase ''appears to be'' in noting that SRKWs are Chinook salmon specialists in the ''Habitat Issues'' section of the SRKW SAR. We also disagree with the inclusion of pink salmon in the list of other species in their diet, as the paper cited (Ford *et al.* 2016) finds that pink salmon are present in proportions of less than 0.01 in fecal samples from SRKWs. CBD–WDC suggest that NMFS include updated information on toxic contamination and potential impacts in this section.

Response: We have updated diet language in the final 2019 SRKW SAR with findings from Ford *et al.* (2016),

who found that a majority of the diet comprised Chinook and Coho salmon, with seasonal differences in importance. We have also added information on toxic pollutants.

Humpback Whale, California/Oregon/Washington

Comment 35: CBD–WDC comment that rather than referring to the stock structure guidance, the proposed text revision to the ''Stock Definition and Geographic Range'' section of the California/Oregon/Washington humpback whale report makes the issue murky by saying the ''relationship of MMPA stocks to ESA distinct population segments is complex.'' The NMFS Procedure, to the contrary, says that ''NMFS should align stock designations with DPSs established under the ESA unless there is compelling reason not to.'' Further, ''maintaining incongruent MMPA and ESA management units is neither practical nor implementable.'' The SARs' continued reliance on a California/Oregon/Washington humpback stock is confusing, but the relationship of MMPA stocks to ESA DPSs is not ''complex.'' CDC–WDC recommend NMFS revise the stocks to align with the DPSs.

Response: See response to Comment 2.

Comment 36: CBD–WDC comment that updates to the ''Ship Strikes'' section in the California/Oregon/Washington humpback whale SAR are helpful and request that Rockwood and Jahncke (2019) be cited at the end of that section.

Response: We have added the unpublished Rockwood and Jahncke (2019) reference to the California/Oregon/Washington humpback whale SAR text.

Comment 37: CBD–WDC suggest the ''Habitat Concerns'' section of the California/Oregon/Washington humpback whale SAR be updated with the recent scientific information in the humpback whale critical habitat proposed rule and biological report.

Response: NMFS has added language to the California/Oregon/Washington humpback whale 2019 final SAR to reflect the critical habitat proposed rule and habitat concerns.

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Dated: July 28, 2020.

Chris Oliver,

Assistant Administrator for Fisheries,National Marine Fisheries Service.

[FR Doc. 2020–16720 Filed 7–31–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Electric Boat Corporation of New York State Department of State Objection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of stay—closure of administrative appeal decision record.

SUMMARY: This announcement provides notice that the Department of Commerce has stayed, for a period of 28 days, closure of the decision record in an administrative appeal filed by Electric Boat Corporation (Appellant) under the Coastal Zone Management Act requesting that the Secretary of Commerce override an objection by the New York State Department of State to a consistency certification for a proposed project to dispose of dredged material in the Eastern Long Island Sound Dredged Material Disposal Site.

DATES: The decision record for Electric Boat Corporation's federal consistency appeal of New York State Department of State's objection will now close on August 31, 2020.

ADDRESSES: NOAA has provided access to publicly available materials and

related documents comprising the appeal record on the following website: *https://www.regulations.gov/docket?D=NOAA-HQ-2020-0021.*

FOR FURTHER INFORMATION CONTACT: For questions about this Notice, contact Lauren Bregman, NOAA Office of the General Counsel, Oceans and Coasts Section, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–7389, *lauren.bregman@noaa.gov.*

SUPPLEMENTARY INFORMATION: On January 24, 2020, the NOAA Administrator, pursuant to authority delegated by the Secretary of Commerce to decide Coastal Zone Management Act of 1972 (CZMA) federal consistency appeals, received a ''Notice of Appeal'' filed by Electric Boat Corporation under the CZMA, 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR part 930, subpart H. The Notice of Appeal is taken from an objection by the New York State Department of State to Appellant's consistency certification for a proposed U.S. Army Corps of Engineers permit to dispose of dredged material in the Eastern Long Island Sound Dredged Material Disposal Site.

Under the CZMA, the NOAA Administrator may override New York State Department of State's objection on grounds that the project is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with the objectives or purposes of the CZMA,'' the Department of Commerce must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the national interest furthered by the proposed activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the applicable coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is ''necessary in the interest of national security,'' the NOAA Administrator must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122.

The NOAA Administrator must close the decision record in a federal consistency appeal 160 days after the Notice of Appeal is published in the **Federal Register**. 15 CFR 930.130(a)(1). The CZMA, though, authorizes the NOAA Administrator to stay the closing of the decision record for up to 60 days when the NOAA Administrator determines it is necessary to receive, on an expedited basis, any supplemental information specifically requested by the NOAA Administrator to complete a consistency review. 15 CFR 930.130(a)(2), (3).

After reviewing the decision record developed to date, the NOAA Administrator has decided to solicit supplemental briefs from the Appellant and New York State Department of State pertaining to additional information including a July 17, 2020, comment letter received from the Department of the Navy. In order to allow time for the receipt of these briefs, the NOAA Administrator hereby stays closure of the decision record, currently scheduled to occur on August 3, 2020, until August 31, 2020.

Public Availability of Appeal Documents

NOAA has provided access to publicly available materials and related documents comprising the appeal record on the following website: *https://www.regulations.gov/docket?D=NOAA-HQ-2020-0021.*

Authority Citation: 15 CFR 930.130(a)(2), (3).

Adam Dilts,

Chief, Oceans and Coasts Section, NOAA Office of the General Counsel.

[FR Doc. 2020–16663 Filed 7–31–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA330]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council's is convening a meeting of its Groundfish Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Wednesday, August 19, 2020, beginning at 9:30 a.m.

ADDRESSES: All meeting participants and interested parties can register to join the webinar for the August 19 webinar: *https://attendee.gotowebinar.com/register/6047049378918009870.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee will meet to discuss the Conservation Law Foundation petition for rulemaking on Atlantic cod. They will receive an update on the development of Framework Adjustment 61 specifications and other measures and make recommendations to the Groundfish Committee, as appropriate. Other business will be discussed, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign

language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 29, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–16789 Filed 7–31–20; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2020–0026]

Request for Information on the Equal Credit Opportunity Act and Regulation B

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) seeks comments and information to identify opportunities to prevent credit discrimination, encourage responsible innovation, promote fair, equitable, and nondiscriminatory access to credit, address potential regulatory uncertainty, and develop viable solutions to regulatory compliance challenges under the Equal Credit Opportunity Act (ECOA) and Regulation B.

DATES: Comments must be received by October 2, 2020.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2020–0026, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-RFI-ECOA@cfpb.gov.* Include Docket No. CFPB–2020–0026 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier.
- *Instructions:* The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All submissions in response to this request for information (RFI), including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Please do not include in your submissions sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, or other information that you would not ordinarily make public, such as trade secrets or confidential commercial information. Submissions will not be edited to remove any identifying or contact information, or other information that you would not ordinarily make public. If you wish to submit trade secret or confidential commercial information, please contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section below. Information submitted to the Bureau will be treated in accordance with the Bureau's Rule on the Disclosure of Records and Information, 12 CFR part 1070 *et seq.*

FOR FURTHER INFORMATION CONTACT: For general inquiries and submission process questions, please call Pavy Bacon, Senior Counsel, Office of Regulations at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] granted primary authority to the Bureau to supervise and enforce compliance with ECOA and its implementing regulation, Regulation B, for entities within Bureau's jurisdiction and to issue regulations and guidance to interpret ECOA. The Dodd-Frank Act requires the Bureau to report on its efforts ''to fulfill the fair lending mission of the Bureau,'' [2] and authorizes it to ''engage in . . . requests for information, [which] includes matters relating to fair lending.'' [3]

The Dodd-Frank Act clearly states the Bureau's purpose as follows: ''to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that *all* consumers have access to . . . markets for consumer financial products and services are fair, transparent, and competitive.'' [4] The Bureau's mission includes both protecting consumers from unlawful discrimination and fostering innovation. Specifically, the Dodd-Frank Act makes clear that ''[t]he Bureau is authorized to exercise its authorities under [F]ederal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services . . . (2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination . . . and (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.'' [5] This RFI is one method by which the Bureau is continuing to explore ways to ensure nondiscriminatory access to credit as well as cutting-edge issues at the intersection of fair lending and innovation, including how innovation can increase access to credit for all consumers—and especially unbanked and underbanked consumers (referred to as ''credit invisibles'' in a May 2015 Bureau research report [6])—without unlawful discrimination.

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 12 U.S.C. 5496(c)(8).

[3] 12 U.S.C. 5562(a)(2).

[4] 12 U.S.C. 5511(a) (emphasis added).

[5] 12 U.S.C. 5511(b).

[6] *See* The CFPB Office of Research, *Data Point: Credit Invisibles* (May 2015), *https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.*

The Equal Credit Opportunity Act (ECOA),[7] which is implemented by Regulation B, applies to creditors. The statute makes it unlawful for ''any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract); (2) because all or part of the applicant's income derives from any public assistance program; or (3) because the applicant has in good faith exercised any right under [the Consumer Credit Protection Act].'' [8] The Bureau has recognized the following methods of proving lending discrimination: Overt evidence of discrimination, evidence of disparate treatment, and evidence of disparate impact.[9] ECOA prohibits discrimination ''with respect to any aspect of a credit transaction.'' [10] As such, Regulation B covers creditor activities before, during, and after the extension of credit.[11] Creditors are also prohibited from making any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application.[12] A creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.[13] Creditors may also meet special social needs and benefit economically disadvantaged groups through the Special Purpose Credit Program provisions of ECOA and Regulation B.[14]

II. Request for Information

The Bureau seeks comments on the actions it can take or should consider taking to prevent credit discrimination, encourage responsible innovation, promote fair, equitable, and nondiscriminatory access to credit, address potential regulatory uncertainty, and develop viable solutions to regulatory compliance challenges under ECOA and Regulation B. The information provided will help the Bureau identify how it can continue to create a regulatory environment that expands access to credit, help to ensure that all consumers and communities are protected from discrimination in all aspects of a credit transaction, and develop approaches to address regulatory compliance challenges. The Bureau encourages comments from all interested members of the public. The Bureau anticipates that the responding public may include (among others) financial entities or institutions and their service providers; trade associations that represent these entities; individual consumers; fair lending, civil rights, consumer and community advocates; Federal, Tribal, State, and local regulators and agencies; researchers or members of academia; or attorneys that represent any of the above. The Bureau encourages commenters to share their views on all or a subset of the questions included in this RFI. These questions are not meant to be exhaustive; the Bureau welcomes additional relevant comments on these important topics. For answers to specific questions, please note the number associated with any question to which you are responding at the top of each response.

In particular, the Bureau requests commenters to respond to the following questions:

1. *Disparate Impact:* Regulation B provides that ECOA may prohibit creditor practices that have a disparate impact—Regulation B specifically states that ''Congress intended an 'effects test' concept . . . to be applicable to a creditor's determination of creditworthiness.'' [15] The official interpretation to Regulation B states that ECOA/Regulation B ''may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact.'' [16] The official interpretation also provides an example of how to evaluate a creditor practice for disparate impact.[17] Should the Bureau provide additional clarity regarding its approach to disparate impact analysis under ECOA and/or Regulation B? If so, in what way(s)?

2. *Limited English Proficiency:* The Bureau seeks to foster greater access to credit markets, including to consumers who face obstacles because they are Limited English Proficient (LEP). The Bureau did some work on the challenges LEP consumers encounter in 2016 and 2017.[18] In its continued outreach on these topics, the Bureau has heard from a variety of stakeholders that institutions want to serve LEP consumers but face regulatory uncertainties and perceived fair lending risks in serving LEP consumers because the language spoken by a consumer may correlate with prohibited bases under ECOA, including national origin. Some financial institutions may decide against providing any LEP products or services due to these regulatory uncertainties, while others may vary how and when they offer products and services in non-English languages.

The Bureau seeks to understand the challenges specific to serving LEP consumers and to find ways to encourage creditors to increase assistance to LEP consumers. Should the Bureau provide additional clarity under ECOA and/or Regulation B to further encourage creditors to provide

[7] 15 U.S.C. 1691 *et seq.*

[8] 15 U.S.C. 1691(a).

[9] *See* Comment 4(a)–1 (''Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate''); Comment 6(a)–2 (''The Act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact.''); Bureau of Consumer Fin. Prot., *Equal Credit Opportunity Act (ECOA) Examination Procedures* (Oct. 30, 2015), *https://files.consumerfinance.gov/f/documents/201510_cfpb_ecoa-narrative-and-procedures.pdf; see also* CFPB Bulletin 2012–04 (Fair Lending), *Lending Discrimination* (Apr. 18, 2012), *https://files.consumerfinance.gov/f/201404_cfpb_bulletin_lending_discrimination.pdf* (concurring with Interagency Task Force on Fair Lending, *Policy Statement on Discrimination in Lending,* 59 FR 18266 (Apr. 15, 1994) (noting that ''courts have recognized three methods of proof of lending discrimination under the ECOA . . .: [(1)] 'Overt evidence of discrimination,' when a lender blatantly discriminates on a prohibited basis; [(2)] Evidence of 'disparate treatment,' when a lender treats applicants differently based on one of the prohibited factors; and [(3)] Evidence of 'disparate impact,' when a lender applies a practice uniformly to all applicants but the practice has a discriminatory effect on a prohibited basis and is not justified by business necessity.'').

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

[11] 12 CFR 1002.4(a). *See also* Comment 4(a)–1 (providing that ''1002.4(a) covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation . . . for example, application procedures, criteria used to evaluate creditworthiness, administration of accounts, and treatment of delinquent or slow accounts'').

[12] 12 CFR 1002.4(b).

[13] Comment 4(b)–2.

[14] *See* 12 CFR 1002.8.

[15] 12 CFR 1002.6(a).

[16] Comment 6(a)–2.

[17] *Id.*

[18] *See* Bureau of Consumer Fin. Prot., *Financial education programs serving immigrant populations* (July 2016), *https://files.consumerfinance.gov/f/documents/20160714_cfpb_report_fined_immigrant_May_20_2016_FINAL.pdf;* Bureau of Consumer Fin. Prot., *Spotlight on serving limited English proficient consumers* (Nov. 2017), *https://files.consumerfinance.gov/f/documents/cfpb_spotlight-serving-lep-consumers_112017.pdf;* Bureau of Consumer Fin. Prot., *Supervisory Highlights* (Oct. 2016), *https://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13__Final_10.31.16.pdf.*

assistance, products, and services in languages other than English to consumers with limited English proficiency? If so, in what way(s)?

3. *Special Purpose Credit Programs:* The Special Purpose Credit Program (SPCP) provisions of ECOA/Regulation B provide targeted means by which creditors, under certain circumstances, can meet ''special social needs'' and ''benefit economically disadvantaged groups.'' [19] The official interpretation to Regulation B states that ''a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies.'' [20] ECOA and Regulation B also allow for special purpose credit offered under ''[a]ny credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons.'' [21] Through stakeholder engagement and its supervisory activity, the Bureau has learned that stakeholders are interested in additional guidance on SPCPs that may be helpful to them in developing SPCPs while ensuring regulatory compliance. In its Summer 2016 *Supervisory Highlights,* the Bureau set forth observations regarding credit decisions made pursuant to the terms of programs that for-profit institutions have described as SPCPs.[22]

Should the Bureau address any potential regulatory uncertainty and facilitate the use of SPCPs? If so, in what way(s)? For example, should the Bureau clarify any of the SPCP provisions in Regulation B?

4. *Affirmative Advertising to Disadvantaged Groups:* The official interpretation to Regulation B states that ''[a] creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.'' [23] The Bureau understands from its stakeholder engagement that creditors are interested in additional guidance that may be helpful to them in developing such marketing campaigns while ensuring regulatory compliance. Should the Bureau provide clarity under ECOA and/or Regulation B to further encourage creditors to use such affirmative advertising to reach traditionally disadvantaged consumers and communities? If so, in what way(s)?

5. *Small Business Lending:* As the Bureau noted in its May 2017 white paper on small business lending, small businesses play a key role in fostering community development and fueling economic growth both nationally and in their local communities.[24] Women-owned and minority-owned small businesses play a particularly important role in supporting their local communities.[25] Access to credit is a crucial component of the success of these businesses. ECOA and Regulation B protect business owners from discrimination because of race, color, national origin, sex, and other protected characteristics.[26] In light of the Bureau's authority under ECOA/Regulation B, in what way(s) might it support efforts to meet the credit needs of small businesses, particularly those that are minority-owned and women-owned?

6. *Sexual Orientation and Gender Identity Discrimination:* On June 15, 2020, in *Bostock* v. *Clayton County,* the Supreme Court ruled that the prohibition against sex discrimination in Title VII of the Civil Rights Act of 1964 (Title VII) encompasses sexual orientation discrimination and gender identity discrimination.[27] The majority opinion in *Bostock* interpreted Title VII and did not address ECOA. Should the Supreme Court's decision in *Bostock* affect how the Bureau interprets ECOA's prohibition of discrimination on the basis of sex? If so, in what way(s)?

7. *Scope of Federal Preemption of State Law:* Regulation B alters, affects, or preempts only those state laws that are inconsistent with ECOA and/or Regulation B and then only to the extent of the inconsistency.[28] A state law is not inconsistent with ECOA or Regulation B if it is more protective of an applicant.[29] A creditor, state, or other interested party may request that the Bureau determine whether a state law is inconsistent with the requirements of ECOA and/or Regulation B.[30] What are examples of potential conflicts or intersections between state laws, state regulations, and ECOA and/or Regulation B, and should the Bureau address such potential conflicts or intersections? For example, should the Bureau provide further guidance to assist creditors evaluating whether state law is preempted to the extent it is inconsistent with the requirements of ECOA and/or Regulation B?

8. *Public Assistance Income:* ECOA makes it ''unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction . . . because all or part of the applicant's income derives from any public assistance program.'' [31] ECOA provides that making an inquiry whether the applicant's income derives from any public assistance program does not constitute discrimination ''if such inquiry is for the purpose of determining the amount and probable continuance of income levels [among other things].'' [32] The official interpretation to Regulation B further provides that ''[i]n considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances.'' [33] The Bureau previously issued guidance (through a May 2015 bulletin on the Section 8 Housing Choice Voucher Homeownership Program [34] and a November 2014 bulletin on Social Security Disability Income Verification [35]) to help creditors comply with these and other regulatory provisions. The Bureau understands that stakeholders continue to have questions about these provisions under ECOA and/or Regulation B.

Should the Bureau provide additional clarity under ECOA and/or Regulation B regarding when all or part of the applicant's income derives from any public assistance program? If so, in what way(s)? For example, should it provide

[19] 12 CFR 1002.8(a).

[20] Comment 8(a)–5.

[21] Comments 9(b)(2)–4, 5.

[22] *See, e.g.,* Bureau of Consumer Fin. Prot., *Supervisory Highlights* (June 2016), *https://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_12.pdf.*

[23] Comment 4(b)–2.

[24] Bureau of Consumer Fin. Prot., *Key dimensions of the small business lending landscape* (May 2017), *https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf.*

[25] *Id.*

[26] 15 U.S.C. 1691(a); 12 CFR 1002.4(a).

[27] 590 U.S. , 140 S. Ct. 1731 (2020) (*Bostock*).

[28] 12 CFR 1002.11(a).

[29] *Id.*

[30] 12 CFR 1002.11(b)(2).

[31] 15 U.S.C. 1691(a)(2).

[32] 15 U.S.C. 1691(b)(2); *see also* 12 CFR 1002.6(b)(5) (''[A] creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness . . . .'').

[33] Comment 6(b)(5)–(3)(ii); *see also* Comment 6(b)(5)–(1) (''A creditor must evaluate income derived from . . . public assistance on an individual basis . . . .).

[34] *See* CFPB Bulletin 2015–02, *Section 8 Housing Choice Voucher Homeownership Program* (May 11, 2015), *https://files.consumerfinance.gov/f/201505_cfpb_bulletin-section-8-housing-choice-voucher-homeownership-program.pdf.*

[35] *See* CFPB Bulletin 2014–03, *Social Security Disability Income Verification* (Nov. 18, 2014), *https://files.consumerfinance.gov/f/201411_cfpb_bulletin_disability-income.pdf.*

guidance on how to address situations where creditors seek to ascertain the continuance of public assistance benefits in underwriting decisions?

9. *Artificial Intelligence and Machine Learning:* As the Bureau noted in its annual fair lending report to Congress dated April 30, 2020 [36] and a blog post dated July 7, 2020,[37] financial institutions are starting to deploy artificial intelligence (AI) and machine learning (ML) across a range of functions. For example, they are used as virtual assistants that can fulfill customer requests, in models to detect fraud or other potential illegal activity, as compliance monitoring tools, and in credit underwriting. Should the Bureau provide more regulatory clarity under ECOA and/or Regulation B to help facilitate innovation in a way that increases access to credit for consumers and communities in the context of AI/ML without unlawful discrimination? If so, in what way(s)?

Another important issue is how lenders using complex AI/ML models satisfy ECOA's adverse action notice requirements. ECOA requires creditors to provide consumers with the principal reason(s) for a denial of credit or other adverse action.[38] These notice provisions serve important anti-discrimination, educational, and accuracy purposes. There may be questions about how institutions can comply with these requirements if the reasons driving an AI/ML decision are based on complex interrelationships.[39] Should the Bureau modify requirements or guidance concerning notifications of action taken, including adverse action notices, under ECOA and/or Regulation B to better empower consumers to make more informed financial decisions and/or to provide additional clarity when credit underwriting decisions are based in part on models that use AI/ML? If so, in what way(s)?

10. *ECOA Adverse Action Notices:* Under ECOA and Regulation B, a statement of reasons for adverse action must be specific and indicate the principal reason(s) for the adverse action.[40] The Bureau understands from direct engagement and its supervisory work that stakeholders continue to have questions about this requirement. Should the Bureau provide any additional guidance under ECOA and/or Regulation B related to when adverse action has been taken by a creditor, requiring a notification that includes a statement of specific reasons for the adverse action? If so, in what way(s)?

Authority: 12 U.S.C. 5511(c).

III. 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: July 28, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–16722 Filed 7–31–20; 8:45 am]

BILLING CODE 4810–AM–P

[36] *See* Fair Lending Report of the Bureau of Consumer Financial Protection (Apr. 2020), 85 FR 27395, *https://files.consumerfinance.gov/f/documents/cfpb_2019-fair-lending_report.pdf.*

[37] *See* Patrice Alexander Ficklin *et al., Innovation spotlight: Providing adverse action notices when using AI/ML models* (July 7, 2020), *https://www.consumerfinance.gov/about-us/blog/innovation-spotlight-providing-adverse-action-notices-when-using-ai-ml-models/.*

[38] 15 U.S.C. 1691(d).

[39] *See* Fair Lending Report of the Bureau of Consumer Financial Protection (Apr. 2020), 85 FR 27395 (May 8, 2020), *https://files.consumerfinance.gov/f/documents/cfpb_2019-fair-lending_report.pdf;* Patrice Alexander Ficklin *et al., Innovation spotlight: Providing adverse action notices when using AI/ML models* (July 7, 2020), *https://www.consumerfinance.gov/about-us/blog/innovation-spotlight-providing-adverse-action-notices-when-using-ai-ml-models/.*

[40] 15 U.S.C. 1691(d)(3); 12 CFR 1002.9(b)(2).

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the Final Environmental Impact Statement for the Housing Program at Wright-Patterson Air Force Base, Ohio

ACTION: Notice of availability.

SUMMARY: On July 16, 2020, the United States Air Force (USAF) signed the Record of Decision for the Final Environmental Impact Statement for the Housing Program at Wright-Patterson Air Force Base, Ohio.

ADDRESSES: Mr. Mike Ackerman, AFCEC/CZN, Bldg 1, 2261 Hughes Ave. (STE 155), JBSA-Lackland, TX 78236–9853, (210) 925–2741; *michael.ackerman.2@us.af.mil.*

SUPPLEMENTARY INFORMATION: The USAF has decided to implement the first phase of Alternative 2, specifically renovation of 30 historic housing units and the demolition of government-owned non-historic housing located on Yount Drive. This decision will support the near-term housing needs of WPAFB's key and essential leaders.

The Air Force's decision, documented in the Record of Decision, was based on analysis provided in the Final Environmental Impact Statement, and includes inputs from the public and regulatory agencies. The Final Environmental Impact Statement was made available to the public on May 29, 2020 through a Notice of Availability in the **Federal Register** (Volume 85, Number 104, Page 32390) with a review period that ended on June 29, 2020.

Authority: This Notice of Availability is published pursuant to the regulations (40 CFR part 1506.6) implementing the provisions of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (32 CFR parts 989.21(b) and 989.24(b)(7)).

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2020–16729 Filed 7–31–20; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Applications for New Awards: Rehabilitation Training: Vocational Rehabilitation Technical Assistance Center-Quality Management and Vocational Rehabilitation Technical Assistance Center-Quality Employment

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2020 for a Vocational Rehabilitation Technical Assistance Center for Quality Management (VRTAC–QM) and a Vocational Rehabilitation Technical Assistance Center for Quality Employment (VRTAC–QE), Catalog of Federal Domestic Assistance (CFDA) numbers 84.264J and 84.264K. The VRTAC–QM and VRTAC–QE will focus on identified national needs and improvement of the number and quality of employment outcomes under the vocational rehabilitation (VR) program and raise expectations for all people with disabilities.

DATES:

Applications Available: August 3, 2020.

Deadline for Transmittal of Applications: September 2, 2020.

Date of Pre-Application Meeting: The Office of Special Education and Rehabilitative Services (OSERS) will post a PowerPoint presentation that provides general information related to the Rehabilitation Services Administration's (RSA's) discretionary

grant competitions and PowerPoint presentations specifically related to the VRTAC–QM and VRTAC–QE competitions at *https://ncrtm.ed.gov/RSAGrantInfo.aspx.* OSERS will conduct a pre-application meeting via conference call to respond to questions specific to the VRTAC–QM and the VRTAC–QE. Information about the pre-application meeting will be available at *https://ncrtm.ed.gov/RSAGrantInfo.aspx* prior to the date of the call. OSERS invites you to send questions about the VRTAC–QM to *84.264J@ed.gov* and the VRTAC–QE to *84.264K@ed.gov* in advance of the pre-application meetings. The VRTAC–QM and VRTAC–QE pre-application meeting summaries of questions and answers, will be available at *https://ncrtm.ed.gov/RSAGrantInfo.aspx* approximately six business days after the pre-application meeting.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR–2019–02–13/pdf/2019–02206.pdf.*

FOR FURTHER INFORMATION CONTACT:

For VRTAC–QM: Douglas Zhu, U.S. Department of Education, 400 Maryland Avenue SW, Room 5095, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–6037. Email: *84.264J@ed.gov.*

For VRTAC–QE: Felipe Lulli, U.S. Department of Education, 400 Maryland Avenue SW, Room 5101, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7425. Email: *84.264K@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Under the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by the Workforce Innovation and Opportunity Act (WIOA), RSA makes grants to States and public or nonprofit agencies and organizations (including institutions of higher education) to pay part of the cost of projects to provide State VR agency personnel with training and technical assistance designed to assist in increasing the numbers of, and upgrading the skills of, qualified personnel (especially rehabilitation counselors) who are trained in providing vocational, medical, social, and psychological rehabilitation services to individuals with disabilities, who are trained to assist individuals with communication and related disorders, and who are trained to provide other services authorized under the Rehabilitation Act. Projects must be awarded and operated in a manner consistent with the nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws.

Priorities: Priorities 1 and 2 are from the notice of final priorities, requirements, and definitions for this program published elsewhere in this issue of the **Federal Register** (NFP).

Applicants must address either Absolute Priority 1 or Absolute Priority 2, in the budget information (ED Form 524, Section B) and budget narrative. Applicants may apply for both priorities if they submit separate applications and demonstrate in each application that it has sufficient institutional capacity to fully implement multiple awards, including the required cost share.

Absolute Priorities: For FY 2020, and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or more of these priorities.

These priorities are:

Absolute Priority 1: Vocational Rehabilitation Technical Assistance Center for Quality Management.

The purpose of this priority is to fund a cooperative agreement to establish a Vocational Rehabilitation Technical Assistance Center for Quality Management (VRTAC–QM).

The VRTAC–QM will provide intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance to State VR agencies on quality management strategies that will enable VR agencies to improve service delivery to, and employment outcomes achieved by, individuals with disabilities. For States that request intensive training and technical assistance, the training and technical assistance will upgrade and increase the competencies, skills, and knowledge of VR personnel, enabling them to assess current VR program performance and to identify the strengths, weaknesses, opportunities for improvement, and threats (SWOT) that impact the effectiveness of VR agency service delivery and the quality of employment outcomes. This SWOT assessment will be based on a review of a wide variety of information sources, including, but not limited to, RSA's monitoring findings and recommendations; State audit reports; consumer feedback provided in public hearings and through consumer satisfaction surveys; results of comprehensive statewide needs assessments; and input from workforce development partners, community rehabilitation programs, and other VR stakeholders. Based on SWOT assessments, the center and VR agency personnel will develop individualized intensive training and technical assistance agreements designed to provide personnel with skills and strategies they need to address the weaknesses identified in the SWOT assessments to improve service delivery and employment outcomes for individuals with disabilities. The center will also provide VR agency personnel with technical assistance on evaluating whether the quality management strategies they adopt lead to increasing the percentage of participants who achieve an MSG and exit the program with an employment outcome and to modify those strategies, if necessary, to achieve continuous program improvement. In addition to the intensive training and technical assistance, the VRTAC–QM also will provide targeted training and technical assistance and universal training and technical assistance to State VR agencies on a broad range of quality management strategies and practices, both programmatic and fiscal, to address needs common to many agencies.

With regard to program management and performance, the VRTAC–QM's training and technical assistance will support the assessment, development, and enhancement of staff knowledge, skills, and abilities to perform the following functions in order to improve service delivery and employment outcomes for individuals with disabilities:

- Analyzing the State VR agency's comprehensive system of personnel development to identify strengths and weaknesses in staff's ability to understand and address factors affecting program performance and designing management strategies to address these deficits.
- Analyzing case service data to identify trends and inconsistencies in program performance, and developing strategies to improve the effectiveness and timeliness of services provided, including addressing inconsistencies in the quality and quantity of employment outcomes achieved by various groups of

individuals with disabilities served by the program.

• Understanding statutory and regulatory requirements related to performance management, including calculations for the common performance measures required under WIOA and factors that may be affecting the agency's performance on these measures.

• Conducting quality assurance and performance improvement, including the use of data for performance management systems and the implementation of the common performance measures required by WIOA.

• Strategic planning to address aspects of the SWOT assessment that pose challenges and barriers to improving service delivery and employment outcomes for individuals with disabilities, particularly students and youth with disabilities and individuals with significant and the most significant disabilities.

• Implementing effective and efficient policies for delivering pre-employment transition services under section 113, VR services under section 103(a), and supported employment services under title VI of the Rehabilitation Act.

• Understanding the relationship to important outcomes of various cost containment measures, such as implementing an order of selection giving priority for services to individuals with the most significant disabilities, establishing a financial needs test for various services, implementing policies for consumer participation in the cost of services, and implementing the requirement to seek comparable services and benefits for certain services, among others.

Under the VR program, agencies must comply with several complex Federal fiscal requirements related to maintenance of effort, reallotment, reservation of funds for pre-employment transition services, and match, among others. VR agencies must understand, track, assess, and adjust, when necessary, program activities to meet these requirements while maximizing program outcomes. Additionally, the lack of knowledge and skills in fiscal and resource management can negatively affect the ability of VR agency personnel to meet consumer needs, for example, necessitating the implementation of orders of selection limiting the numbers of eligible individuals served in the VR program. With regard to effective resource management, the training and technical assistance will support the assessment, development, and enhancement of staff knowledge, skills, and abilities to ensure that—

• Resources, including program funds and personnel, are being used for allowable purposes and innovative employment strategies and supports that maximize employment outcomes for individuals with disabilities, including students and youth with disabilities and individuals with significant and the most significant disabilities;

• Programs have sound internal controls and reliable reporting systems upon which to base fiscal and programmatic decision-making to support attainment of program goals and objectives, including those related to increasing the numbers and qualifications of service delivery personnel; and

• Resources, including program funds and personnel, are maximized for program needs.

The following are examples of activities the VRTAC–QM may undertake to address weaknesses in resource management:

• Assess grantee financial management processes used to support attainment of fiscal and programmatic outcomes (for example, whether an agency's fiscal processes support the accurate tracking and reporting of non-Federal funds to maximize the drawdown of Federal award funds to support attainment of employment outcomes). The assessment will be used to identify areas for improvement in fiscal processes that will assist the agency in meeting program goals.

• Assess personnel training and technical assistance needs to identify gaps in fiscal knowledge, skills, and abilities that prevent the agency from effective and efficient resource utilization necessary to achieve employment outcomes.

• Provide intensive training and technical assistance on financial planning to maximize program resources and attainment of program goals and objectives, maximizing opportunities for funds matching, avoiding potential maintenance of effort and match penalties, and meeting the reservation of funds requirement for pre-employment transition services in order to increase resources available for service delivery.

• Provide technical assistance on implementing Federal, State, and program fiscal requirements, including internal controls, in an efficient and effective manner to reduce unnecessary burden and to focus efforts on program outcomes.

• Provide technical assistance on the identification, collection, and analysis of program and fiscal data necessary for program management and maximizing available resources to support consumer services.

Absolute Priority 2: Vocational Rehabilitation Technical Assistance Center for Quality Employment.

The purpose of this priority is to fund a cooperative agreement to establish a Vocational Rehabilitation Technical Assistance Center for Quality Employment (VRTAC–QE).

The purpose of the VRTAC–QE is to upgrade and increase the competencies, skills, and knowledge of VR personnel to implement and sustain employment strategies and supporting practices that enable individuals with disabilities to achieve quality employment and career advancement, particularly competitive integrated employment as defined in the Rehabilitation Act. The center will include strategies and practices that meet the needs and promote the quality employment of individuals with significant and the most significant disabilities, students and youth with disabilities, and traditionally underserved populations. The VRTAC–QE will implement a coordinated plan to provide intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance to State VR agencies on a broad range of employment strategies and supporting practices.

Employment strategies for consideration include, but are not limited to, the following:

(a) Career pathways education, training, and supports in high-demand occupations, including those in science, technology, engineering, and mathematics (STEM) fields.

(b) Registered and industry-recognized apprenticeships, pre-apprenticeships, and on-the-job training.

(c) Supported employment and customized employment.

(d) Customized training and credential programs to meet employer demand.

(e) Self-employment and entrepreneurship, including services available under the Randolph-Sheppard Vending Facility Program.

(f) Business engagement and employer supports, including dual customer models such as Progressive Employment.

Supporting practices for consideration include, but are not limited to, the following:

(1) Practices to enhance the employment capacity of individuals with the most significant disabilities receiving supported employment

services, such as the Individual Placement and Support model.

(2) Pre-employment transition services that prepare students with disabilities and transition services that prepare youth with disabilities to identify career interests through work-based learning and early career exploration opportunities, including internships and job shadowing, with a focus on high-demand and STEM careers.

(3) Career counseling techniques and resources, including labor market information tools such as Career Index Plus.

(4) Strategies involving workforce development partners, community rehabilitation programs, and other community-based organizations to provide the comprehensive support services that individuals with significant and the most significant disabilities need to succeed, such as the Integrated Resource Teams model.

(5) Approaches that encourage VR clients to enter and remain engaged in the VR process, such as rapid engagement, motivational interviewing, benefits counseling, and financial empowerment training, and vehicles such as the Achieving a Better Life Experience (ABLE) tax-free accounts for individuals with disabilities.

(6) Community outreach strategies to expand the pool of potential VR applicants and referral sources, including traditionally underserved populations.

Requirements: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following requirements apply to the VRTAC–QM and VRTAC–QE. The requirements are from the NFP.

Project Requirements of Priority 1

To meet the requirements of this priority, the VRTAC–QM must, at a minimum, conduct one or more of the following activities:

(1) Establish a committee on quality management of State VR programs that meets at least semi-annually to obtain individual advice and recommendations for the project.

The committee must include, but is not limited to, individuals with disabilities, representatives from State VR agencies, representatives from community rehabilitation programs, stakeholders, and individuals with subject matter expertise in improving outcomes through effective program and resource management and in employment strategies for people with disabilities. At a minimum, the committee members will provide individual input and recommendations pertaining to the implementation of the project and the project evaluation and quality assurance plan.

(2) Establish a state-of-the-art website and information technology (IT) platform for communicating with State VR agencies and ensure that all products produced by the VRTAC–QM and posted on the website meet government and industry-recognized standards for accessibility.

The website will become a key training and technical assistance delivery vehicle; a major communication center for the VRTAC–QM and State VR agencies; and the central repository of information about quality management strategies and practices that will form the basis for intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance.

(3) Complete a comprehensive review of programmatic and fiscal quality management strategies and practices for VR services for individuals with disabilities to achieve employment outcomes and develop an overarching training and technical assistance plan for the project. Both the review and the plan must be made available to the public, ensuring applicable privacy requirements are met.

The purpose of the review is to identify those strategies and practices for inclusion in VRTAC–QM's overarching training and technical assistance plan. The center will develop an analytical framework and selection criteria against which to evaluate potential strategies and practices. The analysis will focus on: State VR agency needs and priorities, up-to-date information on quality management strategies and practices that have proven to be effective in the field of rehabilitation as well as other public and private sectors of the economy that may have applicability to the management of VR agencies, and quantitative and qualitative research on the effectiveness of the identified program and resource management strategies and practices leading to improved service delivery and employment outcomes for individuals with disabilities.

Sources of information used for this review may include: State VR agency interviews and consultations; information from such sources as the RSA–911 Case Service Report aggregate data, general labor market data and information, Unified or Combined State Plans, and RSA monitoring reports; and information and resources generated by technical assistance centers funded by the U.S. Departments of Education, Labor, and Health and Human Services.

The overarching training and technical assistance plan must include, at a minimum—

(a) Quality management strategies and practices that result in improved service delivery and employment outcomes for individuals with disabilities, including the rationale for their selection;

(b) Conceptual framework for the selected strategies and practices, including key assumptions, expectations, and presumed relationships or linkages among strategies and practices;

(c) Nature and scope of the intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance to be provided in support of the selected strategies and practices; and

(d) Protocols and timelines for requesting and obtaining training and technical assistance.

(4) Provide intensive training and technical assistance to State VR agencies.

Intensive training and technical assistance will be provided to increase State VR agencies' capacity to adopt, expand, or sustain programmatic and fiscal quality management strategies and practices that improve the quality of service delivery and employment outcomes. Intensive training and technical assistance will be provided on-site, over an extended period, under the terms of signed intensive training and technical assistance agreements between the VRTAC–QM and the participating State VR agencies. Numerical targets for the number of intensive training and technical assistance agreements will be included in the cooperative agreement between RSA and the VRTAC–QM. Agreements will reflect the participating VR agencies' needs and priorities, goals, and objectives. They must include the following components:

(a) Quality management strategies and practices to be implemented by the State VR agency and that result in improved service delivery and employment outcomes.

(b) Nature and scope of the training and technical assistance to be provided by the VRTAC–QM.

(c) Roles and responsibilities of the VRTAC–QM, State VR agency, other workforce development partners, community rehabilitation programs, and other partners, including the commitment of resources.

(d) Logic model [1] that includes: Performance outcomes, targets, and baselines; project activities, inputs, and outputs; and data collection and analysis commitments.

The intensive training and technical assistance agreements will be developed based on the VRTAC–QM and participating VR agency's review and analysis of such information sources as Unified or Combined State Plans; RSA–911 and other performance data; general labor market data and information; RSA monitoring reports; State audit reports; and a review of pertinent Federal, State, and local resources in the State, including existing employment and training programs.

(5) Provide targeted training and technical assistance and universal training and technical assistance on programmatic and fiscal quality management strategies and practices that lead to effective and efficient service delivery and quality employment outcomes.

(6) Coordinate training and technical assistance with other technical assistance centers.

The VRTAC–QM must coordinate the provision of training and technical assistance with the Vocational Rehabilitation Technical Assistance Center for Quality Employment and other RSA-funded technical assistance and training centers. This coordination is particularly critical when developing intensive training and technical assistance agreements with the VR agencies to avoid confusion and duplication of efforts. The VRTAC–QM must also coordinate with other technical assistance centers funded by the U.S. Departments of Education, Labor, and Health and Human Services.

(7) Present at a national conference or regional forums or specialized meetings throughout the grant period, with special focus in the fifth year of the grant to disseminate the VRTAC–QM's summative findings and results.

The primary objectives are to help State VR agencies to expand and sustain their VRTAC–QM programmatic and fiscal management strategies and practices that result in improved service delivery and employment outcomes by promoting an exchange of ideas and experiences with other participating VR agencies and to encourage other State VR agencies to consider adopting VRTAC–QM strategies and practices. In addition, the VRTAC–QM will explore cost-effective approaches such as virtual convenings to engage VR agencies and partners who may be unable to attend in-person meetings.

(8) Develop a plan for an evaluation, including a timeline for the evaluation and measurement benchmarks, that will assess the effect of the center's training and technical assistance on the service delivery and employment outcomes achieved by the VR agencies that received the center's services. This should be done through an analysis of the quality, relevance, and usefulness of VRTAC–QM training and technical assistance activities designed to improve State VR agencies' program and resource management and lead to improved service delivery and achievement of high-quality employment outcomes and career advancement.

Project Requirements of Priority 2

To meet the requirements of this priority, the VRTAC–QE must, at a minimum, conduct one or more of the following activities:

(1) Establish a state-of-the-art website and IT platform for communicating with State VR agencies and ensure that all products produced by the VRTAC–QE and posted on the website meet government and industry-recognized standards for accessibility.

The website will become a key training and technical assistance delivery vehicle; a major communication center for the VRTAC–QE, State VR agencies, workforce development partners, and other professionals; and the central repository of information about employment strategies and practices that will form the basis for intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance.

(2) Complete a comprehensive review of effective strategies and practices leading to quality employment for individuals with disabilities and develop an overarching training and technical assistance plan for the project. Both the review and the plan must be made available to the public, ensuring applicable privacy requirements are met.

The purpose of the review is to identify employment strategies and supporting practices for inclusion in VRTAC–QE's overarching training and technical assistance plan. The center will develop an analytical framework and selection criteria against which to evaluate potential strategies and practices. The analysis will focus on: State VR agency needs and priorities; up-to-date information on national trends, barriers, challenges, and opportunities regarding quality employment for individuals with disabilities, including factors leading to successful employment of individuals with significant and the most significant disabilities, students and youth with disabilities, and traditionally underserved populations; and quantitative and qualitative research on the effectiveness of the identified strategies and practices.

Sources of information for this review may include, but are not limited to, State VR agency interviews and consultations; analyses of aggregate RSA–911 Case Service Report data, Unified or Combined State Plans, and RSA monitoring reports; information and tools generated by RSA's vocational rehabilitation technical assistance centers and special demonstration projects, available on the National Clearinghouse of Rehabilitation Training Materials website; and other resources funded by the U.S. Departments of Education, Labor, and Health and Human Services, and institutions of higher education.

The overarching training and technical assistance plan must include, at a minimum—

(a) Employment strategies and supporting practices, including the rationale for their selection;

(b) Conceptual framework for the selected strategies and practices, including key assumptions, expectations, and presumed relationships or linkages among strategies and practices;

(c) Nature and scope of the intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance to be provided in support of the selected strategies and practices; and

(d) Protocols and timelines for requesting and obtaining training and technical assistance.

(3) Provide intensive training and technical assistance to State VR agencies.

Intensive training and technical assistance will be provided to increase the capacity of State VR agencies to adopt, expand, or sustain employment strategies and supporting practices that improve the quality of employment outcomes. Intensive training and technical assistance will be provided on-site, over an extended period, under the terms of signed intensive training and technical assistance agreements between the VRTAC–QE and the participating State VR agencies.

[1] "Logic model" (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Numerical targets for the number of intensive training and technical assistance agreements will be included in the cooperative agreement between RSA and the VRTAC–QE. Agreements will reflect the participating VR agencies' needs and priorities, goals, and objectives. They must include the following components:

(a) Employment strategies and supporting practices to be implemented by the State VR agency.

(b) Nature and scope of the training and technical assistance to be provided by the VRTAC–QE.

(c) Roles and responsibilities of the VRTAC–QE, State VR agency, workforce development partners, community rehabilitation programs, and other partners, including the commitment of resources.

(d) Logic model [2] that includes: State-specific performance outcomes, targets, and baselines; project activities, inputs, and outputs; and data collection and analysis commitments.

The intensive training and technical assistance agreements will be developed based on the VRTAC–QE and participating VR agency's review and analysis of such information sources as Unified or Combined State Plans; RSA–911 and other performance data; RSA monitoring reports; relevant labor market information; and a review of pertinent Federal, State, and local resources in the State, including existing employment and training programs.

Intensive training and technical assistance will be implemented in coordination with, and leveraging the resources of, State and local workforce development partners and other parties specified in the intensive training and technical assistance agreement.

(4) Provide targeted training and technical assistance meeting the identified needs of a limited number of State VR agencies, as well as universal training and technical assistance broadly available to all State VR agencies and their partners.

(5) Coordinate training and technical assistance with other technical assistance centers.

The VRTAC–QE must coordinate the provision of training and technical assistance with the Vocational Rehabilitation Technical Assistance Center for Quality Management and other RSA-funded training and technical assistance investments. This coordination is particularly critical when developing intensive training and technical assistance agreements with the VR agencies to avoid confusion and duplication of efforts. The VRTAC–QE must also coordinate with other training and technical assistance resources funded by the U.S. Departments of Education, Labor, and Health and Human Services, and other pertinent Federal or State organizations, and institutions of higher education, as appropriate.

(6) Disseminate VRTAC–QE summative findings and results through a national conference or regional forums or specialized meetings throughout the grant period and at with special focus in the fifth year of the grant. The primary objectives are to help State VR agencies to expand and sustain their VRTAC–QE strategies and practices and to encourage other State VR agencies to consider adopting some VRTAC–QE strategies and practices by promoting an exchange of ideas and experiences with other participating VR agencies. To maximize the dissemination of project findings and results throughout the grant period and with special focus in the fifth year, the VRTAC–QE will explore cost-effective approaches such as virtual convenings to engage VR agencies and partners who may be unable to attend in-person meetings.

(7) Develop a plan for an evaluation, including a timeline for the evaluation and measurement benchmarks, that will assess VRTAC–QE employment strategies and supporting activities' effect on VR participants' employment outcomes and career advancement. The evaluation will also assess the quality, relevance, and usefulness of the VRTAC–QE's training and technical assistance in improving State VR agencies' ability to identify and implement the appropriate strategies and practices.

Application Requirements: The following application requirements apply to both Priority 1 and Priority 2. The Department encourages innovative approaches to meet these requirements. Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Quality of the Evaluation Plan,'' how the proposed project will meet the evaluation requirements of the priority. Applicants must describe the anticipated implementation steps, milestones, and timelines for the development of a logic model for the project. The logic model must include data elements, inputs, activities, outputs, and short-term and long-term performance indicators regarding—

(1) Quantitative outcomes resulting from the program management or employment strategies and practices, including—

(i) Quality and timeliness of the VR processes and services;

(ii) Number and quality of employment outcomes;

(iii) VR participants' employment or career-readiness;

(iv) Cost-effectiveness; and

(v) Sustainability;

(2) Quality, relevance, and usefulness of the project's training and technical assistance activities;

(3) Quantitative or qualitative insights about the relationship between strategies, practices, and training and technical assistance activities on critical outcomes for VR personnel, VR clients, and key partners, including through—

(i) Pre- and post-training assessments;

(ii) Comparison groups;

(iii) Focus groups; or

(iv) Success stories.

(b) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how the applicant will ensure that—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have historically been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) Projects will be operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws;

(3) Key project personnel, consultants, and

subcontractors have the qualifications and experience to meet all the requirements of the priority, including expertise in—

(i) Programmatic areas addressed in the Project Requirements section of the priority;

(ii) Program and resource management and oversight;

(iii) Knowledge translation and dissemination, including the effective use of communication technologies; and

(iv) Project evaluation leading to continuous improvement, including qualitative and quantitative assessments;

(4) The applicant and key partners have adequate resources to carry out the proposed project activities, and achieve anticipated project outcomes and impact on the VR services to individuals with disabilities, including assurances that the proposed allocation of human and financial resources for project

[2] ''Logic model'' (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

evaluation will be enough to meet the requirements in section (a) of the application requirement regarding the ''Quality of the Evaluation Plan,'' above; and

(5) The proposed costs are reasonable in relation to the anticipated results and benefits.

(c) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how the applicant will ensure that—

(1) The project's intended outcomes, including implementation of the evaluation plan, will be achieved on time and within budget, through—

(i) Clearly defined responsibilities of key project personnel, consultants, and contractors, as applicable;

(ii) Procedures to track and ensure completion of the action steps, timelines, and milestones established for key project activities, requirements, and deliverables, in accordance with the cooperative agreement between RSA and the applicant;

(iii) Internal monitoring processes to ensure that the project is being implemented in accordance with an established project performance plan, including timelines and milestones; and

(iv) Financial and budgetary oversight processes to

ensure timely obligations and reporting of grant funds, in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 and the terms and conditions of the Federal award;

(2) The allocation of key project personnel, consultants, and contractors—including levels of effort of key personnel—will be appropriate and adequate to achieve the project's intended outcomes, including an assurance that key personnel will have enough availability to ensure timely communications with stakeholders and RSA;

(3) The proposed management plan will ensure that the products and services are of high quality, relevance, and usefulness, in both content and delivery; and

(4) The proposed project will benefit from a diversity of perspectives, including those of State and local personnel, providers, researchers, and policy makers, among others, in its development and operation.

Additional Application Requirements for Priority 1

The following application requirements apply only to priority 1 (VRTAC–QM). The Department encourages innovative approaches to meet these requirements. Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will increase State VR agencies' capacity to improve the quality of VR services and employment outcomes for individuals with disabilities by enabling VR agencies to develop and implement efficient and effective program and resource management techniques leading to increases in the numbers and improved skills of VR counselors and other service delivery personnel. To meet this requirement, the applicant must demonstrate—

(1) Knowledge about State VR program challenges, opportunities, barriers, and trends regarding program and resource management or quality employment outcomes for individuals with disabilities including those with significant and the most significant disabilities, students and youth with disabilities, and traditionally underserved populations;

(2) Knowledge about Federal, State, and nongovernment initiatives to promote program and resource management and quality employment outcomes for individuals with disabilities, particularly in response to requirements under WIOA;

(3) The proposed project's potential to contribute to these Federal, State, and nongovernment initiatives by assisting State VR agencies in equipping personnel with the necessary skills and training to implement the substantive provisions of the Rehabilitation Act introduced by WIOA that are designed to improve the quality of employment outcomes for individuals with disabilities; and

(4) How the proposed project will increase State VR agencies' capacity to implement program and resource management strategies leading to improved VR services, employment outcomes, and career advancement opportunities for individuals with disabilities.

(b) Demonstrate, in the narrative section of the application, under ''Quality of Project Services,'' how the proposed project will achieve the goals, objectives, and intended outcomes of this priority. To meet this requirement, the applicant must describe its plan for implementing the project, including major implementation activities, timelines, and milestones (particularly for the initial fiscal year), as well as key assumptions and expectations, presumed relationships or linkages among variables, and underlying rationale and empirical support, for the following Project Requirements of the priority:

(1) State-of-the-art website. Applicants must describe how the website will serve as an effective communication center, training and technical assistance delivery vehicle, and repository of information about quality management or employment strategies and practices, including—

(i) Expected features and capabilities, including information-delivery and stakeholder-convening technologies; and

(ii) Anticipated uses of such features and capabilities in support of the project goals and objectives.

(2) Comprehensive review. Applicants must describe how the comprehensive review will provide the factual basis for the project training and technical assistance plan. At a minimum, the comprehensive review must include—

(i) Input from State VR agencies about their needs, priorities, and innovative approaches to program and resource management that lead to improved service delivery;

(ii) Information regarding the latest—

(A) National trends, barriers, challenges, and opportunities;

(B) Effective and efficient program and resource management strategies, techniques, and practices that may be applicable to State VR agencies; and

(C) Additional information that the applicant deems relevant; and

(iii) An analytical framework for assessing the collected information and selecting the program and resource management strategies and practices for inclusion in the training and technical assistance plans.

(3) Provision of intensive training and technical assistance. Applicants must describe how the intensive training and technical assistance agreements will increase State VR agencies' capacity to improve the State VR agencies' performance and quality employment outcomes for individuals with disabilities, through State-appropriate—

(i) Program and resource management;

(ii) Federal, State, and local partnerships; and

(iii) Performance outcomes, outputs, inputs, targets, baselines, and data collection requirements.

(4) Provision of targeted training and technical assistance and universal training and technical assistance. Applicants must describe how each training and technical assistance modality (targeted or universal) will help State VR agencies to adopt, expand, and sustain program and resource management practices. For each training and technical assistance modality, describe—

(i) Topics, activities, and products;

(ii) Intended audience and outreach strategies;

(iii) Content delivery and dissemination methods; and

(iv) Steps to ensure quality, relevance, and usefulness.

(5) Coordination. The applicant must describe how it will maximize coordination between the VRTAC–QE and the VRTAC–QM and seek opportunities to coordinate with other training and technical assistance investments, including those funded by the U.S. Departments of Education, Labor, and Health and Human Services, in the provision of training and technical assistance to State VR agencies.

(6) National conference, regional forums, or specialized meetings throughout the grant period and with special focus in the fifth year of the grant performance period. Applicants must describe how the project will disseminate its summative findings and results, including cost-effective approaches such as virtual convenings to engage State VR agencies and other potential Federal, State, local, and nongovernment partners, including—

(i) Types of events (*e.g.,* conferences, forums, specialized meetings);

(ii) Target audience (*e.g.,* by event type, types of stakeholders with a variety of roles and sectors); and

(iii) Convening modes (in-person, virtual).

(c) Demonstrate, in the narrative section of the application under ''Quality of the Evaluation Plan,'' the applicant's capacity and experience in addressing the State VR agencies' training and technical assistance needs in the areas of program and resource management, including but not limited to strategic planning and performance improvement leading to performance improvement, including SWOT assessment related to implementing strategies that ensure education funds are spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

Additional Application Requirements for Priority 2

The following application requirements apply only to Priority 2 (VRTAC–QE). The Department encourages innovative approaches to meet these requirements. Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will increase State VR agencies' capacity to improve the quality of VR services and employment outcomes for individuals with disabilities by enabling VR agencies to develop and implement innovative employment and support strategies that are designed to improve employment outcomes and career advancement for individuals with disabilities. To meet this requirement, the applicant must demonstrate—

(1) Knowledge about State VR program challenges, opportunities, barriers, and trends regarding program and resource management or quality employment outcomes for individuals with disabilities including those with significant and the most significant disabilities, students and youth with disabilities, and traditionally underserved populations;

(2) Knowledge about Federal, State, and nongovernment initiatives to promote program and resource management and quality employment outcomes for individuals with disabilities, particularly in response to requirements under WIOA;

(3) The proposed project's potential to contribute to these Federal, State, and nongovernment initiatives by assisting State VR agencies in equipping personnel with the necessary skills and training to implement the substantive provisions of the Rehabilitation Act introduced by WIOA that are designed to improve the quality of employment outcomes for individuals with disabilities; and

(4) How the proposed project will increase State VR agencies' capacity to implement employment strategies and supporting practices leading to improved VR services, employment outcomes, and career advancement opportunities for individuals with disabilities

(b) Demonstrate, in the narrative section of the application, under ''Quality of Project Services,'' how the proposed project will achieve the goals, objectives, and intended outcomes of this priority. To meet this requirement, the applicant must describe its plan for implementing the project, including major implementation activities, timelines, and milestones (particularly for the initial fiscal year), as well as key assumptions and expectations, presumed relationships or linkages among variables, and underlying rationale and empirical support, for the following Project Requirements of the priority:

(1) State-of-the-art website. Applicants must describe how the website will serve as an effective communication center, training and technical assistance delivery vehicle, and repository of information about quality management or employment strategies and practices, including—

(i) Expected features and capabilities, including information-delivery and stakeholder-convening technologies; and

(ii) Anticipated uses of such features and capabilities in support of the project goals and objectives.

(2) Comprehensive review. Applicants must describe how the comprehensive review will provide the factual basis for the project training and technical assistance plan. At a minimum, the comprehensive review must include—

(i) Input from State VR agencies about their needs, priorities, and innovative approaches to program and resource management that lead to quality employment and career-readiness that lead to quality employment outcomes;

(ii) Information regarding the latest—

(A) National trends, barriers, challenges, and opportunities;

(B) Effective employment strategies and practices that prepare individuals with disabilities to compete in the global economy and designed to create or expand innovative and affordable paths to relevant careers through postsecondary credentials or job-ready skills; and

(C) Additional information that the applicant deems relevant; and

(iii) An analytical framework for assessing the collected information and selecting the employment and career-readiness strategies and practices for inclusion in the training and technical assistance plans.

(3) Provision of intensive training and technical assistance. Applicants must describe how the intensive training and technical assistance agreements will increase State VR agencies' capacity to improve the State VR agencies' performance and quality employment outcomes for individuals with disabilities, through State-appropriate—

(i) Employment strategies and supporting practices;

(ii) Federal, State, and local partnerships; and

(iii) Performance outcomes, outputs, inputs, targets, baselines, and data collection requirements.

(4) Provision of targeted training and technical assistance and universal training and technical assistance. Applicants must describe how each training and technical assistance modality (targeted or universal) will help State VR agencies to adopt, expand, and sustain employment strategies and practices that improve employment outcomes and career advancement opportunities for eligible VR participants. For each training and

technical assistance modality, describe—

(i) Topics, activities, and products;

(ii) Intended audience and outreach strategies;

(iii) Content delivery and dissemination methods; and

(iv) Steps to ensure quality, relevance, and usefulness.

(5) Coordination. The applicant must describe how it will maximize coordination between the VRTAC–QE and the VRTAC–QM and seek opportunities to coordinate with other technical assistance centers, including those funded by the U.S. Departments of Education, Labor, and Health and Human Services, in the provision of training and technical assistance to State VR agencies.

(6) National conference, regional forums, or specialized meetings throughout the grant period, with special focus in the fifth year of the grant performance period. Applicants must describe how the project will disseminate its summative findings and results, including cost-effective approaches such as virtual convenings to engage State VR agencies and other potential Federal, State, local, and nongovernment partners, including—

(i) Types of events (*e.g.,* conferences, forums, specialized meetings);

(ii) Target audience (*e.g.,* by event type, types of stakeholders with a variety of roles and sectors); and

(iii) Convening modes (in-person, virtual).

Definitions: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following definitions apply to the VRTAC–QM and VRTAC–QE priorities. The definitions are from the NFP.

Intensive training and technical assistance means training and technical assistance provided to State VR agencies and State VR agency personnel primarily on-site or through remote delivery, as needed and appropriate, over an extended period. Intensive training and technical assistance are based on an ongoing relationship between the training and technical assistance center staff and State VR agencies and State VR agency personnel under the terms of a signed intensive training and technical assistance agreement.

Targeted training and technical assistance means training and technical assistance based on needs common to one or more State VR agencies and State VR agency personnel on a time-limited basis and with limited commitment of training and technical assistance center resources. Targeted training and technical assistance are delivered through virtual or in-person methods tailored to the identified needs of the participating State VR agencies and State VR agency personnel.

Universal training and technical assistance means training and technical assistance broadly available to State VR agencies and State VR agency personnel and other interested parties through their own initiative, resulting in minimal interaction with training and technical assistance center staff. Universal training and technical assistance includes generalized presentations, products, and related activities available through a website or through brief contacts with the training and technical assistance center staff.

Program Authority: 29 U.S.C. 772(a)(1) and 29 U.S.C. 773(b)(1).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR parts 385 and 373. (e) The NFP.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

VRTAC–QM

Type of Award: Cooperative agreement.

Estimated Available Funds: $3,344,560.

Maximum Award: We will not make an award exceeding $3,344,560 for a single budget period of 12 months.

Note: Of the $3,344,560 available for this award, $3,000,000 is from the Rehabilitation Training program and will be used for the provision of training and technical assistance, and $344,560 is from the Demonstration and Training program and will be used for evaluation activities. These funds must be budgeted and tracked separately.

Applications must include separate ED–524 budget forms and budget narratives for funds requested under the Rehabilitation Training and Demonstration and Training programs, respectively.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

VRTAC–QE

Type of Award: Cooperative agreement.

Estimated Available Funds: $3,344,560.

Maximum Award: We will not make an award exceeding $3,344,560 for a single budget period of 12 months.

Note: Of the $3,344,560 available for this award, $3,000,000 is from the Rehabilitation Training program and will be used for the provision of training and technical assistance, and $344,560 is from the Demonstration and Training program and will be used for evaluation activities. These funds must be budgeted and tracked separately.

Applications must include separate ED–524 budget forms and budget narratives for funds requested under the Rehabilitation Training and Demonstration and Training programs, respectively.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

VRTAC–QM and VRTAC–QE

1. *Eligible Applicants:* States and public or private nonprofit agencies and organizations, including Indian Tribes and institutions of higher education.

2. *Cost Sharing or Matching:* The Department determined that cost sharing of 10 percent of the total cost of the project is required of grantees under both the Rehabilitation Training program and the Demonstration and Training program. Therefore, cost sharing of 10 percent of the total cost of the project (*i.e.,* based on the sum of Federal and non-Federal project costs) is required of the grantee under this competition. Any program income that may be incurred during the period of performance may only be directed towards advancing activities in the approved grant application and may not be used towards the 10 percent cost share requirement. The Secretary does not, as a general matter, anticipate waiving this requirement. However, the Secretary may waive part of the non-Federal share of the cost of the project after negotiations if the applicant demonstrates that it does not have sufficient resources to contribute the

entire cost share. Furthermore, given the importance of the cost share funds to the long-term success of the project, eligible entities must identify appropriate cost share funds in the proposed budget. Finally, the selection criteria include factors such as ''the adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization'' and ''the relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project,'' which may include a consideration of demonstrated cost sharing support.

Note: The awards will be jointly funded by the Rehabilitation Training program and the Demonstration and Training program, which have different indirect cost rate requirements. These funds must be budgeted and tracked separately, with the correct indirect cost rate applied to each set of funds.

Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award. This requirement applies only to the Rehabilitation Training program funds, which amount to up to $3,000,000 of the $3,344,560 available for each award.

Under 34 CFR 373.22, indirect cost reimbursement for grants under the Demonstration and Training program is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or 10 percent of the total direct cost base, whichever amount is less. This requirement applies only to the Demonstration and Training program funds, which amount to up to $344,560 of the $3,344,560 available for each award.

3. *Subgrantees:* Under 34 CFR 373.23(b), a grantee under this competition may not award subgrants using Demonstration and Training program funds to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants using Rehabilitation Training program funds—to directly carry out project activities described in its application—to the following types of entities: States and public or private nonprofit agencies and organizations, including Indian Tribes and institutions of higher education. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee. Under 34 CFR 75.708(e) and 373.23(b), a grantee may use either Demonstration and Training program or Rehabilitation Training program funds to contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

IV. Application and Submission Information

1. *Application and Submission Information:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Rehabilitation Training competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2020.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 45 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative, Part III.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Need for project and the significance of the proposed project.* (10 points)

The Secretary considers the need for and significance of the proposed project. In determining the need for and significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in employment, independent living services, or both, as appropriate.

(b) *Quality of the project design.* (25 points)

(1) The Secretary considers the quality of the design of the proposed project. In determining the quality of the

design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(iv) The extent to which the proposed project will increase efficiency in the use of time, staff, money, or other resources in order to improve results and increase productivity.

(c) *Quality of project services.* (25 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(iii) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(d) *Quality of project personnel and adequacy of resources.* (15 points)

The Secretary considers the quality of project personnel who will carry out the proposed project and the adequacy of resources for the proposed project. In determining the quality of the personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, in determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iii) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(iv) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(v) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project

(e) *Quality of the management plan and strategy to scale.* (15 points)

The Secretary considers the quality of the management plan and the strategy to scale the proposed project. In determining the quality of the management plan for the proposed project and the applicant's capacity to scale the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a national or regional level (as defined in 34 CFR 77.1(c)) working directly, or through partners, during the grant period.

(f) *Quality of the project evaluation.* (10 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

In addition to the selection criteria listed above, the Secretary, in making awards under this program, in accordance with 34 CFR 385.33, considers the past performance of the applicant in carrying out similar training activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices, and attainment of established project objectives.

This criterion will be used after non-Federal reviewers score the applications and will be applied to all applications that are recommended for funding.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

When reviewing prior performance under 34 CFR 75.217(d)(3) and conducting risk assessments pursuant to 2 CFR 200.205, the Secretary will consider factors such as whether applicants have demonstrated sufficient institutional capacity through the commitment of adequate resources, as described in the selection criteria, and adequate past performance in fully implementing multiple awards.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit quarterly and annual performance reports that provide the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The GPRA measures applicable to the VRTAC–QM and the VRTAC–QE are as follows:

(a) Number and percentage of participating State VR agencies reporting improved coordination and collaboration with Federal, State, or local organizations as a result of the training and technical assistance.

(b) Number and percentage of VR agency personnel reporting that the training and technical assistance is high in quality, relevant, and useful to their work.

(c) Of State VR agencies that received training and technical assistance, the percentage change in consumers achieving an employment outcome compared to the prior year.

(d) Of State VR agencies that received training and technical assistance, the number and percentage of agencies that achieved their negotiated level of performance for the measurable skill gains indicator in the VR Program Year.

In addition to the GPRA measures, the following program measure has been established for the VRTAC–QM and the VRTAC–QE: The number and percentage of participating State VR agencies that adopt quality management or quality employment strategies and practices as a result of training and technical assistance provided under this grant.

Applicable short-term and long-term indicators and targets will be specified in the VRTAC–QM and VRTAC–QE cooperative agreements. Grant recipients will report the data necessary to assess performance against these measures, indicators, and targets in their quarterly, annual and final performance reports.

Annual project progress toward meeting project goals must be posted on the project website.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at

www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

Commissioner, Rehabilitation Services Administration, Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–16686 Filed 7–30–20; 4:15 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1575–003; ER10–3050–005; ER14–2871–014; ER16–182–009; ER20–71–001; ER20–72–001; ER17–1785–004; ER20–74–001; ER16–1130–007; ER16–1131–007; ER16–1132–007; ER17–47–006; ER19–1658–002; ER17–1574–004; ER10–3245–011; ER10–3249–011; ER10–3250–011; ER18–2241–002; ER19–426–002; ER19–427–002; ER19–1660–002; ER19–1662–002; ER20–75–001; ER10–2488–019; ER15–621–013; ER20–77–001; ER19–1663–002; ER19–1664–002; ER19–1665–002; ER11–2639–012; ER15–622–013; ER10–3052–004 ; ER15–463–013; ER16–72–009; ER20–78–001; ER20–76–002; ER19–1666–002; ER18–2013–003; ER15–110–013; ER17–48–007; ER19–1667–002; ER19–274–001; ER13–1586–015; ER10–1992–021; ER16–902–006; ER18–47–005; ER20–79–001; ER16–1129–007; ER10–3053–005; ER18–2240–002.

Applicants: Alta Oak Realty, LLC, Cabazon Wind Partners, LLC, Cameron Ridge, LLC, Cameron Ridge II, LLC, Coachella Hills Wind, LLC, Coachella Wind Holdings, LLC, Coachella Wind, LLC, Desert Hot Springs, LLC, DifWind Farms Limited II, DifWind Farms Limited V, DifWind Farms LTD VI, Dutch Wind, LLC,EUI Affiliate LLC, Foote Creek II, LLC, Foote Creek III, LLC, Foote Creek IV, LLC, Garnet Wind, LLC, Luz Solar Partners VIII, Ltd., Luz Solar Partners IX, Ltd., Mojave 3/4/5 LLC, Mojave 16/17/18 LLC, Oasis Alta, LLC, Oasis Power Partners, LLC, Pacific Crest Power, LLC, Painted Hills Wind Holdings, LLC, PHWD Affiliate LLC, Refresh Wind, LLC, Refresh Wind 2, LLC, Ridge Crest Wind Partners, LLC, Ridgetop Energy, LLC, Rock River I, LLC, San Gorgonio Westwinds II, LLC, San Jacinto Wind II, LLC, Tehachapi Plains Wind, LLC, Terra-Gen 251 Wind, LLC, Terra-Gen Dixie Valley, LLC, Terra-Gen Energy Services, LLC, Terra-Gen Mojave Windfarms, LLC, Terra-Gen VG Wind, LLC, TG High Prairie, LLC, TGP Energy Management, LLC, Victory Garden Phase IV, LLC, Voyager Wind I, LLC, Voyager Wind II, LLC, Voyager Wind IV Expansion, LLC, Whitewater Hill Wind Partners, LLC, VPI Enterprises, LLC, Yavi Energy, LLC, DifWind Farms Limited I, San Gorgonio Westwinds II—Windustries, LLC.

Description: Notice of Non-Material Change in Status of Alta Oak Realty, LLC, et al.

Filed Date: 7/27/20.

Accession Number: 20200727–5185.

Comments Due: 5 p.m. ET 8/17/20.

Docket Numbers: ER19–1643–001.

Applicants: Hopewell Power Generation, LLC.

Description: Report Filing: Refund report to be effective N/A.

Filed Date: 7/27/20.

Accession Number: 20200727–5157.

Comments Due: 5 p.m. ET 8/17/20.

Docket Numbers: ER20–529–003.

Applicants: Wilderness Line Holdings, LLC.

Description: Tariff Amendment: Executed Windstar LGIA & TSA to be effective 6/30/2020.

Filed Date: 7/27/20.

Accession Number: 20200727–5131.

Comments Due: 5 p.m. ET 8/17/20.

Docket Numbers: ER20–1921–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: Amended Filing—Revisions to Attachment AF to Clarify Market Mitigation Process to be effective 8/3/2020.

Filed Date: 7/28/20.

Accession Number: 20200728–5055.

Comments Due: 5 p.m. ET 8/18/20.

Docket Numbers: ER20–1939–000.

Applicants: Calpine Northeast Development, LLC.

Description: Amendment to May 29, 2020 Calpine Northeast Development, LLC tariff filing.

Filed Date: 7/27/20.

Accession Number: 20200727–5173.

Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2508–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA #5699; Queue #AF1–178; Cancel ISA, SA #3039; Queue #W2–075 to be effective 6/30/2020.

Filed Date: 7/27/20.

Accession Number: 20200727–5130.

Comments Due: 5 p.m. ET 8/17/20.

Docket Numbers: ER20–2509–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 5690; Queue No. AF1–184 to be effective 6/30/2020.

Filed Date: 7/27/20.

Accession Number: 20200727–5140.

Comments Due: 5 p.m. ET 8/17/20.

Docket Numbers: ER20–2510–000.

Applicants: Odom Solar LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 9/25/2020.

Filed Date: 7/27/20.

Accession Number: 20200727–5162.

Comments Due: 5 p.m. ET 8/17/20.

Docket Numbers: ER20–2511–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: ISO–NE & NEPOOL; Addition of 30 Min. to Day-Ahead Energy Mkt Submission Window to be effective 9/30/2020.

Filed Date: 7/27/20.

Accession Number: 20200727–5163.

Comments Due: 5 p.m. ET 8/17/20.

Docket Numbers: ER20–2512–000.

Applicants: SR Baxley, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 9/25/2020.

Filed Date: 7/27/20.

Accession Number: 20200727–5164.

Comments Due: 5 p.m. ET 8/17/20.

Docket Numbers: ER20–2513–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Tri-State Rate Schedule No. 113 to be effective 7/28/2020.

Filed Date: 7/27/20.

Accession Number: 20200727–5165.

Comments Due: 5 p.m. ET 8/17/20.

Docket Numbers: ER20–2514–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 5686; Queue No. AF1–187 to be effective 6/29/2020.

Filed Date: 7/27/20.

Accession Number: 20200727–5166.

Comments Due: 5 p.m. ET 8/17/20.

Docket Numbers: ER20–2515–000.

Applicants: SR Georgia Portfolio I MT, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 9/25/2020.
Filed Date: 7/27/20.
Accession Number: 20200727–5167.
Comments Due: 5 p.m. ET 8/17/20.

Docket Numbers: ER20–2516–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Tariff Clean-Up Filing Effective 20200701 to be effective 7/1/2020.
Filed Date: 7/28/20.
Accession Number: 20200728–5046.
Comments Due: 5 p.m. ET 8/18/20.

Docket Numbers: ER20–2517–000.
Applicants: Northern Colorado Interconnect, LLC.
Description: Baseline eTariff Filing: NorCol Interconnect, NorCol & NorCol II SFA to be effective 8/28/2020.
Filed Date: 7/28/20.
Accession Number: 20200728–5053.
Comments Due: 5 p.m. ET 8/18/20.

Docket Numbers: ER20–2518–000.
Applicants: New England Power Pool Participants Committee, ISO New England Inc.
Description: § 205(d) Rate Filing: ISO–NE & NEPOOL; Revisions to ISO Information Policy Re: Defaulting Participants to be effective 10/1/2020.
Filed Date: 7/28/20.
Accession Number: 20200728–5065.
Comments Due: 5 p.m. ET 8/18/20.

Docket Numbers: ER20–2519–000.
Applicants: East Line Solar, LLC.
Description: Baseline eTariff Filing: East Line Solar, LLC MBR Tariff to be effective 7/29/2020.
Filed Date: 7/28/20.
Accession Number: 20200728–5076.
Comments Due: 5 p.m. ET 8/18/20.

Docket Numbers: ER20–2520–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5692; Queue No. AF1–198 to be effective 6/30/2020.
Filed Date: 7/28/20.
Accession Number: 20200728–5084.
Comments Due: 5 p.m. ET 8/18/20.

Docket Numbers: ER20–2521–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5689; Queue No. AF1–193 to be effective 6/29/2020.
Filed Date: 7/28/20.
Accession Number: 20200728–5091.
Comments Due: 5 p.m. ET 8/18/20.

Docket Numbers: ER20–2522–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF—Bartow Amended and Restated NITSA SA–145 to be effective 10/1/2020.
Filed Date: 7/28/20.
Accession Number: 20200728–5092.
Comments Due: 5 p.m. ET 8/18/20.

Docket Numbers: ER20–2523–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA SA No. 5722; Queue No AF1–210 to be effective 6/30/2020.
Filed Date: 7/28/20.
Accession Number: 20200728–5093.
Comments Due: 5 p.m. ET 8/18/20.

Docket Numbers: ER20–2524–000.
Applicants: Weaver Wind, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/27/2020.
Filed Date: 7/28/20.
Accession Number: 20200728–5095.
Comments Due: 5 p.m. ET 8/18/20.

Docket Numbers: ER20–2525–000.
Applicants: Westlands Transmission, LLC.
Description: Baseline eTariff Filing: Rate Schedule FERC No. 1, Transmission Service Agreement to be effective 9/28/2020.
Filed Date: 7/28/20.
Accession Number: 20200728–5096.
Comments Due: 5 p.m. ET 8/18/20.

Docket Numbers: ER20–2526–000.
Applicants: Weaver Wind Maine Master Tenant, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/27/2020.
Filed Date: 7/28/20.
Accession Number: 20200728–5099.
Comments Due: 5 p.m. ET 8/18/20.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC20–12–000.
Applicants: I Squared Capital.
Description: Self-Certification of FC of I Squared Capital.
Filed Date: 7/27/20.
Accession Number: 20200727–5139.
Comments Due: 5 p.m. ET 8/17/20.

Docket Numbers: FC20–13–000.
Applicants: I Squared Capital.
Description: Self-Certification of FC of I Squared Capital.
Filed Date: 7/27/20.
Accession Number: 20200727–5144.
Comments Due: 5 p.m. ET 8/17/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at:

http://www.ferc.gov/docs-filing/efiling/filing-req.pdf. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 28, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16809 Filed 7–31–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–481–000]

Rio Bravo Pipeline Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Rio Bravo Pipeline Project Amendment, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Rio Bravo Pipeline Project Amendment (Project Amendment) involving construction and operation of facilities by Rio Bravo Pipeline Company, LLC (RB Pipeline) in Jim Wells, Kleberg, Kenedy, Willacy, and Cameron Counties, Texas. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the Project Amendment. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public

comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on August 27, 2020. Comments may be submitted in written form.

Further details on how to submit comments are provided in the *Public Participation* section of this notice.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all written comments during the preparation of the EA.

If you sent comments on this project to the Commission *before* the opening of this docket on June 16, 2020, you will need to file those comments in Docket No. CP20–481- 000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project Amendment, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

RB Pipeline provided landowners with a fact sheet prepared by the FERC entitled *An Interstate Natural Gas Facility On My Land? What Do I Need To Know?* This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) under the natural gas *Landowner Topics* link.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *FERC Online.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *FERC Online.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* You will be asked to select the type of filing you are making; a comment on a particular project is considered a Comment on a Filing; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP20–481–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 1.[1]

Summary of the Proposed Project

RB Pipeline proposes to modify the facilities approved in the Commission's *Order Granting Authorizations under Sections 3 and 7 of the Natural Gas Act* (Order) issued on November 22, 2019. The Rio Bravo Pipeline, as authorized, consists of a 2.4-mile-long, 42-inch-diameter pipeline, including 0.8 mile of dual pipeline (referred to as the Header System) in Kleber and Jim Wells Counties; 135.5 miles of parallel 42-inch-diameter pipelines originating in Kleberg County and terminating at Rio Grande LNG, LLC's Rio Grande liquefied natural gas (LNG) Terminal in Cameron County (referred to as Pipelines 1 and 2); four metering sites along the Header System; two interconnect booster compressor stations, each with a metering site; three compressor stations (one at the Rio Grande LNG Terminal); and other associated utilities, systems, and facilities, all in Texas.

As part of the Project Amendment, RB Pipeline proposes the following pipeline facility modifications:

- Decrease the maximum allowable operating pressure (MAOP) of the 2.4-mile-long Header System pipeline from 1,480 pounds per square inch gauge (psig) to 1,200 psig;
- construct an extension of 0.2 mile of mainline pipeline for each Pipeline 1 and 2 for a total of 135.7 miles each;
- increase the diameter of Pipeline 1 from 42 inches to 48 inches and increase the MAOP of both pipelines from 1,480 psig to 1,825 psig (Pipeline 2 will remain a 42-inch-diameter pipeline); and
- increase the transportation capacity of Pipeline 1 from 2.25 billion cubic feet per day (Bcf/d) to 2.6 Bcf/d, and decrease the transportation capacity of Pipeline 2 from 2.25 Bcf/d to 1.9 Bcf/d, resulting in the total authorized capacity of 4.5 Bcf/d remaining unchanged.

The Project Amendment also includes modifications to the following aboveground facilities that are authorized (but as yet unbuilt) along the Rio Bravo Pipeline right-of- way:

- Eliminate Compressor Station 2 in Kenedy County;
- eliminate Compressor Station 3 within the Rio Grande LNG Terminal in Cameron County, except for a meter and other ancillary facilities within the LNG Terminal;
- eliminate all facilities associated with Booster Stations 1 and 2, including

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

related meter stations, in Kenedy County; and

- increase the horsepower (hp) at Compressor Station 1 from 180,000 hp to 282,000 hp by switching from six 30,000-hp natural gas compressor units to four 43,000-hp natural gas compressor units and two 55,000-hp compressor units.

The general location of the project facilities is shown in appendix 2.

Land Requirements for Construction

The Rio Bravo Pipeline system, as authorized, will affect about 2,501.2 acres during construction; and about 1,330 acres of land would be retained for permanent use during operation. The Project Amendment would modify those totals to affect 2,457.8 acres during construction and 1,286.7 acres during operation; the reduction in land requirements would be due in large part to the elimination of Compressor Station 2 and Booster Stations 1 and 2.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the Project Amendment under these general headings:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- socioeconomics;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staff's independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental- documents*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

Commission staff have already identified several issues that deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by RB Pipeline. This preliminary list of environmental issues may change based on your comments and our analysis:

- alternative systems analysis;
- visual resources;
- pipeline safety associated with the increased diameter and capacity of Pipelines 1 and 2;
- air quality impacts associated with the pipeline and aboveground facilities;
- noise impacts associated with pipeline construction and operation;
- cumulative impacts; and
- climate change.

Environmental Mailing List

The environmental mailing list for the Project Amendment includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 3).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the *eLibrary* link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.,* CP20–481). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Dated: July 28, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16810 Filed 7–31–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 77–298; Project No. 77–285]

NOI Parties; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* Major, new license.

b. *Project Nos.:* P–77–298; P–77–285.

c. *Date filed:* June 28, 2019.

d. *Applicant:* NOI Parties (the NOI Parties are proxies for a new Regional Entity that ultimately would be the license applicant for the project. The Regional Entity has not yet been formed under California law, but once formed, the Regional Entity would supplant the NOI Parties in this Integrated Licensing Process [ILP] proceeding. The NOI Parties are Mendocino County Inland Water Agency and Power Commission; Sonoma County Water Agency; California Trout, Inc.; County of Humboldt, California; and the Round Valley Indian Tribes).

e. *Name of Project:* Potter Valley Project.

f. *Location:* On the Eel and East Fork Russian Rivers in Lake and Mendocino Counties, California, about 15 miles northeast of the City of Ukiah. The existing 9.959-megawatt (MW) Potter Valley Project occupies lands owned by Pacific Gas and Electric Company (2,328 acres), National Forest System Lands administered by the United States Forest Service, Mendocino National Forest (1,146 acres), and privately-owned lands (41 acres).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825u.

h. *Applicant Contacts:* Grant Davis, General Manager, Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, CA 95403, (707) 547–1900, *Grant.Davis@scwa.ca.gov;* Janet Pauli, Chair, Mendocino County Inland Water and Power Commission, P.O. Box 1247, Ukiah, CA 95482, (707) 743–1173, *pauli@mendoiwpc.com;* Curtis Knight, Executive Director, California Trout, 360 Pine Street, 4th Floor, San Francisco, CA 94104, (415) 392–8887, *cknight@caltrout.org;* and Hank Seemann, Deputy Director—Environmental Services, Humboldt County Public Works Department, 1106 Second Street, Eureka, CA 95501, (707) 268–2680, *hseemann@co.humboldt.ca.us.*

i. *FERC Contact:* Quinn Emmering, *quinn.emmering@ferc.gov,* 202–502–6382.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC 61,076 (2001).

k. Please note that on April 6, 2017, Pacific Gas and Electric Company (PG&E) initiated the Commission's Integrated Licensing Process (ILP) to relicense the Potter Valley Project by filing, pursuant to 18 CFR 5.6, a Notice of Intent (NOI) and Pre-Application Document (PAD), which included a proposed process plan and schedule. However, on January 25, 2019, PG&E filed a notice of withdrawal indicating that it was discontinuing its efforts to relicense the project, which became effective on February 11, 2019. As a result, on March 1, 2019, the Commission issued a Notice Soliciting Applications for interested applicants to file NOIs, PADs, and requests to complete the pre-filing stages of the relicensing process.

On June 28, 2019, the NOI Parties filed a NOI to seek a new license for the project and that it incorporates by reference PG&E's PAD as part of the project record as all the general information on the existing project is the same. On August 1, 2019, the Commission issued a public notice of the NOI Parties' intent to continue the ILP initiated by PG&E and file a final license application by April 14, 2022. On May 13, 2020, the NOI Parties filed a Feasibility Study Report, which includes information on the proposed Regional Entity to operate and maintain the project and its proposed changes to project facilities and operations from what PG&E originally proposed. Therefore, in addition to the Feasibility Study Report and NOI, participants should also refer to PG&E's PAD for general information about existing project facilities, project operations, and environmental resources in the project area.

l. *Deadline for filing scoping comments:* August 27, 2020.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERC*Online.aspx. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/Quick*Comment.aspx. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–77–298.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

m. This application is not ready for environmental analysis at this time.

n. The Potter Valley Project stores winter runoff from the upper Eel River Basin and annually diverts an average of approximately 60,000 acre-feet of Eel River water into the Russian River to generate hydroelectric power, provide water to local water users, and meet regulatory streamflow requirements for the Eel River and East Branch Russian River.

Existing project facilities include: (1) Lake Pillsbury, a 2,275-acre storage reservoir with a current storage capacity of 76,876 acre-feet at normal maximum water surface elevation (NMWSE) of 1,828.3 feet impounded by Scott Dam on the Eel River; (2) Scott Dam, a 130-foot-high, 805-foot-long, concrete gravity dam with an ogee-shaped, overflow spillway structure with five 32-foot-wide, 10-foot-high, radial gates, and 26 10-foot-high, 7.5- to 10-foot-wide, steel slide gates; (3) a 72-inch-diameter, riveted-steel outlet pipe passing through Scott Dam at invert

elevation 1,730.3 feet, controlled by a 42-inch Lauren-Johnson needle valve that releases water downstream into the Eel River; (4) Van Arsdale Reservoir, a 106-acre reservoir at NMWSE of 1,494.3 feet with a current storage capacity of 390 acre-feet impounded by Cape Horn Dam on the Eel River; (5) Cape Horn Dam, consisting of a 60-foot-high, 237-foot-long, earthfill section and a 63-foot-high, 283-foot-long, concrete, gravity overflow spillway section with the crest at 1,490.3 feet msl elevation; (6) release gates at the center of the dam passing water downstream through a 434-foot-long, pool-and-weir type fish ladder that rises a vertical distance of 400 feet for anadromous fish passage to the Eel River and its tributaries; (7) Van Arsdale intake diversion structure, that includes fish screens and a fish return channel, diverting water from the Eel River about 400 feet upstream of Cape Horn Dam; (8) a trans-basin diversion system comprised of a 5,826-foot-long tunnel, a 457-foot-long conduit, an 807-foot-long tunnel, and a 367-foot-long conduit that conveys water to the penstocks; (9) a butterfly valve house and penstock bypass channel to maintain flows in the East Branch Russian River during powerhouse outages; (10) a 1,793-foot-long, steel penstock and a 1,812-foot-long steel penstock supplying water to the powerhouse; (11) a powerhouse with three Francis turbine generating units with installed capacities of 4.4 MW, 2.559 MW, and 3.060 MW; (12) a 85-foot-long tailrace that receives water from the powerhouse and discharges to either non-project canals operated by the Potter Valley Irrigation District or to a 6,325-foot-long project canal that flows into the East Fork Russian River; (13) a switchyard; (14) recreation facilities consisting of five family campgrounds, two group campgrounds, and several day-use facilities; and (15) appurtenant facilities. The project has a total installed capacity of 9.959 MW and, under current operation (since 2007), an average annual generation of 19,900 megawatt-hours (MWh).

The NOI Parties propose to: (1) remove Scott Dam and Lake Pillsbury to restore anadromous fish passage and riparian and aquatic habitat on the Eel River; (2) modify the Van Arsdale intake structure to increase diversion capacity to improve water supply reliability to the Russian River and power generation capacity, and to reduce the risk of fish entrainment; (3) modify fish passage facilities at Cape Horn Dam to improv upstream and downstream fish passage; and (4) modify project operations to reflect a seasonal diversion from the Eel River to the Russian River Basin to reduce environmental impacts in the river basins.

o. In addition to publishing the full text of this document in the **Federal Register**. The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support.

p. You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. *Scoping Process:* The Commission intends to prepare an Environmental Impact Statement (EIS) for the Potter Valley Project in accordance with the National Environmental Policy Act. The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not anticipate holding a formal public or agency scoping meeting at this time. Instead, we are soliciting comments, recommendations, and information on Scoping Document 3 (SD3) issued on July 28, 2020.

Copies of SD3 outlining the subject areas to be addressed in the EIS were distributed to the parties on the Commission's mailing list and to the NOI Parties' distribution list. The SD3 may be viewed on the Commission's website using the eLibrary link (see item o above).

Dated: July 28, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–16811 Filed 7–31–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[R01–OW–2020; FRL–10012–96–Region 1]

Program Requirement Revisions Related to the Public Water System Supervision Programs for the Commonwealth of Massachusetts, the State of Connecticut and the State of New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commonwealth of Massachusetts, the State of Connecticut and the State of New Hampshire are revising their respective approved Public Water System Supervision (PWSS) programs to meet the requirements of the Safe Drinking Water Act (SDWA).

DATES: All interested parties may request a public hearing for any of the above EPA determinations. A request for a public hearing must be submitted by September 2, 2020, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

However, if a substantial request for a public hearing is made by this date, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective September 2, 2020.

Any request for a public hearing shall 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 the Regional Administrator's determination; (3) information that the requesting person intends to submit at such hearing; and (4) 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.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, at the following office(s): U.S. Environmental Protection, Water Division, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

For state-specific documents:

Commonwealth of Massachusetts, Drinking Water, One Winter Street, Boston, MA 02108

Connecticut Department of Public Health, Drinking Water Section, 410 Capital Avenue, Hartford, CT 06134

New Hampshire Department of Environmental Services, Drinking Water and Groundwater Bureau, 29 Hazen Drive, Concord, NH 03302–0095

FOR FURTHER INFORMATION CONTACT: Jeri Weiss, U.S. EPA-New England, Water Division, telephone (617) 918–1568.

SUPPLEMENTARY INFORMATION: The Commonwealth of Massachusetts has adopted a drinking water regulation for the Arsenic Rule (66 FR 6976) promulgated on January 22, 2001. After review of documentation submitted by the Commonwealth, the Environmental Protection Agency (EPA) has determined that the Commonwealth's Arsenic Rule is no less stringent than the corresponding federal regulation, with the understanding that the Commonwealth's regulation includes a typographical error that the Commonwealth has agreed to correct. EPA considers this issue to be minor and believes it should not preclude granting the Commonwealth primacy for the reasons detailed below.

The Commonwealth of Massachusetts revised its Drinking Water Regulations for Arsenic promulgated at 310 CMR 22.06, 310 CMR 22.07A, and 310 CMR 22.07B effective December 6, 2002. Under federal regulations, the arsenic Maximum Contaminant Level (MCL) is 0.01 mg/l. The Commonwealth's regulation contains the correct value for the arsenic MCL. However, there is a typographical error in the Commonwealth's public notice requirements at 310 CMR 22.16 Table 7.C., *Standard Health Effects Language for Public Notification.* In that table, the Commonwealth erroneously lists the MCL for arsenic as 0.05 mg/l when it should read 0.01 mg/l. MCL. Despite the typographical error, the Commonwealth issues reports based on exceedances of the correct value for the arsenic MCL. The Commonwealth has indicated that it will correct the typographical error in its upcoming regulatory revision later this year. Therefore, EPA intends to approve the Commonwealth's PWSS program revision for its Arsenic rule.

The State of Connecticut has adopted a drinking water regulation for the Consumer Confidence Report Rule (63 FR 44511) promulgated on August 19, 1998, the Interim Enhanced Surface Water Treatment Rule (63 FR 69478–69521) promulgated on December 16, 1998, and the Long Term 1 Enhanced Surface Water Treatment Rule (67 FR 1812) promulgated on January 14, 2002. After review of the documentation submitted by the State, EPA has determined that the State of Connecticut's regulation for these three drinking water rules is no less stringent than the corresponding federal regulations. EPA intends to approve Connecticut's PWSS program revision for these three rules.

The State of New Hampshire has adopted a drinking water regulation for the Arsenic Rule (66 FR 6976) promulgated on January 22, 2001. After review of the documentation submitted by the State, EPA has determined that the state of New Hampshire's rule is no less stringent than the corresponding federal regulation. EPA's primary enforcement responsibility regulations require states that accept electronic documents from public water systems to have adopted regulations consistent with 40 CFR part 3 (electronic reporting). New Hampshire accepts electronic documents and is in the process of completing elements of its electronic reporting program that will supplement the State's already existing legal authority under the State's Uniform Electronic Transactions Act. Therefore, EPA intends to approve New Hampshire's PWSS program revision for its Arsenic rule.

(Authority: Section 1401 (42 U.S.C 300f) and Section 1413 (42 U.S.C 300g–2) of the Safe Drinking Water Act, as amended (1996), and (40 CFR 142.10) of the National Primary Drinking Water Regulations)

Dated: July 27, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1—New England.

[FR Doc. 2020–16726 Filed 7–31–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 10010–80–Region 3]

Notice of Administrative Settlement Agreement in Connection With the J.H. & C.K. Eagle Mill (Kulpmont) Site, Kulpmont, Northumberland County, Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a proposed administrative settlement agreement for recovery of response costs (''Proposed Agreement'') associated with the J.H. & C.K. Eagle Mill (Kulpmont) Site in Kulpmont, Northumberland County, Pennsylvania (''Site'') was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims under Section 107(a) of CERCLA, against PAD Kulpmont LLC (''Settling Party''). The Proposed Agreement would require Settling Party to sell the Site property and pay EPA 80 percent of the sales proceeds.

For thirty (30) days following the date of publication of this notice, EPA will receive electronic comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection by request. Please see the **ADDRESSES** section of this notice for special instructions in effect due to impacts related to the COVID–19 pandemic.

DATES: Comments must be submitted electronically on or before September 2, 2020.

ADDRESSES: As a result of impacts related to the COVID–19 pandemic, requests for documents and submission of comments must be via electronic mail except as provided below. The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection upon request by contacting EPA Senior Assistant Regional Counsel Andrew S. Goldman at *goldman.andrew@epa.gov.* Comments must be submitted via electronic mail to this same email address and should reference the ''J.H. & C.K. Eagle Mill (Kulpmont) Site, Proposed Settlement Agreement'' and ''EPA CERCLA Docket No. CERC–03–2020–0080CR.'' Persons without access to electronic mail may call Mr. Goldman at (215) 814–2487 to make alternative arrangements.

FOR FURTHER INFORMATION CONTACT: Andrew S. Goldman at EPA by phone ((215) 814–2487) or email (*Goldman.andrew@epa.gov*).

Dated: June 16, 2020.

Paul Leonard,

Director, Superfund & Emergency Management Division,Region III.

[FR Doc. 2020–16813 Filed 7–31–20; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of an Open Meeting of the Board of Directors of the Export-Import Bank of the United States

TIME AND DATE: Thursday, August 13, 2020 at 10:00 a.m.

PLACE: The meeting will be held via teleconference.

STATUS: The meeting will be open to public observation by teleconference only.

MATTERS TO BE CONSIDERED:

Stakeholder presentations regarding the request to renew EXIM's partnership with Private Export Funding Corporation (PEFCO).

CONTACT PERSON FOR MORE INFORMATION: Joyce Stone (Mobile 202–257–4086). Members of the public who wish to attend the meeting via teleconference should register via *https://attendee.gotowebinar.com/register/4040042635128782091* by close of business Monday, August 10, 2020. Individuals will be directed to a Webinar registration page and provided call-in information.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2020–16922 Filed 7–30–20; 4:15 pm]

BILLING CODE 6690–01–P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of a Modified System of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, notice is hereby given that the Farm Credit Administration (FCA or Agency) is amending an existing system of records, FCA–14—Employee Travel Records—FCA.

DATES: You may send written comments on or before September 2, 2020. The FCA filed an amended System Report with Congress and the Office of Management and Budget on June 8, 2020. This notice will become effective without further publication on September 14, 2020 unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA website: http://www.fca.gov.* Click inside the ''I want to. . .'' field, near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.
- Mail: David Grahn, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our website at *http://www.fca.gov.* Once you are in the website, click inside the ''I want to. . .'' field, near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page, where you can select the SORN for which you would like to read public comments. The comments will be posted as submitted but, for technical reasons, items such as logos and special characters may be omitted. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FOR FURTHER INFORMATION CONTACT: Autumn R. Agans, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4019.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 that agencies publish a system of records notice in the **Federal Register** when there is a revision, change, or addition to the system of records.

The Employee Travel Records—FCA system is used to ensure proper payment of travel claims. The Agency is updating the notice to include payment of relocation costs and fees as a primary purpose of the system and is updating the categories of records maintained in the system to reflect that modified purpose. Additionally, the FCA is making administrative updates as well as non-substantive changes to conform to the system of records notice (SORN) template requirements prescribed in the Office of Management and Budget (OMB) Circular No. A–108. The substantive changes and modifications to the currently published version of FCA–14—Employee Travel Records—FCA include:

1. Updating the name of the system to reflect the expanded purpose—FCA–14—Employee Travel and Relocation Records—FCA.
2. Identifying the records in the system as unclassified.
3. Updating the system location to reflect the system's current location.
4. Updating the system managers to reflect the system's current owner.
5. Expanding the purpose of the system to include processing payment(s) of relocation claims for FCA employees.
6. Expanding and clarifying the categories of records to ensure they are consistent with the purposes for which the records are collected.
7. Expanding and clarifying the categories of individuals to ensure they are consistent with the purposes for which the records are collected.
8. Expanding and clarifying how records may be stored and retrieved.
9. Revising the retention and disposal section to reflect the relevant records schedule.
10. Revising the safeguards section to reflect updated cybersecurity guidance and practices.

Additionally, non-substantive changes have been made to the notice to align with the latest guidance from OMB.

The amended system of records is: FCA–14—Employee Travel and Relocation Records—FCA. As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, the FCA has sent notice of this proposed system of records to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate. The notice is published in its entirety below.

SYSTEM NAME AND NUMBER:

FCA–14—Employee Travel and Relocation Records—FCA.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Chief Financial Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SYSTEM MANAGER:

Chief Financial Officer and Director, Office of the Chief Financial Officer,

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSES OF THE SYSTEM:

Information in this system of records is used by the FCA to ensure the proper payment of travel and relocation claims.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FCA employees who travel at the expense of FCA or in support of official FCA business and individuals who relocate at FCA's expense.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information including, but not limited to: (a) Name, home and business address, telephone number, email address, and Social Security number of FCA employees traveling on FCA business or being relocated at FCA's expense; (b) name and relationship information of spouses, children, and other family members for individuals being relocated at FCA's expense; (c) employment information, such as grade, retirement plan, title (current and new), duty station address, salary information, and government issued credit card number (if applicable) of individuals being relocated at FCA's expense; (d) buyer seller and similar residence transaction information of the individual being relocated at FCA's expense, including property addresses, purchase/sale prices, information about the financing company/lender associated with a property, loan account number(s) and other loan information (principle, payments, down payment, etc.), insurance company associated with the property, and other documents provided by the individual as receipts for reimbursement; (e) travel information including authorization number, destination, itinerary, mode and purpose of travel, as well as travel and relocation authorizations, travel vouchers, receipts, dates, expenses, amounts advanced, amounts claimed, amounts reimbursed, receipts, and other records not otherwise covered as part of the government-wide system of records notices published by the General Services Administration (GSA/GOVT–3 and GSA/GOVT–4). This system complements those systems, and in some cases, the notice incorporates by reference but does not repeat all the information contained in those systems.

RECORD SOURCE CATEGORIES:

FCA employee that is the subject of the record and service providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses'' (64 FR 8175). The information collected in the system will be used in a manner compatible with the purposes for which the information has been collected.

Disclosure to consumer reporting agencies: None

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in hard copy and electronic form, including file folders on a computerized database.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name of individual traveling or being relocated at FCA's expense.

POLICIES AND PROCEDURES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained in accordance with the FCA Comprehensive Records Schedule and the National Archives and Records Administration's General Records Schedule 1.1: Financial Management and Reporting Records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

FCA implements multiple layers of security to ensure access to records is limited to those with a need-to-know in support of their official duties. Records are physically safeguarded in a secured environment using locked file rooms, file cabinets, or locked offices and other physical safeguards. Computerized records are safeguarded through use of user roles, passwords, firewalls, encryption, and other information technology security measures.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

NOTIFICATION PROCEDURE:

Address inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, McLean, VA 22102–5090.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Federal Register Vol. 64, No. 100/Tuesday, May 25, 1999 page 21875, Vol. 70, No. 183/Thursday, September 22, 2005, page 55621.

Dated: July 28, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–16702 Filed 7–31–20; 8:45 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: Farm Credit Administration.

ACTION: Rescission of a System of Records Notice.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, notice is hereby given that the Farm Credit Administration (FCA or Agency) is rescinding the System of Records Notice, FCA–12—Health and Life Insurance Records—FCA.

DATES: You may send written comments on or before September 2, 2020. The proposed action will become effective without further publication on September 14, 2020 unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA website: http://www.fca.gov.* Click inside the ''I want to. . .'' field, near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.
- *Mail:* David Grahn, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our website at *http://www.fca.gov.*

Once you are in the website, click inside the ''I want to. . .'' field, near the

top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page, where you can select the SORN for which you would like to read public comments. The comments will be posted as submitted but, for technical reasons, items such as logos and special characters may be omitted. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FOR FURTHER INFORMATION CONTACT: Autumn R. Agans, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4019, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 and subsequent guidance from the Office of Management and Budget that agencies publish in the **Federal Register**, notice of rescission of a System of Records Notice when an agency stops maintaining a previously established system of records.

This information system includes enrollment and related information about FCA employees used to administer Agency-sponsored health and life insurance programs. A review of the System of Records Notice, FCA–12—Health and Life Insurance Records—FCA, was conducted in November 2019. The Agency determined that a separate system for Agency-sponsored health or life insurance benefits is no longer necessary, as the agency no longer sponsors health or life insurance programs.

As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, the FCA has sent notice of this action to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.

SYSTEM NAME AND NUMBER:

FCA–12—Health and Life Insurance Records—FCA.

HISTORY:

Federal Register Vol. 64, No. 100/Tuesday, May 25, 1999 page 21875, Vol. 70, No. 183/Thursday, September 22, 2005, page 55621.

Dated: July 28, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–16701 Filed 7–31–20; 8:45 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of a Modified System of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is hereby given that the Farm Credit Administration (FCA or Agency) is amending an existing system of records, FCA–6—Freedom of Information and Privacy Act Requests—FCA.

DATES: You may send written comments on or before September 2, 2020. FCA filed an amended System Report with Congress and the Office of Management and Budget on June 8, 2020. This notice will become effective without further publication on September 14, 2020 unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency, commenters are encouraged to submit comments by email or through the FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA Website: http://www.fca.gov.* Click inside the ''I want to . . .'' field, near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.
- *Mail:* David Grahn, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our website at *http://www.fca.gov.* Once you are in the website, click inside the ''I want to . . .'' field, near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page, where you can select the SORN for which you would like to read public comments. The comments will be posted as submitted but, for technical reasons, items such as logos and special characters may be omitted. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FOR FURTHER INFORMATION CONTACT: Autumn R. Agans, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4019.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 that agencies publish a system of records notice in the **Federal Register** when there is a revision, change, or addition to the system of records.

The Freedom of Information Act and Privacy Act Requests—FCA system is used by FCA officials in administratively processing requests for records to ensure compliance with the Freedom of Information Act and Privacy Act. The Agency is updating the notice to add additional and clarifying details, to make administrative updates, and to make non-substantive changes to conform to the SORN template requirements prescribed in the Office of Management and Budget (OMB) Circular No. A–108. The substantive changes and modifications to the currently published version of FCA–6—Freedom of Information and Privacy Act Requests—FCA include:

1. Identifying the records in the system as unclassified.
2. Revising the System name.
3. Revising and clarifying the system's purpose.
4. Revising and clarifying the categories of records maintained in the system.
5. Revising the retention and disposal section to reflect updated guidance from the National Archives and Records Administration.
6. Revising the safeguards section to reflect updated cybersecurity guidance and practices.

Additionally, non-substantive changes have been made to the notice to align with the latest guidance from OMB.

The amended system of records is: FCA–6—Freedom of Information Act and Privacy Act Requests—FCA. As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, FCA sent notice of this proposed system of

records to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate. The notice is published in its entirety below.

SYSTEM NAME AND NUMBER:

FCA–6—Freedom of Information Act and Privacy Act Requests—FCA.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SYSTEM MANAGER:

Freedom of Information Act and Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5. U.S.C. 552, 552a; 12 U.S.C. 2243, 2252.

PURPOSES OF THE SYSTEM:

We use information in this system of records in administratively processing requests for records to ensure compliance with the Freedom of Information Act and Privacy Act.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons that request records under the Freedom of Information Act or Privacy Act. Freedom of Information Act requests are subject to the Privacy Act only to the extent that they concern individuals; information pertaining to corporations and other business entities and organizations is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains (1) paper and electronic requests for records under the Freedom of Information Act or Privacy Act, including names, addresses and other contact information as provided by the requestor; and (2) copies of replies and responsive records.

RECORD SOURCE CATEGORIES:

Persons making Freedom of Information Act and Privacy Act requests and FCA or FCSIC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses'' (64 FR 8175). Disclosure to consumer reporting agencies:None.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in file folders and electronically in a computerized database.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name.

POLICIES AND PROCEDURES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained in accordance with the National Archives and Records Administration's General Records Schedule requirements for Freedom of Information Act and Privacy Act request files, and with the FCA Comprehensive Records Schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

FCA implements multiple layers of security to ensure access to records is limited to those with a need-to-know in support of their official duties. Paper records are physically safeguarded in a secured environment using locked file rooms, file cabinets, or locked offices and other physical safeguards. Computerized records are safeguarded through use of user roles, passwords, firewalls, encryption, and other information technology security measures. Only personnel with a need-to-know in support of their duties have access to the records.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

NOTIFICATION PROCEDURE:

Address inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, McLean, VA 22102–5090.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Federal Register Vol. 64, No. 100/Tuesday, May 25, 1999 page 21875

Vol. 70, No. 183/Thursday, September 22, 2005, page 55621

Dated: July 28, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–16697 Filed 7–31–20; 8:45 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of a Modified System of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is hereby given that the Farm Credit Administration (FCA or Agency) is amending an existing system of records, FCA–9—Personnel Security Files—FCA. The Personnel Security Files—FCA system is used to records to determine suitability for employment and to issue a clearance. The Agency is updating the notice to reflect changes to the categories of individuals, to include more details, and make administrative updates, as well as non-substantive changes, to conform to the SORN template requirements prescribed in the Office of Management and Budget (OMB) Circular No. A–108.

DATES: You may send written comments on or before September 2, 2020. FCA filed an amended System Report with Congress and the Office of Management and Budget on May 5, 2020. This notice will become effective without further publication on September 14, 2020 unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA website: http://www.fca.gov.* Click inside the ''I want to. . .'' field, near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.
- *Mail:* David Grahn, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our website at *http://www.fca.gov.* Once you are in the

website, click inside the ''I want to. . .'' field, near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page, where you can select the SORN for which you would like to read public comments. The comments will be posted as submitted but, for technical reasons, items such as logos and special characters may be omitted. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FOR FURTHER INFORMATION CONTACT: Autumn R. Agans, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4019.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 that agencies publish a system of records notice in the **Federal Register** when there is a revision, change, or addition to the system of records. The substantive changes and modifications to the currently published version of FCA–9—Personnel Security Files—FCA include:

1. Identifying the records in the system as unclassified.
2. Updating the system location to reflect the system's current location.
3. Updating the system managers to reflect the system's current owner.
4. Expanding and clarifying the categories of records and individuals to ensure they are consistent with the intended purpose.
5. Expanding the record source categories to account for legacy records received from the Office of Personnel Management's National Background Investigations Bureau (NBIB) and the Department of Defense's (DoD) Defense Counterintelligence Security Agency (DCSA), which assumed investigation responsibilities from OPM in October 2019.
6. Expanding and clarifying how records may be stored and retrieved.
7. Revising the retention and disposal section to reflect updated guidance from the National Archives and Records Administration.
8. Revising the safeguards section to reflect updated cybersecurity guidance and practices.

Additionally, non-substantive changes have been made to the notice to align with the latest guidance from OMB.

The amended system of records is: FCA–9—Personnel Security Files—FCA. As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, FCA sent notice of this proposed system of records to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate. The notice is published in its entirety below.

SYSTEM NAME AND NUMBER:

FCA–9—Personnel Security Files—FCA.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Agency Services, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SYSTEM MANAGER:

Personnel Security Officer, Office of Agency Services, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252; Executive orders 10577, 12968, 13467, 13488, and 13764.

PURPOSES OF THE SYSTEM:

We use information in this system of records to determine suitability for employment and to issue a clearance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA employees, individuals who have been extended and accepted formal offers of employment by the Agency, interns, and contractor personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains case files compiled during background investigations of employees and contractor personnel in public trust or sensitive positions. It may include: (a) Security forms (*e.g.,* SF 85P, Questionnaire for Public Trust Positions); (b) investigative reports that may include a credit check, police records, and interviews with neighbors, former supervisors, and coworkers; (c) a determination of suitability for employment or for a security clearance by FCA's security officer; and (d) issuance of clearance statement. Certain records included in a case file are considered copies and are primarily owned by DCSA and are accounted for in DoD's ''Personnel Vetting Records System,'' DUSDI 02–DoD.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from: (a) The individual to whom the record applies; (b) DoD and legacy OPM NBIB investigative files maintained by the DCSA; (c) employment information maintained by the FCA; and (d) external and internal investigative inquiries by Federal law enforcement agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses'' (64 FR 8175). Disclosure to consumer reporting agencies:

None.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in files folders and electronically in a computerized database.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, Social Security number, or some combination thereof.

POLICIES AND PROCEDURES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained in accordance with the National Archives and Records Administration's General Records Schedule requirements, and with the FCA Comprehensive Records Schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

FCA implements multiple layers of security to ensure access to records is limited to those with a need-to-know in support of their official duties. Records are physically safeguarded in a secured environment using locked file rooms, file cabinets, or locked offices and other physical safeguards. Computerized records are safeguarded through use of user roles, passwords, firewalls, encryption, and other information technology security measures. Only the Personnel Security Officer and Alternate Personnel Security Officer have access to the records.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

NOTIFICATION PROCEDURE:

Address inquiries about this system of records to: Privacy Act Officer, Farm

Credit Administration, McLean, VA 22102–5090.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Information in this system of records about a confidential source's identity is subject to a specific exemption, 5 U.S.C. 552a(k)(5), to ensure accurate information on employment suitability.

HISTORY:

Federal Register Vol. 64, No. 100/Tuesday, May 25, 1999 page 21875

Vol. 70, No. 183/Thursday, September 22, 2005, page 55621

Dated: July 28, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–16698 Filed 7–31–20; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0987; FRS 16960]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 2, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0987.

Title: 911 Callback Capability; Non-initialized Handsets (47 CFR Sections 9.10(o)(1)(i-iii), 9.10(o)(2)(i-iii)).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 968 respondents; 225,968 responses.

Estimated Time per Response: 0.01258143 hours (range of 30 seconds for labeling each handset to one hour for each respondent's public education effort).

Frequency of Response: Third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority of this information collection is contained in 47 U.S.C. 154, 160, 201, 251–254, 303, and 332.

Total Annual Burden: 2,843 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: In 2003, the Commission modified 47 CFR Section 20.18(l) to further improve the ability of public safety answering points (PSAPs) to respond quickly and efficiently to calls for emergency assistance made from non-service initialized wireless mobile handsets. In 2019, 47 CFR 20.18 was renumbered as 47 CFR 9.10. Accordingly, we update the references to Section 20.18 with Section 9.10. *See* 84 FR 66716. Non-service-initialized wireless mobile handsets (non-initialized handsets) are not registered for service with any Commercial Mobile Radio Service (CMRS) licensee. A non-initialized handset lacks a dialable number, but is programmed to make outgoing 911 calls. The Commission addressed issues arising from the inability of a PSAP operator to call back a 911 caller who becomes disconnected when using a non-service-initialized wireless handset. These requirements also apply to manufacturers of 911-only handsets that are manufactured after May 3, 2004.

Federal Communications Commission.

Marlene Dortch,

Secretary,Office of the Secretary.

[FR Doc. 2020–16693 Filed 7–31–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0813; FRS 16965]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 2, 2020. If you anticipate that you will be

submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0813.

Title: Section 9.10, Enhanced 911 Emergency Calling Systems.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other-for-profit and State, Local and Tribal governments.

Number of Respondents and Responses: 1,048 Respondents; 567 Responses.

Estimated Time per Response: 0.5–1 hours.

Frequency of Response: One-time third-party disclosure requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151, 152, 154(i), 154(j), 154(o), 251(e), 303(b), 303(g), 303(r), 316, and 403.

Total Annual Burden: 527 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The information collection entailed in a Public Safety Answering Point (PSAP) request is necessary to initiate E911 service and serves as notice to the CMRS provider. The notification requirement on PSAPs will be used by the carriers to verify that wireless E911 calls are referred to PSAPs who have the technical capability to use the data to the caller's benefit. If the carrier challenges the validity of the request, the request will be deemed valid if the PSAP making the request provides the following information:

A. Cost Recovery. The PSAP must demonstrate that a mechanism is in place by which the PSAP will recover its costs of the facilities and equipment necessary to receive and utilize the E911 data elements;

B. Necessary Equipment. The PSAP must provide evidence that it has ordered the equipment necessary to receive and utilize the E911 data elements; and

C. Necessary Facilities. The PSAP must demonstrate that it has made a timely request to the appropriate local exchange carrier for the necessary trunking and other facilities to enable E911 data to be transmitted to the PSAP.

In the alternative, the PSAP may demonstrate that a funding mechanism is in place, that it is E911 capable using a Non-Call Associated Signaling technology, and that it has made a timely request to the appropriate LEC for the necessary ALI database upgrade.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–16694 Filed 7–31–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget (OMB) clearance for information collection requirements in its Use of Prenotification Negative Option Plans (''Negative Option Rule'' or ''Rule''). That clearance expires on December 31, 2020.

DATES: Comments must be received on or before October 2, 2020.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Negative Option Rule; PRA Comment: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Room CC–9528, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION:

Title: Use of Prenotification Negative Option Plans (Negative Option Rule or Rule), 16 CFR 425.[1]

OMB Control Number: 3084–0104.

Type of Review: Extension of a currently approved collection.

Likely Respondents: Sellers of prenotification subscription plans.

Estimated Annual Hours Burden: 9,750 hours.

Estimated Annual Cost Burden: $572,300 (solely related to labor costs).

Estimated Capital or Other Non-Labor Cost: $0 or *de minimis.*

Abstract: The Negative Option Rule governs the operation of prenotification subscription plans. Under these types of plans—which can include things such as a book of the month club, food of the month club, or clothing items of the month club—a seller provides a consumer with automatic shipments of merchandise unless the consumer affirmatively notifies the seller they do not want the shipment. The Rule requires that a seller notify a member that they will automatically ship merchandise to the member and bill the member for the merchandise if the subscriber fails to expressly reject the merchandise beforehand within a prescribed time. The Rule protects consumers by: (a) Requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (b) establishing procedures for the administration of such ''negative option'' plans.

Under the PRA, 44 U.S.C. 3501–3521, the FTC is requesting that OMB renew the clearance for the PRA burden associated with the proposed collection.

Burden statement:

Estimated annual burden hours: 9,750.

[1] The Commission recently published an Advance Notice of Proposed Rulemaking seeking comments on the need for amendments to the current Rule. 84 FR 52393 (Oct. 2, 2019). The present PRA Notice is not part of that proceeding and merely seeks comment on the existing burden estimates for the current Rule, which applies only to ''prenotification'' negative option plans.

Based on industry input, staff estimates that approximately 75 existing clubs each require annually about 100 hours to comply with the Rule's disclosure requirements. Approximately 10 new clubs come into being each year. Industry estimates of the number of existing clubs have fluctuated significantly since the early 2000s.[2] Industry sources also report to the Commission that a substantial portion of the existing clubs would make these disclosures absent the Rule because they help foster long-term relationships with consumers.

Over the next three years, there will be an average 85 existing firms per year (75 + 85 + 95 ÷ 3). Thus, the average annual hours of burden for existing firms is expected to be 8,500 hours (85 clubs × 100 hours). The estimated 10 new clubs entering the market per year require approximately 125 hours to comply with the Rule, including start up-time. Thus, the cumulative PRA burden for new clubs is about 1,250 hours (10 clubs × 125 hours). Combined with the estimated burden for established clubs, the total annual burden is 9,750 hours.

Estimated annual cost burden: $572,300 (solely related to labor costs).

Based on recent data from the Bureau of Labor Statistics,[3] the mean hourly wage for advertising managers is approximately $69 per hour; compensation for office and administrative support personnel is approximately $20 per hour. Assuming that managers perform the bulk of the work, and clerical personnel perform associated tasks (*e.g.,* placing advertisements and responding to inquiries about offerings or prices), the total cost to the industry for the Rule's information collection requirements would be approximately $572,300 [(80 hours managerial time × 85 existing clubs × $69 per hour) + (20 hours clerical time × 85 existing clubs × $20 per hour) + (90 hours managerial time × 10 new clubs × $69 per hour) + (35 hours clerical time × 10 new clubs × $20)].

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the new clubs that enter the market each year, the costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are *de minimis.* Negative option clubs already have access to the ordinary office equipment necessary to comply with the Rule. Similarly, the Rule imposes few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the advertising for negative option plans. Because printing and distribution expenditures are incurred to market the product regardless of the Rule, adding the required disclosures results in marginal incremental expense.

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records and providing disclosures to consumers. All comments must be received on or before October 2, 2020.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before October 2, 2020. Write ''Negative Option Rule; PRA Comment: FTC File No. P072108'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Negative Option Rule; PRA Comment: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential'' —as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 2, 2020. For information on the Commission's privacy policy, including routine uses permitted by the

[2] The industry estimates of existing firms subject to the Rule's disclosure requirements range from 190 (2005), 158 (2008), 45 (2011), 35 (2014) and 75 (2017). Such fluctuations have most likely derived from changes in the national economy and trends in the specific industries subject to the Rule.

[3] Occupational Employment And Wages—May 2019, Table 1, at *https://www.bls.gov/news.release/ocwage.t01.htm.*

Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2020–16718 Filed 7–31–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–20HD]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Shigella Hypothesis Generating Questionnaire (SHGQ) to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on February 25, 2020 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Shigella Hypothesis Generating Questionnaire—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Shigella are a family of bacteria that cause the diarrheal disease shigellosis. It is estimated that Shigella causes about 500,000 cases of diarrhea in the United States annually. From 2007 through 2017, there have been 1,046 outbreaks of shigellosis in the United States, with most of these outbreaks attributed to person to person spread. Outbreaks of shigellosis have been reported in a range of settings such as community-wide, daycares, schools, restaurants, and retirement homes. Outbreaks of shigellosis have impacted a range of populations such as children, men who have sex with men, people experiencing homelessness, tight knit religious communities, international travelers, and refugees/displaced persons. Finally, outbreaks of shigellosis have been attributed to a range of transmission modes including person-to-person/no common source, sexual person-to-person contact, contaminated food, and contaminated water. As part of Shigella outbreak investigations, it is common for state and local health departments to conduct comprehensive interviews with cases and contacts to identify how individuals became sick with shigellosis, to identify individuals who could have come into contact with an individual sick with shigellosis, and to identify strategies to control the cluster or outbreak. As person-to-person contact is the most common mode of transmission for shigellosis, and shigellosis is highly contagious, it can be challenging to identify how individuals could have become ill. As a result, comprehensive hypothesis generating questionnaires focused on a range of settings, activities, and potential modes of transmission are needed to guide prevention and control activities.

There is currently no national, standardized hypothesis generating interview data collection instrument for use during single or multistate shigellosis cluster or outbreak investigations. More detailed data about shigellosis cases involved in single or multistate clusters or outbreaks are needed to better characterize the epidemiology of clusters and outbreaks and to identify modes or settings of importance by collecting the following information. This information will not only help inform routine cluster and outbreak investigation activities but also guide awareness efforts and appropriate prevention strategies. To meet these needs the Shigella Hypothesis Generating Questionnaire (SHGQ) was developed.

The SHGQ will be administered by state and local public health officials via telephone interviews with cases of shigellosis or their proxy who are part of a shigellosis cluster or outbreak. The SHGQ will collect information on demographics characteristics, household information and family member event and activity attendance, clinical signs and symptoms, medical care and treatment information, travel history, contact with international travelers or other ill individuals, event and activity attendance, limited food and water exposure, work, visit, and volunteer locations, childcare and school attendance, and recent sexual partner(s) and activity.

This interview activity is consistent with the state's existing authority to investigate reports of notifiable diseases for routine surveillance purposes; therefore, formal consent to participate in the activity is not required. However, cases may choose not to participate and may choose not to answer any question they do not wish to answer. It will take health department personnel approximately 45 minutes to administer the questionnaire to an estimated 1500 patient respondents. This results in an estimated annual burden to the public of 1,125 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Shigellosis case patients identified as part of outbreak or cluster investigations.	Shigella Hypothesis Generating Questionnaire.	1500	1	45/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–16796 Filed 7–31–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2020–0070]

Proposed Data Collection Submitted for Public Comment and Recommendations: Extension of Comment Period

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC)within the Department of Health and Human Services (HHS) announces the extension of the comment period for CDC Docket Number CDC–2020–0070, CDC Diabetes Prevention Recognition Program for an additional 30 days.

DATES: Written comments must be received on or before September 14, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0070 by either of the following methods. CDC does not accept comment by email.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

FOR FURTHER INFORMATION CONTACT: Jeffrey Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: (404) 639–7118.

SUPPLEMENTARY INFORMATION: On June 15, 2020, as required by the Paperwork Reduction Act, CDC published a notice in the **Federal Register** requesting public comment and recommendations on a proposed data collection titled CDC Diabetes Prevention Recognition Program (OMB Control Number 0920–0909) (85 FR 36214). Since then, CDC has received a request to extend the comment period to permit participants in four regional Tribal consultation calls to provide comment on this proposed data collection. Four consultation calls are scheduled for after August 14, 2020, the original closing date of the docket.

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Science, Office of Scientific Integrity, Centers for Disease Control and Prevention.

[FR Doc. 2020–16798 Filed 7–31–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–20EU]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Capacity Building Assistance Program: Data Management, Monitoring, and Evaluation to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on January 28, 2020 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Capacity Building Assistance Program: Data Management, Monitoring, and Evaluation—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) partners with the national HIV prevention workforce to: (1) Ensure that persons with HIV (PWH) are aware of their infection and successfully linked to medical care and treatment to achieve viral suppression

and (2) expand access to pre-exposure prophylaxis (PrEP), condoms, and other proven strategies for persons at risk of becoming infected. CDC funds state and local health departments and community-based organizations (CBOs) to optimally plan, integrate, implement, and sustain comprehensive HIV prevention programs and services for people with and at greatest risk of HIV infection, including blacks/African Americans; Hispanics/Latinos; all races/ethnicities of gay, bisexual, and other men who have sex with men (MSM); people who inject drugs (PWID); and transgender persons.

Through the CDC cooperative agreement program entitled CDC–RFA–PS19–1904: Capacity Building Assistance (CBA) for High Impact HIV Prevention Program Integration, the CDC Division of HIV/AIDS Prevention (DHAP) funds the CBA Provider Network (CPN) to deliver CBA to CDC-funded health departments and CBOs. CBA provided by the CPN include trainings and technical assistance (TA) that enable the HIV prevention workforce to optimally plan, implement, integrate, and sustain high-impact prevention interventions and strategies to reduce HIV infections and HIV-related morbidity, mortality, and health disparities across the United States and its territories. This information collection evaluates CDC–RFA–PS19–1904. Specifically, the CDC is requesting the Office of Management and Budget (OMB) to grant a three-year approval to collect data through the use of four web-based instruments that will be administered to recipients of CBA services and their program managers: (1) Learning Group Registration; (2) Post-Training Evaluation (PTE); (3) Post-Technical Assistance Evaluation (PTAE); and (4) Training and Technical Assistance Follow-up Survey (TTAFS).

CBA training participants will complete the Learning Group Registration Form as part of the process for enrolling in a CBA training. The Learning Group Registration Form collects demographic information about training participants including: (1) Business contact information (*e.g.,* email and telephone number); (2) primary [employment] functional role; (3) employment setting; and (4) programmatic and population areas of focus. After an online or in-person training event is completed, training participants are invited to complete the PTE. The PTE is designed to elicit information from training participants about their satisfaction with the training delivery method and course content.

Similar to the PTE, the PTAE consists of questions designed to elicit information from TA participants about their satisfaction with aspects of TA such as the relevance of the materials provided or created, responsiveness of the TA provider, TA participants' changes in knowledge or skills as a result of the TA, and barriers and facilitators to implementation of interventions/public health strategies. The TTAFS collects organizational-level data every six months from the program managers within CDC-funded programs. Program managers provide information about the implementation status of the intervention/public heath strategy for which their staff received training and/or TA. Program managers are also asked to describe how their organization applied the training and TA (*e.g.,* planning or adapting an intervention/public health strategy).

The Learning Group Registration Form, PTE, and PTAE will be administered to CDC-funded program staff who participate in a training or TA event offered by a CBA provider funded under PS19–1904. The TTAFS will be administered to the program managers of state and local health department staff and CBO staff who participate in a CBA training or TA event. Respondents will provide information electronically through an online survey. The option to complete surveys via a telephone interview will be offered to respondents who do not complete the online survey within seven days.

The number of respondents is calculated based on an average of the number of health professionals, including doctors, nurses, health educators, and disease intervention specialists, trained by CBA providers during the years 2016–2018. We estimate 3,800 health professionals will provide one response for the Learning Group Registration; 3,800 health professionals will provide a response for the PTE for each training episode; 3,650 health professionals will provide a response for the PTAE for each TA episode; and 189 program managers will provide two responses to the TTAFS in the web-based or telephone survey per year.

The information collected will allow CDC to:

(1) Identify and respond to public health program performance issues identified through feedback from health departments and CBOs;

(2) Identify and respond to new HIV prevention training and TA needs of health departments and CBOs;

(3) Provide a timely and accurate response to federal, state, and local agencies and other stakeholders seeking information about the types and quality of CBA services delivered.

No other federal agency collects this type of national HIV prevention capacity building data.

The total annualized burden is 1,671 hours. There are no other costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)
Healthcare Professionals	Learning Group Registration	3,800	1	5/60
Healthcare Professionals	Post-Training Evaluation	3,800	2	5/60
Healthcare Professionals	Post-Technical Assistance Evaluation	3,650	2	5/60
Program Managers	Training and TA Follow-up Survey	139	2	18/60
Program Managers	Training and TA Telephone Script	50	2	18/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–16795 Filed 7–31–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20QS; Docket No. CDC–2020–0086]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Multi-site Clinical Assessment of Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (MCAM). This collection is designed to assess and characterize illness heterogeneity of Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS), and uses a standardized approach including standardized protocols with standardized tests and instruments to collect data on patients from multiple clinical practices.

DATES: CDC must receive written comments on or before October 2, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0086 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Multi-site Clinical Assessment of Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (MCAM)—Existing collection in use without an OMB Control Number—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This Multi-site Clinical Assessment of Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (MCAM) study uses a standardized approach for data collection to examine the heterogeneity of patients with Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS) using a clinical epidemiologic longitudinal study with a retrospective and prospective rolling cohort design. The study also aims to address the issue of ME/CFS case definition and improve measures of illness domains by using evidence-based data from multiple clinical practices in the United States. Healthy adults and those with illnesses that share some features with ME/CFS were enrolled in comparison groups. Children and adolescents with ME/CFS and healthy participants were also enrolled.

The MCAM study has been conducted in multiple stages following multiple study protocols. The time burden estimates are based on the 2012–2019 data collection, which is the most recent stage of data collection completed.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Adult	CDC Symptom Inventory (CDC–SI)/Form A	45	1	12/60	9
Adult	CDC Symptom Inventory (CDC–SI)/Form B	20	1	10/60	3
Adult	CDC Symptom Inventory (CDC–SI)	20	1	8/60	3
Adult	Short Form CDC–SI/Checklist	85	1	10/60	14
Adult	Medical Outcomes Study Short Form 36	85	1	7/60	10

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Adult	Multidimensional Fatigue Inventory (MFI–20)	85	1	5/60	7
Adult	DePaul Symptom Questionnaire (DSQ)	45	1	24/60	18
Adult	DSQ, 26 selected questions	65	1	12/60	13
Adult	DSQ, 18 selected questions	85	1	6/60	9
Adult	PROMIS Short Form (PROMIS SF—Fatigue, SD, SRI, PB, PI) & Sleep Data Collection Form.	85	1	5/60	7
Adult	PROMIS SF—Fatigue, SD, SRI, PB, PI	85	1	4/60	6
Adult	Brief Pain Inventory (BPI)	85	1	13/60	18
Adult	Patient Health Questionnaire (PHQ–8), Generalized Anxiety Disorder (GAD–7), CDC Health-Related Quality of Life (HRQoL–4).	85	1	10/60	14
Adult	CDC HRQoL–4	85	1	3/60	4
Adult	CDC HRQoL–4 with activity limitation questions	85	1	4/60	6
Adult	Self-Rating Depression Scale (SDS)	45	1	7/60	5
Adult	Illness Impact Questionnaire	85	1	3/60	4
Adult	Saliva Data Collection Sheet	85	1	5/60	7
Adult	Orthostatic Grading Scale (OGS)	85	1	3/60	4
Adult	COMPosite Autonomic Symptom Score 31 (COMPASS–31).	85	1	5/60	7
Adult	CDC Symptom Inventory (CDC–SI)/Form A	24	1	42/60	17
Adult	CDC Symptom Inventory (CDC–SI)/Form B	30	1	20/60	10
Adult	CDC Symptom Inventory (CDC–SI)	15	1	10/60	3
Adult	Short Form CDC–SI/Checklist	69	1	20/60	23
Adult	Medical Outcomes Study Short Form 36	69	1	17/60	20
Adult	Multidimensional Fatigue Inventory (MFI–20)	69	1	10/60	12
Adult	DePaul Symptom Questionnaire (DSQ)	24	1	36/60	14
Adult	DSQ, 26 selected questions	45	1	18/60	14
Adult	DSQ, 18 selected questions	69	1	20/60	23
Adult	PROMIS Short Form (PROMIS SF—Fatigue, SD, SRI, PB, PI) & Sleep Data Collection Form.	24	1	6/60	2
Adult	PROMIS SF—Fatigue, SD, SRI, PB, PI	69	1	5/60	6
Adult	Brief Pain Inventory (BPI)	24	1	13/60	5
Adult	Patient Health Questionnaire (PHQ–8), Generalized Anxiety Disorder (GAD–7), CDC Health-Related Quality of Life (HRQoL–4).	24	1	10/60	4
Adult	CDC HRQoL–4	69	1	4/60	5
Adult	CDC HRQoL–4 with activity limitation questions	69	1	7/60	8
Adult	Self-Rating Depression Scale (SDS)	24	1	7/60	3
Adult	Illness Impact Questionnaire	69	1	3/60	3
Adult	Saliva Data Collection Sheet	69	1	5/60	6
Adult	Orthostatic Grading Scale (OGS)	69	1	5/60	6
Adult	COMPosite Autonomic Symptom Score 31 (COMPASS–31).	69	1	7/60	8
Pediatric	CDC Symptom Inventory: For Baseline Subjects Pediatrics.	36	1	8/60	5
Pediatric	CDC Symptom Inventory: For the Follow-Up Subjects Pediatrics.	29	1	6/60	3
Pediatric	SF–36 Health Survey	64	1	5/60	5
Pediatric	Multidimensional Fatigue Inventory (MFI–20)	64	1	2/60	2
Pediatric	Selected Questions from DePaul Pediatric Health Questionnaire (DPHQ), 19 Questions.	64	1	5/60	5
Pediatric	PROMIS Pediatric Instruments (Fatigue & Pain)	64	1	2/60	2
Pediatric	Pediatric Pain Questionnaire (PPQ)	64	1	7/60	8
Pediatric	Visual Analogue Scale	64	1	6/60	6
Pediatric	Hospital Anxiety and Depression Scale	64	1	5/60	5
Pediatric	Pediatric Daytime Sleepiness Scale	64	1	2/60	2
Pediatric	Social Participation Form Pediatric	64	1	7/60	8
Pediatric	Sociability Form	64	1	3/60	3
Pediatric	Saliva Collection Form	64	1	5/60	5
Pediatric	CDC Symptom Inventory: For Baseline Subjects Pediatrics.	3	1	20/60	1
Pediatric	CDC Symptom Inventory: For the Follow-Up Subjects Pediatrics.	3	1	9/60	0
Pediatric	SF–36 Health Survey	3	1	9/60	0
Pediatric	Multidimensional Fatigue Inventory (MFI–20)	3	1	7/60	0
Pediatric	Selected Questions from DePaul Pediatric Health Questionnaire (DPHQ), 19 Questions.	3	1	10/60	0
Pediatric	PROMIS Pediatric Instruments (Fatigue & Pain)	3	1	3/60	0

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Pediatric	Pediatric Pain Questionnaire (PPQ)	3	1	15/60	1
Pediatric	Visual Analogue Scale	3	1	8/60	0
Pediatric	Hospital Anxiety and Depression Scale	3	1	7/60	0
Pediatric	Pediatric Daytime Sleepiness Scale	3	1	3/60	0
Pediatric	Social Participation Form Pediatric	3	1	10/60	0
Pediatric	Sociability Form	3	1	5/60	0
Pediatric	Saliva Collection Form	3	1	5/60	0
Adult	CogState Practice Section	109	1	17/60	31
Adult	CogState Baseline Section	109	1	27/60	49
Adult	WAIS IV DS F+B, TOPF	109	1	10/60	18
Adult	Exercise (Bike) Testing	64	1	30/60	32
Adult	CogState Time 1 Section	109	1	22/60	40
Adult	CogState Time 2 Section	109	1	12/60	22
Adult	CogState Time 3 Section	109	1	12/60	22
Adult	CogState Time 4 Section	109	1	12/60	22
Adult	Visual Analogue Scale for CFS Symptoms	60	1	8/60	8
Adult	EQ–5D–Y Health Questionnaire	60	1	6/60	6
Adult	PROMIS SF v1—Physical Function	60	1	5/60	5
Adult	Physical Fitness and Exercise Activity Levels of Scale	60	1	2/60	2
Adult	International Physical Activity Questionnaire (Self-Administered Long Form).	60	1	5/60	5
Adult	Physical Activity Readiness Questionnaire	60	1	5/60	5
Adult	Visual Analogue Scale for CFS Symptoms	49	1	8/60	6
Adult	EQ–5D–Y Health Questionnaire	49	1	6/60	5
Adult	PROMIS SF v1—Physical Function	49	1	5/60	4
Adult	Physical Fitness and Exercise Activity Levels of Scale	49	1	2/60	2
Adult	International Physical Activity Questionnaire (Self-Administered Long Form).	49	1	5/60	4
Adult	Physical Activity Readiness Questionnaire	49	1	5/60	4
Total		715			

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0806]

Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2021

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for fiscal year (FY) 2021 animal drug user fees. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Animal Drug User Fee Amendments of 2018 (ADUFA IV), authorizes FDA to collect user fees for certain animal drug applications and supplements, for certain animal drug products, for certain establishments where such products are made, and for certain sponsors of such animal drug applications and/or investigational animal drug submissions. This notice establishes the fee rates for FY 2021.

FOR FURTHER INFORMATION CONTACT: Visit FDA's website at *https://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm* or contact Lisa Kable, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–6888, *Lisa.Kable@fda.hhs.gov.* For general questions, you may also email the Center for Veterinary Medicine (CVM) at: *cvmadufa@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the FD&C Act (21 U.S.C. 379j–12) establishes four different types of user fees: (1) Fees for certain types of animal drug applications and supplements; (2) annual fees for certain animal drug products; (3) annual fees for certain establishments where such products are made; and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions (21 U.S.C. 379j–12(a)). When certain conditions are met, FDA will waive or reduce fees (21 U.S.C. 379j–12(d)).

For FYs 2019 through 2023, the FD&C Act establishes aggregate yearly base revenue amounts for each fiscal year (21 U.S.C. 379j–12(b)(1)). Base revenue amounts are subject to adjustment for inflation and workload (21 U.S.C. 379j–12(c)(2) and (3)). Beginning with FY 2021, the annual fee revenue amounts are also subject to adjustment to reduce workload-based increases by the amount of certain excess collections or to account for certain collection shortfalls. (21 U.S.C. 379j–12(c)(3) and (g)(5)). Fees for applications, establishments, products, and sponsors are to be established each year by FDA so that the percentages of the total revenue that are derived from each type of user fee will be as follows: (1) Revenue from application fees shall be 20 percent of total fee revenue; (2) revenue from product fees shall be 27 percent of total fee revenue; (3) revenue from establishment fees shall be 26 percent of

total fee revenue; and (4) revenue from sponsor fees shall be 27 percent of total fee revenue (21 U.S.C. 379j–12(b)(2)).

For FY 2021, the animal drug user fee rates are: $574,810 for an animal drug application; $287,405 for a supplemental animal drug application for which safety or effectiveness data are required and for an animal drug application subject to the criteria set forth in section 512(d)(4) of the FD&C Act (21 U.S.C. 360b(d)(4)); $12,230 for an annual product fee; $166,695 for an annual establishment fee; and $142,881 for an annual sponsor fee. FDA will issue invoices for FY 2021 product, establishment, and sponsor fees by December 31, 2020, and payment will be due by January 31, 2021. The application fee rates are effective for applications submitted on or after October 1, 2020, and will remain in effect through September 30, 2021. Applications will not be accepted for review until FDA has received full payment of application fees and any other animal drug user fees owed under the Animal Drug User Fee Act program (ADUFA program).

II. Revenue Amount for FY 2021

A. Statutory Fee Revenue Amounts

ADUFA IV, Title I of Public Law 115–234, specifies that the aggregate base fee revenue amount for FY 2021 for all animal drug user fee categories is $29,931,240 (21 U.S.C. 379j–12(b)(1)(B)).

B. Inflation Adjustment to Fee Revenue Amount

ADUFA IV specifies that the annual fee revenue amount is to be adjusted for inflation increases for FY 2020 and subsequent fiscal years, using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (21 U.S.C. 379j–12(c)(2)(A)(ii) and (iii)). The component of the inflation adjustment for payroll costs shall be one plus the average annual percent change in the cost of all PC&B paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding fiscal years of available data, multiplied by the average proportion of PC&B costs to total FDA costs for the first 3 of the 4 preceding fiscal years. The data on total PC&B paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees.

Table 1 summarizes that actual cost and FTE data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first 3 of the 4 fiscal years preceding FY 2021. The 3-year average is 1.2644 percent.

TABLE 1—FDA PC&B EACH YEAR AND PERCENT CHANGE

Fiscal year	2017	2018	2019	3-Year average
Total PC&B	$2,581,551,000	$2,690,678,000	$2,620,052,000	
Total FTE	17,022	17,023	17,144	
PC&B per FTE	$151,660	$158,061	$152,826	
Percent Change from Previous Year	2.8845%	4.2206%	–3.3120%	1.2644%

The statute specifies that this 1.2644 percent should be multiplied by the proportion of PC&B costs to total FDA costs. Table 2 shows the amount of PC&B and the total amount obligated by FDA for the same 3 fiscal years.

TABLE 2—PC&B AS A PERCENT OF TOTAL COSTS AT FDA

Fiscal year	2017	2018	2019	3-Year average
Total PC&B	$2,581,551,000	$2,690,678,000	$2,620,052,000	
Total Costs	$5,104,580,000	$5,370,935,000	$5,663,389,000	
PC&B Percent	50.5732%	50.0970%	46.2630%	48.9777%

The portion of the inflation adjustment relating to payroll costs is 1.2644 percent multiplied by 48.9777 percent, or 0.6193 percent.

The statute specifies that the portion of the inflation adjustment for non-payroll costs is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items less food and energy; annual index) for the first 3 of the preceding 4 years of available data multiplied by the average proportion of all costs other than PC&B costs to total FDA costs for the first 3 of the 4 preceding fiscal years. As a result of a geographical revision made by the Bureau of Labor and Statistics in January 2018,[1] the ''Washington-Baltimore, DC-MD-VA-WV'' index was discontinued and replaced with two separate indices (*i.e.,* ''Washington-Arlington-Alexandria, DC-VA-MD-WV'' and ''Baltimore-Columbia-Towson, MD''). In order to continue applying a CPI which best reflects the geographic region in which FDA is headquartered and which provides the most current data available, FDA is using the Washington-Arlington-Alexandria less food and energy index when calculating the relevant adjustment factors for FY 2020 and subsequent years. Table 3 provides the summary data for the percent change in the specified CPI for the Washington-Arlington-Alexandria area. The data from the Bureau of Labor Statistics are shown in table 3.

[1] *https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm.*

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN WASHINGTON-ARLINGTON-ALEXANDRIA AREA CPI LESS FOOD AND ENERGY

Year	2017	2018	2019	3-Year average
Annual CPI	266.897	272.414	275.841	
Annual Percent Change	0.5894%	2.0671%	1.2580%	1.3048%

To calculate the inflation adjustment for non-payroll costs, we multiply 1.3048 percent by the proportion of all costs other than PC&B to total FDA costs. Since 48.9777 percent was obligated for PC&B as shown in table 2, 51.0223 percent is the portion of costs other than PC&B (100 percent − 48.9777 percent = 51.0223 percent). The portion of the inflation adjustment relating to non-payroll costs is 1.3048 percent times 51.0223 percent, or 0.6657 percent.

Next, we add the payroll component (0.6193 percent) to the non-payroll component (0.6657 percent), for an inflation adjustment of 1.2850 percent for FY 2021.

ADUFA IV provides for the inflation adjustment to be compounded each fiscal year after FY 2020 (see (21 U.S.C. 379j–12(c)(2)(B)). The inflation adjustment for FY 2021 (1.2850 percent) is compounded by adding 1 and then multiplying by 1 plus the inflation adjustment factor for FY 2020 (2.2705 percent), as published in the **Federal Register** on August 2, 2019 (84 FR 37896 to 37901), which equals 1.035847 (rounded) (1.012850 × 1.022705) for FY 2021. We then multiply the base revenue amount for FY 2021 ($29,931,240) by 1.035847, yielding an inflation adjusted amount of $31,004,185.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

The fee revenue amounts established in ADUFA IV for FY 2020 and subsequent fiscal years are also subject to adjustment to account for changes in FDA's review workload. A workload adjustment will be applied to the inflation adjusted fee revenue amount (21 U.S.C. 379j–12(c)(3)).

To determine whether a workload adjustment applies, FDA calculates the weighted average of the change in the total number of each of the five types of applications and submissions specified in the workload adjustment provision (animal drug applications, supplemental animal drug applications for which data with respect to safety or efficacy are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions) received over the 5-year period that ended on September 30, 2018 (the base years), and the average number of each of these types of applications and submissions over the most recent 5-year period that ended May 31, 2020.

The results of these calculations are presented in the first two columns of table 4. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA animal drug review workload was accounted for by each type of application or submission in the table during the most recent 5 years. Column 5 is the weighted percent change in each category of workload, and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of the table the sum of the values in column 5 is added, reflecting a total change in workload of 2.2092 percent for FY 2021. This is the workload adjuster for FY 2021.

TABLE 4—WORKLOAD ADJUSTER CALCULATION

Application type	Column 1 5-Year average (base years)	Column 2 latest 5-year average	Column 3 percent change	Column 4 weighting factor	Column 5 weighted percent change
New Animal Drug Applications (NADAs)	16.4	16.8	2.4390%	0.0414	0.1011%
Supplemental NADAs with Safety or Efficacy Data	11.6	8.6	−25.8621%	0.0192	−0.4963%
Manufacturing Supplements	353.2	366.4	3.7373%	0.1662	0.6210%
Investigational Study Submissions	183.2	175.0	−4.4760%	0.5615	−2.5131%
Investigational Protocol Submissions	236.4	286.6	21.2352%	0.2117	4.4964%
FY 2021 ADUFA IV Workload Adjuster					2.2092%

Under no circumstances will the workload adjustment result in fee revenues that are less than the base fee revenues for that fiscal year as adjusted for inflation (21 U.S.C. 379j–12(c)(3)). The statutory revenue amount after the inflation adjustment ($31,004,185) must now be increased by 2.2092 percent to reflect the changes in review workload (workload adjustment), for a workload and inflation-adjusted amount of $31,689,129.

D. Reduction of Workload-Based Increase by Amount of Certain Excess Collections

Under section 740(c)(3)(B) of the FD&C Act, for FYs 2021 through 2023, if application of the workload adjustment increases the amount of fee revenues established for the fiscal year, as adjusted for inflation, the fee revenue increase will be reduced by the amount of any excess collections for the second preceding fiscal year, up to the amount of the fee revenue increase for workload. In FY 2019, the total revenue amount was $30,331,000 and the total collections as of May 31, 2020, were $28,680,823. Because the total amount of fees collected did not exceed the total revenue amount, there were no excess collections for FY 2019 that can be applied to reduce the workload-based increase for FY 2021.

E. Recovery of Collection Shortfalls

Under section 740(g)(5)(A) of the FD&C Act, for FY 2021, the amount of fees otherwise authorized to be collected shall be increased by the amount, if any, by which the amount collected and appropriated for FY 2019

falls below the amount of fees authorized for FY 2019.

In FY 2019, the total revenue amount was $30,331,000 and the total amount of fees collected as of May 31, 2020, was $28,680,823. Because the amount of fees collected is less than the total revenue amount, there was a collection shortfall in FY 2019 in the amount of $1,650,177 ($30,331,000 − $28,680,823). In accordance with section 740(g)(5)(A) of the FD&C Act, the amount of the collection shortfall in FY 2019 ($1,650,177) is to be recovered by adjusting the fee revenue amount for FY 2021. To make this adjustment, the collection shortfall amount ($1,650,177) is added to the workload and inflation-adjusted fee revenue amount ($31,689,129), resulting in a fee revenue amount of $33,339,000 (rounded to the nearest thousand dollars).

F. Reduction of Shortfall-Based Fee Increase by Prior Year Excess Collections

Under section 740(g)(5)(B) of the FD&C Act, where FDA's calculations under section 740(g)(5)(A) result in a fee increase for that fiscal year to recover a collection shortfall, FDA must reduce the increase by the amount of any excess collections for preceding fiscal years (after FY 2018) that have not already been applied for purposes of reducing workload-based fee increases. Because FDA did not have excess collections in FY 2019, there will be no reduction of the shortfall-based fee increase for FY 2021.

G. FY 2021 Fee Revenue Amounts

ADUFA IV specifies that the revenue amount of $33,339,000 (rounded to the nearest thousand dollars) for FY 2021 is to be divided as follows: 20 percent, or a total of $6,667,800, is to come from application fees; 27 percent, or a total of $9,001,530, is to come from product fees; 26 percent, or a total of $8,668,140, is to come from establishment fees; and 27 percent, or a total of $9,001,530, is to come from sponsor fees (21 U.S.C. 379j–12(b)).

III. Application Fee Calculations for FY 2021

A. Application Fee Revenues and Numbers of Fee-Paying Applications

Each person that submits an animal drug application or a supplemental animal drug application shall be subject to an application fee, with limited exceptions (see 21 U.S.C. 379j–12(a)(1)). The term ''animal drug application'' means an application for approval of any new animal drug submitted under section 512(b)(1) of the FD&C Act or an application for conditional approval of a new animal drug submitted under section 571 of the FD&C Act (21 U.S.C. 360ccc) (see section 739(1) of the FD&C Act (21 U.S.C. 379j–11(1))). As the expanded definition of ''animal drug application'' includes applications for conditional approval submitted under section 571 of the FD&C Act, such applications are now subject to ADUFA fees, except that fees may be waived if the drug is intended solely to provide for a minor use or minor species (MUMS) indication (see 21 U.S.C. 379j–12(d)(1)(D)).

Prior to ADUFA IV, FDA only had authority to grant conditional approval for drugs intended for a MUMS indication. Under amendments made to section 571 of the FD&C Act by ADUFA IV, FDA retains authority to grant conditional approval for drugs intended for MUMS indications but also will be able to grant conditional approval for certain drugs not intended for a MUMS indication provided certain criteria are met. Beginning with FY 2019, ADUFA IV provides an exception from application fees for animal drug applications submitted under section 512(b)(1) of the FD&C Act by a sponsor who previously applied for conditional approval under section 571 of the FD&C Act for the same product and paid an application fee at the time they applied for conditional approval. The purpose of this exception is to prevent sponsors of conditionally approved products from having to pay a second application fee at the time they apply for full approval of their products under section 512(b)(1) of the FD&C Act, provided the sponsor's application for full approval is filed consistent with the timeframes established in section 571(h) of the FD&C Act.

A ''supplemental animal drug application'' is defined as a request to the Secretary of Health and Human Services (Secretary) to approve a change in an animal drug application that has been approved, or a request to the Secretary to approve a change to an application approved under section 512(c)(2) of the FD&C Act for which data with respect to safety or effectiveness are required (21 U.S.C. 379j–11(2)). The application fees are to be set so that they will generate $6,667,800 in fee revenue for FY 2021. The fee for a supplemental animal drug application for which safety or effectiveness data are required and for an animal drug application subject to criteria set forth in section 512(d)(4) of the FD&C Act is to be set at 50 percent of the animal drug application fee (21 U.S.C. 379j–12(a)(1)(A)(ii)).

To set animal drug application fees and supplemental animal drug application fees to realize $6,667,800, FDA must first make some assumptions about the number of fee-paying applications and supplements the Agency will receive in FY 2021.

The Agency knows the number of applications that have been submitted in previous years, which fluctuates annually. In estimating the fee revenue to be generated by animal drug application fees in FY 2021, FDA is assuming that the number of applications for which fees will be paid in FY 2021 will equal the average number of submissions over the 5 most recent completed fiscal years of the ADUFA program (FY 2015 to FY 2019).

Over the 5 most recent completed fiscal years, the average number of animal drug applications that would have been subject to the full fee was 6.8. Over this same period, the average number of supplemental applications for which safety or effectiveness data are required and applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act that would have been subject to half of the full fee was 9.6.

B. Application Fee Rates for FY 2021

FDA must set the fee rates for FY 2021 so that the estimated 6.8 applications for which the full fee will be paid and the estimated 9.6 supplemental applications for which safety or effectiveness data are required and applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act for which half of the full fee will be paid will generate a total of $6,667,800. To generate this amount, the fee for an animal drug application, rounded to the nearest dollar, will have to be $574,810, and the fee for a supplemental animal drug application for which safety or effectiveness data are required and for applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act will have to be $287,405.

IV. Product Fee Calculations for FY 2021

A. Product Fee Revenues and Numbers of Fee-Paying Products

The animal drug product fee must be paid annually by the person named as the applicant in a new animal drug application or supplemental new animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360) and who had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003 (21 U.S.C. 379j–12(a)(2)). The term ''animal drug

product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an animal drug application or a supplemental animal drug application has been approved (21 U.S.C. 379j–11(3)). The product fees are to be set so that they will generate $9,001,530 in fee revenue for FY 2021.

To set animal drug product fees to realize $9,001,530, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2021. FDA developed data on all animal drug products that have been submitted for listing under section 510 of the FD&C Act and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of June 2020, FDA estimates that there are a total of 751 products submitted for listing by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA estimates that a total of 751 products will be subject to this fee in FY 2021.

In estimating the fee revenue to be generated by animal drug product fees in FY 2021, FDA is assuming that 2 percent of the products invoiced, or 15, will not pay fees in FY 2021 due to fee waivers and reductions. FDA has made this estimate at 2 percent this year, based on historical data over the past 5 completed fiscal years of the ADUFA program.

Accordingly, the Agency estimates that a total of 736 (751 minus 15) products will be subject to product fees in FY 2021.

B. Product Fee Rates for FY 2021

FDA must set the fee rates for FY 2021 so that the estimated 736 products that pay fees will generate a total of $9,001,530. To generate this amount will require the fee for an animal drug product, rounded to the nearest dollar, to be $12,230.

V. Establishment Fee Calculations for FY 2021

A. Establishment Fee Revenues and Numbers of Fee-Paying Establishments

The animal drug establishment fee must be paid annually by the person who: (1) Owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act; (3) had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the fiscal year (see 21 U.S.C. 379j–12(a)(3)). An establishment subject to animal drug establishment fees is assessed only one such fee per fiscal year. The term ''animal drug establishment'' is defined as a foreign or domestic place of business at one general physical location, consisting of one or more buildings, all of which are within 5 miles of each other, at which one or more animal drug products are manufactured in final dosage form (21 U.S.C. 379j–11(4)). The establishment fees are to be set so that they will generate $8,668,140 in fee revenue for FY 2021.

To set animal drug establishment fees to realize $8,668,140, FDA must make some assumptions about the number of establishments for which these fees will be paid in FY 2021. FDA developed data on all animal drug establishments and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of June 2020, FDA estimates that there are a total of 57 establishments owned or operated by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA believes that 57 establishments will be subject to this fee in FY 2021.

In estimating the fee revenue to be generated by animal drug establishment fees in FY 2021, FDA is assuming that 8 percent of the establishments invoiced, or 5, will not pay fees in FY 2021 due to fee waivers and reductions. FDA has made this estimate at 8 percent this year, based on historical data over the past 5 completed fiscal years.

Accordingly, the Agency estimates that a total of 52 establishments (57 minus 5) will be subject to establishment fees in FY 2021.

B. Establishment Fee Rates for FY 2021

FDA must set the fee rates for FY 2021 so that the fees paid for the estimated 52 establishments will generate a total of $8,668,140. To generate this amount will require the fee for an animal drug establishment, rounded to the nearest dollar, to be $166,695.

VI. Sponsor Fee Calculations for FY 2021

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The animal drug sponsor fee must be paid annually by each person who: (1) Is named as the applicant in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive and (2) had an animal drug application, supplemental animal drug application, or investigational animal drug submission pending at FDA after September 1, 2003 (see 21 U.S.C. 379j–11(6) and 379j–12(a)(4)). An animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j–12(a)(4)). The sponsor fees are to be set so that they will generate $9,001,530 in fee revenue for FY 2021.

To set animal drug sponsor fees to realize $9,001,530, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2021. FDA estimates that a total of 192 sponsors will meet this definition in FY 2021.

In estimating the fee revenue to be generated by animal drug sponsor fees in FY 2021, FDA is assuming that 67 percent of the sponsors invoiced, or 129, will not pay sponsor fees in FY 2021 due to fee waivers and reductions. FDA has made this estimate at 67 percent this year, based on historical data over the past 5 completed fiscal years of the ADUFA program.

Accordingly, the Agency estimates that a total of 63 sponsors (192 129) will be subject to and pay sponsor fees in FY 2021.

B. Sponsor Fee Rates for FY 2021

FDA must set the fee rates for FY 2021 so that the estimated 63 sponsors that pay fees will generate a total of $9,001,530. To generate this amount will require the fee for an animal drug sponsor, rounded to the nearest dollar, to be $142,881.

VII. Fee Schedule for FY 2021

The fee rates for FY 2021 are summarized in table 5.

TABLE 5—FY 2021 FEE RATES

Animal drug user fee category	Fee rate for FY 2021
Animal Drug Application Fees:	
Animal Drug Application	$574,810
Supplemental Animal Drug Application for Which Safety or Effectiveness Data are Required or Animal Drug Application Subject to the Criteria Set Forth in Section 512(d)(4) of the FD&C Act	287,405
Animal Drug Product Fee	12,230
Animal Drug Establishment Fee[1]	166,695
Animal Drug Sponsor Fee[2]	142,881

[1] An animal drug establishment is subject to only one such fee each fiscal year.
[2] An animal drug sponsor is subject to only one such fee each fiscal year.

VIII. Fee Waiver or Reduction; Exemption From Fees

A. Barrier to Innovation Waivers or Fee Reductions

Under section 740(d)(1)(A) of the FD&C Act, an animal drug applicant may qualify for a waiver or reduction of one or more ADUFA fees if the fee would present a significant barrier to innovation because of limited resources available to the applicant or other circumstances. FDA CVM's guidance for industry (GFI) #170, entitled ''Animal Drug User Fees and Fee Waivers and Reductions[2],'' states that the agency interprets this provision to mean that a waiver or reduction is appropriate when: (1) The product for which the waiver is being requested is innovative, or the requestor is otherwise pursuing innovative animal drug products or technology and (2) the fee would be a significant barrier to the applicant's ability to develop, manufacture, or market the innovative product or technology. Only applicants that meet both of these criteria will qualify for a waiver or reduction in user fees under this provision (see GFI #170 at pp. 6–8). For purposes of determining whether the second criterion would be met on the basis of limited financial resources available to the applicant, FDA has determined an applicant with financial resources of less than $20,000,000 (including the financial resources of the applicant's affiliates), adjusted annually for inflation, has limited resources available. Using the CPI for urban consumers (U.S. city average; not seasonally adjusted; all items; annual index), the inflation-adjusted level for FY 2021 will be $21,607,020; this level represents the financial resource ceiling that will be used to determine if there are limited resources available to an applicant requesting a Barrier to Innovation waiver on financial grounds for FY 2021.

B. Exemptions From Fees

The types of fee waivers and reductions that applied during ADUFA III still exist for FY 2021. In addition, ADUFA IV established two new exemptions and one new exception from fees, as described below:

If an animal drug application, supplemental animal drug application, or investigational submission involves the intentional genomic alteration of an animal that is intended to produce a human medical product, any person who is the named applicant or sponsor of that application or submission will not be subject to sponsor, product, or establishment fees under ADUFA based solely on that application or submission (21 U.S.C. 379j–12(d)(4)(B)).

Fees will not apply to any person who not later than September 30, 2023, submits to CVM a supplemental animal drug application relating to a new animal drug application approved under section 512 of the FD&C Act, solely to add the application number to the labeling of the drug in the manner specified in section 502(w)(3) of the FD&C Act (21 U.S.C. 352(w)(3)), if that person otherwise would be subject to user fees under ADUFA based only on the submission of the supplemental application (21 U.S.C. 379j–12(d)(4)(A)).

There is also an exception from application fees for animal drug applications submitted under section 512(b)(1) of the FD&C Act by a sponsor who previously applied for conditional approval under section 571 of the FD&C Act for the same product and paid an application fee at the time they applied for conditional approval, provided the sponsor has submitted the application under section 512(b)(1) of the FD&C Act within the timeframe specified in section 571(h) of the FD&C Act (21 U.S.C. 379j–12(a)(1)(C)(ii)).

IX. Procedures for Paying the FY 2021 Fees

A. Application Fees and Payment Instructions

The appropriate application fee established in the new fee schedule must be paid for an animal drug application or supplement subject to fees under ADUFA IV that is submitted on or after October 1, 2020. The payment must be made in U.S. currency by one of the following methods: wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay, or the* Pay.gov *payment option is available to you after you submit a cover sheet. (Note: only full payments are accepted. No partial payments can be made online.)* Once you search for and find your invoice, select ''Pay Now'' to be redirected to *https://www.pay.gov/.* Electronic payment options are based on the balance due. Payment by credit card is available only for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

When paying by check, bank draft, or U.S. postal money order, please write your application's unique Payment Identification Number (PIN), beginning with the letters AD, on the upper right-hand corner of your completed Animal Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 979033) and PIN on the enclosed check, bank draft, or money order. Mail the payment and a copy of the completed Animal Drug User Fee Cover Sheet to: Food and Drug Administration, P.O. Box 979033, St.

[2] CVM's GFI #170 is located at: *https://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM052494.pdf.*

Louis, MO 63197–9000. Note: in no case should the payment for the fee be submitted to FDA with the application.

When paying by wire transfer, the invoice number needs to be included; without the invoice number, the payment may not be applied and the invoice amount would be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full.

Use the following account information when sending a payment by wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, FDA Deposit Account Number: 75060099, U.S. Department of the Treasury routing/transit number: 021030004, SWIFT Number: FRNYUS33.

To send a check by a courier such as Federal Express, the courier must deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.)

It is important that the fee arrives at the bank at least a day or two before the application arrives at FDA's CVM. FDA records the official application receipt date as the later of the following: the date the application was received by FDA's CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Treasury notifies FDA of receipt of an electronic or wire transfer payment. U.S. Bank and the U.S. Treasury are required to notify FDA within 1 working day, using the PIN described previously.

The tax identification number of FDA is 53–0196965.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log on to the ADUFA website at *https://www.fda.gov/industry/animal-drug-user-fee-act-adufa/animal-drug-user-fee-cover-sheet* and, under Application Submission Information, click on ''Create ADUFA User Fee Cover Sheet.'' For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two—Create an Animal Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet are accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique PIN.

Step Three—Send the payment for your application as described in section IX.A.

Step Four—Please submit your application and a copy of the completed Animal Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product, Establishment, and Sponsor Fees

By December 31, 2020, FDA will issue invoices and payment instructions for product, establishment, and sponsor fees for FY 2021 using this fee schedule. Payment will be due by January 31, 2021. FDA will issue invoices in November 2021 for any products, establishments, and sponsors subject to fees for FY 2021 that qualify for fees after the December 2020 billing.

Dated: July 29, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16839 Filed 7–30–20; 11:15 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–D–1106, FDA–2020–D–1136, FDA–2020–D–1137, FDA–2020–D–1138, FDA–2020–D–1139, and FDA–2020–D–1140]

Guidance Documents Related to Coronavirus Disease 2019; 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 August 3, 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.

• 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.

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 address 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 document.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; 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 (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 (85 FR 16949, 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 titled ''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 titled ''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 that FDA issued during the relevant period, as included in Table 1. This notice announces COVID–19-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:

[1] On April 21, 2020, the PHE Determination was extended, effective April 26, 2020; on July 23, 2020, it was extended again, effective July 25, 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/.*

TABLE 1—GUIDANCE RELATED TO THE COVID–19 PUBLIC HEALTH EMERGENCY

Docket No.	Center	Title of guidance	Contact information to request single copies
FDA–2020–D–1106	CDER	Temporary Policy for Preparation of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID–19) (March 2020) (Updated June 1, 2020).	*druginfo@fda.hhs.gov.* Please include the docket number FDA–2020–D–1106 and complete title of the guidance in the request.
FDA–2020–D–1106	CDER	Policy for Temporary Compounding of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (March 2020) (Updated June 1, 2020).	*druginfo@fda.hhs.gov.* Please include the docket number FDA–2020–D–1106 and complete title of the guidance in the request.
FDA–2020–D–1106	CDER	Temporary Policy for Manufacture of Alcohol for Incorporation Into Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID–19) (March 2020) (Updated June 1, 2020).	*druginfo@fda.hhs.gov.* Please include the docket number FDA–2020–D–1106 and complete title of the guidance in the request.
FDA–2020–D–1136	CDER	Temporary Policy on Prescription Drug Marketing Act Requirements for Distribution of Drug Samples During the COVID–19 Public Health Emergency (June 8, 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 CBER, CDRH, CVM	Statistical Considerations for Clinical Trials During the COVID–19 Public Health Emergency Guidance for Industry (June 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, CVM, CBER	Good Manufacturing Practice Considerations for Responding to COVID–19 Infection in Employees in Drug and Biological Products Manufacturing (June 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–1137	CBER	Development and Licensure of Vaccines to Prevent COVID–19 (June 2020).	Office of Communication, Outreach and Development, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Phone 1–800–835–4709 or 240–402–8010, email *ocod@fda.hhs.gov.*
FDA–2020–D–1138	CDRH	Enforcement Policy for Non-Invasive Remote Monitoring Devices Used to Support Patient Monitoring During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency (Revised) (March 20, 2020) (Updated June 5, 2020).	*CDRH-Guidance@fda.hhs.gov.* Please include the document number 20014 and complete title of the guidance in the request.
FDA–2020–D–1138	CDRH	Notifying CDRH of a 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) (Updated June 19, 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, CBER	Effects of the COVID–19 Public Health Emergency on Formal Meetings and User Fee Applications for Medical Devices—Questions and Answers (June 2020).	*CDRH-Guidance@fda.hhs.gov.* Please include the document number 20040 and complete title of the guidance in the request.
FDA–2020–D–1139	CFSAN	Reporting a Temporary Closure or Significantly Reduced Production by a Human Food Establishment and Requesting FDA Assistance During the COVID–19 Public Health Emergency (May 27, 2020).	*INFOCenter-CFSAN@fda.hhs.gov.* Please include the docket number, FDA–2020–D–1139, 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. 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 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—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).
Good Manufacturing Practice Considerations for Responding to COVID–19 Infections in Employees in Drug and Biological Products Manufacturing—June 2020.	21 CFR 211, 211.22, 211.28(d), 211.100. 21 CFR 212.20, 212.30, 212.50, 212.70, 212.71 21 CFR 600.10(c)(1)	(1) ICH Q7 Good Manufacturing Practice Guidance for Active Pharmaceutical Ingredients. (2) ICH Q5A Viral Safety Evaluation of biotechnology Products Derived From Cell Lines of Human or Animal Origin. (3) ICH Q9 Quality Risk Management ..... (4) Planning for the Effects of High Absenteeism to Ensure Availability of Medically Necessary Drug Products. (5) Enforcement Policy for Sterilizers, disinfectant Devices, and Air Purifiers During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency. (6) 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. (7) GFI #271 Reporting and Mitigating Animal Drug Shortages during the COVID–19 Public Health Emergency.	0910–0130 0910–0139 0910–0667 0910–0675 0910–0759 0910–0032 0910–0669
Temporary Policy on Prescription Drug Marketing Act Requirements for Distribution of Drug Samples during the COVID–19 Public Health Emergency—Guidance for Industry.	21 CFR 203	.....	0910–0435
Temporary Policy for Preparation of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID–19)—UPDATE of guidance announced in March 2020.	27 CFR Part 20 and 21	(1) Temporary Compounding of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID–19). (2) Temporary Policy for Manufacture of Alcohol for Incorporation Into Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID–19). (3) Adverse Event Reporting Requirements	0910–0045 0910–0139 0910–0230 0910–0291 0910–0340 0910–0641 0910–0645 0910–0800
Temporary Policy for Manufacture of Alcohol for Incorporation Into Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID–19)—UPDATE of guidance announced in March 2020.	27 CFR Part 20 and 21	None	0910–0045 0910–0139 0910–0230 0910–0291 0910–0340 0910–0641 0910–0645 0910–0800
Policy for Temporary Compounding of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency Immediately in Effect Guidance for Industry—UPDATE of guidance announced in March 2020.	.....	(1) Temporary Policy for Preparation of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID–19). (2) Temporary Policy for Manufacture of Alcohol for Incorporation into Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID–19).	0910–0045 0910–0139 0910–0230 0910–0291 0910–0340 0910–0641 0910–0645 0910–0800

The guidance, Statistical Considerations for Clinical Trials during the COVID–19 Public Health Emergency, contains no collection of information. Therefore, clearance by OMB under the PRA is not required.

B. CBER Guidances

The guidance listed in the table below refer to previously approved collection of information. This collection of information is subject to review by the OMB under the PRA. The collection of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

TABLE 3—CBER 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).
Development and Licensure of Vaccines to Prevent COVID–19.	21 CFR part 312		0910–0114
	21 CFR part 58		0910–0119
	21 CFR part 50		0910–0130
	21 CFR parts 210, 211, and 610.		0910–0139
	221 CFR part 600		0910–0308
	221 CFR part 601		0910–0338
		—Form FDA 3500A	0910–0291
		—Establishment and Operation of Clinical Trial Data Monitoring Committees.	0910–0581
		—Emergency Use Authorization of Medical Products and Related Authorities.	0910–0595

C. 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 OMB under the PRA. The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

TABLE 4—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).
Enforcement Policy for Non-Invasive Remote Monitoring Devices Used to Support Patient Monitoring During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency (Revised) (March 20, 2020) (Updated June 5, 2020).	807, subpart E		0910–0120
	800, 801, and 809		0910–0485
Effects of the COVID–19 Public Health Emergency on Formal Meetings and User Fee Applications for Medical Devices—Questions and Answers (June 22, 2020).		Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program: Guidance for Industry and Food and Drug Administration Staff.	0910–0756
		Emergency Use Authorization of Medical Products and Related Authorities; Guidance for Industry and Other Stakeholders.	0910–0595
	814, subparts A through E.		0910–0231
	807, subpart E		0910–0120
		De Novo Classification Process (Evaluation of Automatic Class III Designation): Guidance for Industry and Food and Drug Administration Staff.	0910–0844
	814, subpart H		0910–0332
	812		0910–0078

The guidance indicated in the table below refers to previously approved collections of information. These collections of information are subject to review by the 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 5—CDRH 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
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 (Revised) (May 6, 2020) (Updated June 19, 2020).	807, subparts A through D.	Emergency Use Authorization of Medical Products and Related Authorities; Guidance for Industry and Other Stakeholders.	0910–0625 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 public health emergency. Updates to FDA every two 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 public health emergency.

D. CFSAN Guidances

The guidance indicated in the table below refers to previously approved collections of information. These collections of information are subject to review by the 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 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 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
Reporting a Temporary Closure or Significantly Reduced Production by a Human Food Establishment and Requesting FDA Assistance During the COVID–19 Public Health Emergency.	21 CFR part 1, subpart H.	.....	0910–0502	Establishments have the option to report to FDA temporary closures or significant reductions of production and to request assistance from FDA.

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: July 28, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16852 Filed 7–31–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3523]

Animal Generic Drug User Fee Rates and Payment Procedures for Fiscal Year 2021

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the fee rates and payment procedures for fiscal year (FY) 2021 generic new animal drug user fees. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Animal Generic Drug User Fee Amendments of 2018 (AGDUFA III), authorizes FDA to collect user fees for certain abbreviated applications for generic new animal drugs, for certain generic new animal drug products, and for certain sponsors of such abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs. This notice establishes the fee rates for FY 2021.

FOR FURTHER INFORMATION CONTACT: Lisa Kable, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–6888, *Lisa.Kable@fda.hhs.gov* or visit FDA's website at *https://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/default.htm.* For general questions, you may also email the Center for Veterinary Medicine (CVM) at *cvmagdufa@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 741 of the FD&C Act (21 U.S.C. 379j–21) establishes three different types of user fees: (1) Fees for certain types of abbreviated applications for generic new animal drugs; (2) annual fees for certain generic new animal drug products; and (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs (21 U.S.C. 379j–21(a)). When certain conditions are met, FDA will waive or reduce fees for generic new animal drugs intended solely to provide for a minor use or minor species indication (21 U.S.C. 379j–21(d)).

For FY 2019 through FY 2023, the FD&C Act establishes a yearly base revenue amount and percentages for each of these fee categories (21 U.S.C. 379j–21(b)). Base revenue amounts are subject to adjustment for inflation and workload (21 U.S.C. 379j–21(c)(2) and (3)). Beginning with FY 2021, the annual fee revenue amounts are also subject to adjustment to reduce workload-based increases by the amount of certain excess collections (21 U.S.C. 379j–21(c)(3)(B)). The target revenue amounts for each fee category for FY 2021, are as follows: For application fees, the target revenue amount is $5,699,000; for product fees, the target revenue amount is $8,548,500; and for sponsor fees, the target revenue amount is $8,548,500.

For FY 2021, the generic new animal drug user fee rates are: $513,423 for each abbreviated application for a generic new animal drug other than those subject to the criteria in section 512(d)(4) of the FD&C Act (21 U.S.C. 360b(d)(4)); $256,712 for each abbreviated application for a generic new animal drug subject to the criteria in section 512(d)(4) of the FD&C Act; $17,235 for each generic new animal drug product; $201,687 for each generic new animal drug sponsor paying 100 percent of the sponsor fee; $151,265 for each generic new animal drug sponsor paying 75 percent of the sponsor fee; and $100,843 for each generic new animal drug sponsor paying 50 percent of the sponsor fee. FDA will issue invoices for FY 2021 product and sponsor fees by December 31, 2020. These fees will be due by January 31, 2021. The application fee rates are effective for all abbreviated applications for a generic new animal drug submitted on or after October 1, 2020, and will remain in effect through September 30, 2021. Applications will not be accepted for review until FDA has received full payment of related application fees and any other fees owed under the Animal Generic Drug User Fee program (AGDUFA program).

II. Revenue Amount for FY 2021

A. Statutory Fee Revenue Amounts

AGDUFA III, Title II of Public Law 115–234, specifies that the aggregate base fee revenue amount for FY 2021 for all generic new animal drug user fee categories is $18,336,340 (21 U.S.C. 379j–21(b)(1)).

B. Inflation Adjustment to Fee Revenue Amount

AGDUFA III specifies that the annual fee revenue amount is to be adjusted for inflation increases for FY 2020 and subsequent fiscal years, using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see 21 U.S.C. 379j–21(c)(2)). The component of the inflation adjustment for payroll costs shall be one plus the average annual percent change in the cost of all PC&B paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding fiscal years of available data, multiplied by the average proportion of PC&B costs to total FDA costs for the first 3 of the 4 preceding fiscal years of available data. The data on total PC&B paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees.

Table 1 summarizes the actual cost and FTE data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first 3 of the 4 fiscal years preceding FY 2021. The 3-year average is 1.2644 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

Fiscal year	2017	2018	2019	3-year average
Total PC&B	$2,581,551,000	$2,690,678,000	$2,620,052,000	
Total FTE	17,022	17,023	17,144	
PC&B per FTE	$151,660	$158,061	$152,826	
Percent Change from Previous Year	2.8845	4.2206	−3.3120	1.2644

The statute specifies that this 1.2644 percent should be multiplied by the proportion of PC&B costs to total FDA costs. Table 2 shows the amount of PC&B and the total amount obligated by FDA for the same 3 FYs.

TABLE 2—PC&B AS A PERCENT OF TOTAL COSTS AT FDA

Fiscal year	2017	2018	2019	3-year average
Total PC&B	$2,581,551,000	$2,690,678,000	$2,620,052,000	
Total Costs	$5,104,580,000	$5,370,935,000	$5,663,389,000	
PC&B Percent	50.5732	50.0970	46.2630	48.9777

The portion of the inflation adjustment relating to payroll cost is 1.2644 percent multiplied by 48.9777 percent, or 0.6193 percent.

The statute specifies that the portion of the inflation adjustment for non-payroll costs is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items less food and energy; annual index) for the first 3 of the preceding 4 years of available data multiplied by the average proportion of all costs other than PC&B costs to total FDA costs for the first 3 of the 4 preceding fiscal years. As a result of a geographical revision made by the Bureau of Labor and Statistics in January 2018 [1], the ''Washington-Baltimore, DC-MD-VA-WV'' index was discontinued and replaced with two separate indices (*i.e.,* ''Washington-Arlington-Alexandria, DC-VA-MD-WV'' and ''Baltimore-Columbia-Towson, MD''). In order to continue applying a CPI that best reflects the geographic region in which FDA is headquartered and that provides the most current data available, FDA is using the Washington-Arlington-Alexandria index, less food and energy, in calculating the relevant adjustment factors for FY 2020 and subsequent years. Table 3 provides the summary data for the percent change in the specified CPI for the Washington-Arlington-Alexandria area. The data from the Bureau of Labor Statistics is shown in table 3.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN WASHINGTON-ARLINGTON-ALEXANDRIA AREA CPI LESS FOOD AND ENERGY

Year	2017	2018	2019	3-year average
Annual CPI	266.897	272.414	275.841	
Annual Percent Change	0.5894%	2.0671%	1.2580%	1.3048%

To calculate the inflation adjustment for non-payroll costs, we multiply 1.3048 percent by the proportion of all costs other than PC&B to total FDA costs. Since 48.9777 percent was obligated for PC&B as shown in table 2, 51.0223 percent is the portion of costs other than PC&B (100 percent − 48.9777 percent = 51.0223 percent). The non-payroll adjustment is 1.3048 percent times 51.0223 percent, or 0.6657 percent.

Next, we add the payroll component (0.6193 percent) to the non-payroll component (0.6657 percent), for an inflation adjustment of 1.2850 percent for FY 2021.

AGDUFA III provides for the inflation adjustment to be compounded each fiscal year after FY 2020 (see 21 U.S.C. 379j–21(c)(2)). The inflation adjustment for FY 2021 (1.2850 percent) is compounded by adding 1 and then multiplying by 1 plus the inflation adjustment factor for FY 2020 (2.2705 percent), as published in the **Federal Register** on August 2, 2019 (84 FR 37891 to 37896), which equals 1.035847 (rounded) (1.012850 × 1.022705) for FY 2021. We then multiply the base revenue amount for FY 2021 ($18,336,340) by 1.035847, yielding an inflation adjusted amount of $18,993,643.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

The fee revenue amounts established in AGDUFA III for FY 2020 and subsequent fiscal years are also subject to adjustment to account for changes in FDA's review workload. A workload adjustment will be applied to the inflation adjusted fee revenue amount (21 U.S.C. 379j–21(c)(3)).

To determine whether a workload adjustment applies, FDA calculates the weighted average of the change in the total number of each of the four types of applications and submissions specified in the workload adjustment provision (abbreviated applications for generic new animal drugs, manufacturing supplemental abbreviated applications for generic new animal drugs, investigational generic new animal drug study submissions, and investigational generic new animal drug protocol submissions) received over the 5-year period that ended on September 30, 2018 (the base years), and the average number of each of these types of applications and submissions over the most recent 5-year period that ended May 31, 2020.

The results of these calculations are presented in the first two columns of table 4. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA generic new animal drug review workload was accounted for by each type of application or submission in the table during the most recent 5 years. Column 5 is the weighted percent change in each category of workload, and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of the table the sum of the values in column 5 is calculated, reflecting a total change in workload of 28.3333 percent for FY 2021. This is the workload adjuster for FY 2021.

[1] *https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm.*

TABLE 4—WORKLOAD ADJUSTER CALCULATION

Application type	Column 1	Column 2	Column 3	Column 4	Column 5
	5-year average (base years)	Latest 5-year average	Percent change	Weighting factor	Weighted percent change
Abbreviated Application for a Generic New Animal Drug (ANADAs)	24.0	25.6	6.6667	0.2181	1.4541
Manufacturing Supplements ANADAs	169.4	189.8	12.0425	0.2693	3.2430
Generic Investigational Study Submissions	69.2	101.8	47.1098	0.3666	17.2683
Generic Investigational Protocol Submissions	34.4	49.4	43.6047	0.1460	6.3679
FY 2021 AGDUFA III Workload Adjuster					28.3333

The statutory revenue amount after the inflation adjustment ($18,993,643) must now be increased by 28.3333 percent to reflect the changes in review workload (workload adjustment), for a workload and inflation-adjusted amount of $24,375,169.

D. Reduction of Workload-Based Increase by Amount of Certain Excess Collections

Under section 741(c)(3)(B) of the FD&C Act, for FYs 2021 through 2023, if application of the workload adjustment increases the amount of fee revenues established for the fiscal year, as adjusted for inflation, the fee revenue increase will be reduced by the amount of any excess collections, for the second preceding fiscal year, up to the amount of the fee revenue increase for workload. The workload and inflation-adjusted amount ($24,375,169) is subtracted by the inflation adjusted amount ($18,993,643) to get the workload adjustment amount ($5,381,526). Then the excess fees collected from FY 2019 as of May 31, 2020 ($1,579,201) are subtracted from the workload adjustment amount ($5,381,526) to get a reduced workload adjustment amount of $3,802,325. Next, the reduced workload adjustment amount ($3,802,325) is added to the inflation-adjusted revenue amount ($18,993,643), for a total fee revenue target of $22,796,000 (rounded to the nearest thousand dollars).

E. FY 2021 Fee Revenue Amounts

AGDUFA III specifies that the revenue amount of $22,796,000 for FY 2021 is to be divided as follows: 25 percent, or a total of $5,699,000, is to come from application fees; 37.5 percent, or a total of $8,548,500, is to come from product fees; and 37.5 percent, or a total of $8,548,500, is to come from sponsor fees (21 U.S.C. 379j–21(b)).

III. Abbreviated Application Fee Calculations for FY 2021

A. Application Fee Revenues and Numbers of Fee-Paying Applications

Each person who submits an abbreviated application for a generic new animal drug shall be subject to an application fee, with limited exceptions (21 U.S.C. 379j–21(a)(1)). The term ''abbreviated application for a generic new animal drug'' means an abbreviated application for the approval of any generic new animal drug submitted under section 512(b)(2) of the FD&C Act (21 U.S.C. 379j–21(k)(1)). The application fees are to be set so that they will generate $5,699,000 in fee revenue for FY 2021.

To set fees for abbreviated applications for generic new animal drugs to realize $5,699,000, FDA must first make some assumptions about the number of fee-paying abbreviated applications it will receive during FY 2021.

The Agency knows the number of applications that have been submitted in previous years. That number fluctuates annually. In estimating the fee revenue to be generated by generic new animal drug applications in FY 2021, FDA is assuming that the number of applications for which fees will be paid in FY 2021 will equal the average number of submissions over the 5 most recently completed fiscal years of the AGDUFA program (FY 2015–FY 2019).

Also, under AGDUFA III, an abbreviated application for an animal generic drug subject to the criteria in section 512(d)(4) of the FD&C Act and submitted on or after October 1, 2013, shall be subject to 50 percent of the fee applicable to all other abbreviated applications for a generic new animal drug (21 U.S.C. 379j–21(a)(1)(C)(ii)).

The average number of original submissions of abbreviated applications for generic new animal drugs over the 5 most recently completed fiscal years is 8.4 applications not subject to the criteria in section 512(d)(4) of the FD&C Act and 5.4 submissions subject to the criteria in section 512(d)(4). Each of the submissions described under section 512(d)(4) of the FD&C Act pays 50 percent of the fee paid by the other applications and will be counted as one half of a fee. Adding all of the applications not subject to the criteria in section 512(d)(4) of the FD&C Act and 50 percent of the number that are subject to such criteria results in a total of 11.10 anticipated full fees.

Based on the previous assumptions, FDA is estimating that it will receive a total of 11.10 fee-paying generic new animal drug applications in FY 2021 (8.4 original applications paying a full fee and 5.4 applications paying a half fee).

B. Application Fee Rates for FY 2021

FDA must set the fee rates for FY 2021 so that the estimated 11.10 abbreviated applications that pay the fee will generate a total of $5,699,000. To generate this amount, the fee for a generic new animal drug application will have to be $513,423 and for those applications that are subject to the criteria set forth in section 512(d)(4) of the FD&C Act, 50 percent of that amount, or $256,712.

IV. Generic New Animal Drug Product Fee Calculations for FY 2021

A. Product Fee Revenues and Numbers of Fee-Paying Products

The generic new animal drug product fee must be paid annually by the person named as the applicant in an abbreviated application or supplemental abbreviated application for a generic new animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360), and who had an abbreviated application or supplemental abbreviated application for a generic new animal drug product pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(a)(2)). The term ''generic new animal drug product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form

marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug has been approved (21 U.S.C. 379j–21(k)(6)). The product fees are to be set so that they will generate $8,548,500 in fee revenue for FY 2021.

To set generic new animal drug product fees to realize $8,548,500, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2021. FDA gathered data on all generic new animal drug products that have been submitted for listing under section 510 of the FD&C Act and matched this to the list of all persons who had a generic new animal drug application or supplemental abbreviated application pending after September 1, 2008. As of June 2020, FDA estimates a total of 501 products submitted for listing by persons who had an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug pending after September 1, 2008. Based on this, FDA believes that a total of 501 products will be subject to this fee in FY 2021.

In estimating the fee revenue to be generated by generic new animal drug product fees in FY 2021, FDA is estimating that 1 percent of the products invoiced, or 5 products, will qualify for minor use/minor species fee waiver (see 21 U.S.C. 379j–21(d)). FDA has made this estimate at 1 percent this year, based on historical data over the past 5 completed fiscal years of the AGDUFA program.

Accordingly, the Agency estimates that a total of 496 (501 minus 5) products will be subject to product fees in FY 2021.

B. Product Fee Rates for FY 2021

FDA must set the fee rates for FY 2021 so that the estimated 496 products that pay fees will generate a total of $8,548,500. To generate this amount will require the fee for a generic new animal drug product, rounded to the nearest dollar, to be $17,235.

V. Generic New Animal Drug Sponsor Fee Calculations for FY 2021

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The generic new animal drug sponsor fee must be paid annually by each person who: (1) Is named as the applicant in an abbreviated application for a generic new animal drug, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an investigational submission for a generic new animal drug that has not been terminated or otherwise rendered inactive and (2) had an abbreviated application for a generic new animal drug, supplemental abbreviated application for a generic new animal drug, or investigational submission for a generic new animal drug pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(k)(7) and 379j–21(a)(3), respectively). A generic new animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j–21(a)(3)(C)). Applicants with more than 6 approved abbreviated applications will pay 100 percent of the sponsor fee; applicants with more than 1 and fewer than 7 approved abbreviated applications will pay 75 percent of the sponsor fee; and applicants with 1 or fewer approved abbreviated applications will pay 50 percent of the sponsor fee (see 21 U.S.C. 379j–21(a)(3)(C)). The sponsor fees are to be set so that they will generate $8,548,500 in fee revenue for FY 2021.

To set generic new animal drug sponsor fees to realize $8,548,500, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2021. FDA estimates that in FY 2021, 13 sponsors will pay 100 percent fees, 19 sponsors will pay 75 percent fees, and 32 sponsors will pay 50 percent fees. That totals the equivalent of 43.25 full sponsor fees (13 × 100 percent or 13, plus 19 × 75 percent or 14.25, plus 32 × 50 percent or 16).

FDA estimates that about 2 percent of all of these sponsors, or 0.865, may qualify for a minor use/minor species fee waiver (see 21 U.S.C. 379j–21(d)). FDA has made the estimate of the percentage of sponsors that will not pay fees at 2 percent this year, based on historical data over the past 5 completed fiscal years of the AGDUFA program.

Accordingly, the Agency estimates that the equivalent of 42.39 full sponsor fees (43.25 minus 0.865) are likely to be paid in FY 2021.

B. Sponsor Fee Rates for FY 2021

FDA must set the fee rates for FY 2021 so that the estimated equivalent of 42.39 full sponsor fees will generate a total of $8,548,500. To generate this amount will require the 100 percent fee for a generic new animal drug sponsor, rounded to the nearest dollar, to be $201,687. Accordingly, the fee for those paying 75 percent of the full sponsor fee will be $151,265, and the fee for those paying 50 percent of the full sponsor fee will be $100,843.

VI. Fee Schedule for FY 2021

The fee rates for FY 2021 are summarized in table 5.

TABLE 5—FY 2021 FEE RATES

Generic new animal drug user fee category	Fee rate for FY 2021
Abbreviated Application Fee for Generic New Animal Drug except those subject to the criteria in section 512(d)(4)	$513,423
Abbreviated Application Fee for Generic New Animal Drug subject to the criteria in section 512(d)(4)	256,712
Generic New Animal Drug Product Fee	17,235
100% Generic New Animal Drug Sponsor Fee [1]	201,687
75% Generic New Animal Drug Sponsor Fee [1]	151,265
50% Generic New Animal Drug Sponsor Fee [1]	100,843

[1] An animal drug sponsor is subject to only one fee each fiscal year.

VII. Fee Waiver or Reduction; Exemption From Fees

The types of fee waivers and reductions that applied last fiscal year still exist for FY 2021. In AGDUFA III a new exemption from fees was established, as follows:

Fees will not apply to any person who not later than September 30, 2023, submits to CVM a supplemental abbreviated application relating to a generic new animal drug approved under section 512 of the FD&C Act, solely to add the application number to the labeling of the drug in the manner specified in section 502(w)(3) of the FD&C Act (21 U.S.C. 352(w)(3)), if that

person otherwise would be subject to user fees under AGDUFA based only on the submission of the supplemental abbreviated application (21 U.S.C. 379j–21(d)(2).

VIII. Procedures for Paying FY 2021 Generic New Animal Drug User Fees

A. Abbreviated Application Fees and Payment Instructions

The FY 2021 fee established in the new fee schedule must be paid for a generic new animal drug application subject to fees under AGDUFA III that is submitted on or after October 1, 2020. The payment must be made in U.S. currency from a U.S. bank by one of the following methods: Wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using an electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* or the *Pay.gov* payment option is available to you after you submit a cover sheet. (Note: Only full payments are accepted. No partial payments can be made online.) Once you have found your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available only for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

When paying by check, bank draft, or U.S. postal money order, please write your application's unique Payment Identification Number (PIN), beginning with the letters ''AG'', on the upper right-hand corner of your completed Animal Generic Drug User Fee Cover Sheet. Also write FDA's post office box number (P.O. Box 979033) and PIN on the enclosed check, bank draft, or money order. Mail the payment and a copy of the completed Animal Generic Drug User Fee Cover Sheet to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. Note: In no case should the payment for the fee be submitted to FDA with the application.

When paying by wire transfer, it is required that the invoice number is included; without the invoice number the payment may not be applied, and the invoice amount would be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, SWIFT No.: FRNYUS33.

To send a check by a courier such as Federal Express, the courier must deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.)

It is important that the fee arrives at the bank at least a day or two before the abbreviated application arrives at FDA's CVM. FDA records the official abbreviated application receipt date as the later of the following: The date the application was received by CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Department of the Treasury notifies FDA of payment. U.S. Bank and the United States Treasury are required to notify FDA within 1 working day, using the PIN described previously.

The tax identification number of FDA is 53–0196965.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log onto the AGDUFA website at *https://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm137049.htm* and scroll down the page until you find the link ''Create AGDUFA User Fee Cover Sheet.'' Select that link and follow the directions. For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two—Create an Animal Generic Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Generic Drug User Fee Cover Sheet. One cover sheet is needed for each abbreviated application for a generic new animal drug. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique PIN.

Step Three—Send the payment for your application as described in section VIII.A.

Step Four—Please submit your application and a copy of the completed Animal Generic Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product and Sponsor Fees

By December 31, 2020, FDA will issue invoices and payment instructions for product and sponsor fees for FY 2021 using this fee schedule. Fees will be due by January 31, 2021. FDA will issue invoices in November 2021 for any products and sponsors subject to fees for FY 2021 that qualify for fees after the December 2020 billing.

Dated: July 28, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

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BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1700]

Prescription Drug User Fee Rates for Fiscal Year 2021

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2021. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Prescription Drug User Fee Amendments of 2017 (PDUFA VI), authorizes FDA to collect application fees for certain applications for the review of human drug and biological products, and prescription drug program fees for certain approved products. This notice establishes the fee rates for FY 2021.

FOR FURTHER INFORMATION CONTACT: Melissa Hurley, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61075, Beltsville, MD 20705–4304, 240–402–4585.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 735 and 736 of the FD&C Act (21 U.S.C. 379g and 379h, respectively) establish two different kinds of user fees. Fees are assessed as follows: (1) Application fees are assessed on certain types of applications for the review of human drug and biological products and (2) prescription drug program fees are assessed on certain approved products (section 736(a) of the FD&C Act). When specific conditions are met, FDA may waive or reduce fees (section 736(d) of the FD&C Act) or exempt certain prescription drug products from fees (section 736(k) of the FD&C Act).

For FY 2018 through FY 2022, the base revenue amounts for the total revenues from all PDUFA fees are established by PDUFA VI. The base revenue amount for FY 2021 is $1,065,707,676. The FY 2021 base revenue amount is adjusted for inflation and for the resource capacity needs for the process for the review of human drug applications (the capacity planning adjustment or CPA). An additional dollar amount specified in the statute (see section 736(b)(1)(F) of the FD&C Act) is then added to provide for additional full-time equivalent (FTE) positions to support PDUFA VI initiatives. The FY 2021 revenue amount may be adjusted further, if necessary, to provide for sufficient operating reserves of carryover user fees. Finally, the amount is adjusted to provide for additional direct costs to fund PDUFA VI initiatives. Fee amounts are to be established each year so that revenues from application fees provide 20 percent of the total revenue, and prescription drug program fees provide 80 percent of the total revenue.

This document provides fee rates for FY 2021 for an application requiring clinical data ($2,875,842), for an application not requiring clinical data ($1,437,921), and for the prescription drug program fee ($336,432). These fees are effective on October 1, 2020, and will remain in effect through September 30, 2021. For applications that are submitted on or after October 1, 2020, the new fee schedule must be used.

II. Fee Revenue Amount for FY 2021

The base revenue amount for FY 2021 is $1,065,707,676 prior to adjustments for inflation, capacity planning, additional FTE, operating reserve, and additional direct costs (see section 736(b)(1) of the FD&C Act).

A. FY 2021 Statutory Fee Revenue Adjustments for Inflation

PDUFA VI specifies that the $1,065,707,676 is to be adjusted for inflation increases for FY 2021 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see section 736(c)(1) of the FD&C Act).

The component of the inflation adjustment for payroll costs shall be one plus the average annual percent change in the cost of all PC&B paid per FTE positions at FDA for the first 3 of the preceding 4 FYs, multiplied by the proportion of PC&B costs to total FDA costs of the process for the review of human drug applications for the first 3 of the preceding 4 FYs (see section 736(c)(1)(A) and (B) of the FD&C Act).

Table 1 summarizes the actual cost and FTE data for the specified FYs and provides the percent changes from the previous FYs and the average percent changes over the first 3 of the 4 FYs preceding FY 2021. The 3-year average is 1.2644 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGES

Fiscal year	2017	2018	2019	3-Year average
Total PC&B	$2,581,551,000	$2,690,678,000	$2,620,052,000	
Total FTE	17,022	17,023	17,144	
PC&B per FTE	$151,660	$158,061	$152,826	
Percent Change From Previous Year	2.8845%	4.2206%	−3.3120%	1.2644%

The statute specifies that this 1.2644 percent be multiplied by the proportion of PC&B costs to the total FDA costs of the process for the review of human drug applications. Table 2 shows the PC&B and the total obligations for the process for the review of human drug applications for the first 3 of the preceding 4 FYs.

TABLE 2—PC&B AS A PERCENT OF TOTAL COST OF THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS

Fiscal year	2017	2018	2019	3-Year average
Total PC&B	$711,016,627	$792,900,647	$872,087,636	
Total Costs	$1,206,657,269	$1,374,508,527	$1,430,338,888	
PC&B Percent	58.9245%	57.6861%	60.9707%	59.1938%

The payroll adjustment is 1.2644 percent from table 1 multiplied by 59.1938 percent (or 0.7484 percent).

The statute specifies that the portion of the inflation adjustment for non-payroll costs is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items; annual index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than PC&B costs to total costs of the process for the review of human drug applications for the first 3 years of the preceding 4 FYs (see section 736(c)(1)(B) of the FD&C Act). As a result of a geographical revision made by the Bureau of Labor and Statistics in January 2018 [1], the ''Washington-Baltimore, DC-MD-VA-WV'' index was discontinued and replaced with two separate indices (*i.e.,* ''Washington-Arlington-Alexandria, DC-VA-MD-WV'' and ''Baltimore-Columbia-Towson, MD''). In order to continue applying a CPI that best reflects the geographic region in which FDA is headquartered and that provides the most current data available, the Washington-Arlington-

[1] For purpose of the capacity planning adjustment, this is defined as an active commercial IND for which a document has been received in the past 18 months.

Alexandria index will be used in calculating the relevant adjustment factors for FY 2020 and subsequent years. Table 3 provides the summary data for the percent changes in the specified CPI for the Washington-Arlington-Alexandria area. The data are published by the Bureau of Labor Statistics and can be found on its website at: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35ASA0,CUUSS35ASA0.*

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-ARLINGTON-ALEXANDRIA AREA

Year	2017	2018	2019	3-year average
Annual CPI	256.221	261.445	264.777	
Annual Percent Change	1.1045%	2.0389%	1.2745%	1.4726%

The statute specifies that this 1.4726 percent be multiplied by the proportion of all costs other than PC&B to total costs of the process for the review of human drug applications obligated. Because 59.1938 percent was obligated for PC&B (as shown in table 2), 40.8062 percent is the portion of costs other than PC&B (100 percent minus 59.1938 percent equals 40.8062 percent). The non-payroll adjustment is 1.4726 percent times 40.8062 percent, or 0.6009 percent.

Next, we add the payroll adjustment (0.7484 percent) to the non-payroll adjustment (0.6009 percent), for a total inflation adjustment of 1.3493 percent (rounded) for FY 2021.

We then multiply the base revenue amount for FY 2021 ($1,065,707,676) by 1.013493, yielding an inflation-adjusted amount of $1,080,087,270.

B. FY 2021 Statutory Fee Revenue Adjustments for Capacity Planning

The statute specifies that after $1,065,707,676 has been adjusted for inflation, the inflation-adjusted amount shall be further adjusted to reflect changes in the resource capacity needs for the process of human drug application reviews (see section 736(c)(2) of the FD&C Act). The statute directed FDA to utilize an interim capacity planning adjustment until a new methodology could be developed and made effective.

As a first step toward the new methodology, FDA committed to establish modernized time reporting and a resource capacity planning capability. Modernized time reporting was implemented in the Center for Biologics Evaluation and Research (CBER) in 2018 and in the Center for Drug Evaluation and Research (CDER) in 2019. A resource capacity planning capability was established in both CDER and CBER in 2020. In the statute, FDA was directed to commission an independent report evaluating options and recommendations for a new methodology to accurately assess changes in the resource and capacity needs of the process for the review of human drug applications, informed by personnel time reporting data as an input, and to publish the report for public comment. The evaluation was conducted by Booz Allen Hamilton and published on the FDA website in April 2020.[2] A docket was then opened to receive public comment.[3] After having reviewed the evaluation and the public comment, FDA is establishing and implementing the new CPA methodology for the setting of FY 2021 fee amounts.

The new CPA methodology is intended to resolve issues with the previous interim methodology.[4] First, the interim methodology was a lagging indicator as it utilized changes in average workload volumes during prior years—specifically, the adjustment was based on the change in the 3-year average ending in the most recent year for which data is available over the 3-year average for the previous year. The new methodology replaces the comparison of prior 3-year averages with predictive models to forecast future workload volumes, where feasible. Second, the interim CPA methodology did not convert the volume of workload into resource demands; its adjustments simply reflected changes in average number of workload units. The new methodology translates the expected workload volumes into forecasted staffing needs in terms of FTEs, facilitating a more straightforward calculation of both future resource and funding needs.

The new CPA methodology includes four steps:

(1) Forecast workload volumes: Predictive models estimate the volume of workload for the upcoming fiscal year. Workload categories in the CPA for PDUFA include original new drug applications (NDAs)/biologics license applications (BLAs), commercial investigational new drug applications (INDs) with activity, supplements (efficacy, labeling and manufacturing), and formal industry meetings scheduled (Type A–C meetings ,[5] including written-response only (WRO) meetings)

(2) Forecast the resource needs: Forecast algorithms are generated utilizing time reporting data. These algorithms estimate the required demand in FTEs for direct review-related effort. This is then compared to current available resources for the direct review workload.

(3) Assess the resource forecast in the context of additional internal factors: Program leadership examines operational, financial, and resourcing data to assess whether FDA will be able to utilize additional funds during the fiscal year, and the funds are required to support additional review capacity. FTE amounts are adjusted, if needed.

(4) Convert the FTE need to dollars: Utilizing the FDA's fully loaded FTE cost model, the final feasible FTEs are converted to an equivalent dollar amount.

Further, FDA is adopting an iterative, continuous improvement approach as part of its new CPA methodology. For FY 2021, FDA is applying the new methodology to core review activities, for which significant data collection and analysis has been completed. Going forward, the Agency intends to refine its

[2] See: *https://www.fda.gov/media/136606/download.*

[3] See: *https://www.regulations.gov/docketBrowser?rpp=50&so=DESC&sb=postedDate&po=0&dct=PS&D=FDA-2020-N-0989.*

[4] Under the interim methodology, the capacity planning adjustment for a fiscal year was based on the product of the annual base revenue for the year, as adjusted for inflation, and an adjustment percentage. The adjustment percentage was a weighted change in the 3-year average ending in the most recent year for which data are available, over the 3-year average in the previous year, for: (1) The total number of human drug applications, efficacy supplements, and manufacturing supplements submitted to FDA; (2) the total number of active commercial investigational new drug applications; and (3) the total number of formal meetings scheduled by FDA and written responses issued by the Agency in lieu of such formal meetings, as set forth in section 1.H. of the PDUFA commitment letter.

[5] The PDUFA VI commitment letter defines these meeting types in section 1.H.: *https://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm511438.pdf.*

data and estimates for the core review activities to improve their accuracy, and also, as feasible, to apply the new methodology to all major activities that impact the resource needs of the process for the review of human drug applications under PDUFA, potentially including, for example, postmarket safety activities and some subsets of policy and guidance development. This iterative, continuous improvement approach to the CPA methodology was recommended by the independent evaluation and in the public comments. FDA believes that its estimates will be continuously improved over time as more robust data becomes available to more fully account for total PDUFA program resource needs, and that this new methodology represents a significant improvement over the previous CPA methodology.

To determine the FY 2021 capacity planning adjustment, FDA calculated a PDUFA CPA for CDER and CBER individually. The final Center-level results were then combined to determine the total FY 2021 PDUFA CPA. The following section outlines the major components of each Center's FY 2021 PDUFA CPA.

Table 4 summarizes the forecasted workload volumes for CDER in FY 2021 based on predictive models, as well as historical actuals from FY 2019 for comparison.

TABLE 4—CDER ACTUAL FY 2019 WORKLOAD VOLUMES AND PREDICTED FY 2021 WORKLOAD VOLUMES

Workload category	FY 2019 actuals	FY 2021 predictions
Efficacy Supplements	287	322
Labeling Supplements	1,320	1,584
Manufacturing Supplements	2,024	2,187
NDA/BLA Original	156	171
PDUFA Industry Meetings Scheduled and WROs	3,186	3,249
Active Commercial INDs [1]	8,233	8,565

[1] The Bureau of Labor Statistics' announcement of the geographical revision can be viewed at *https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm.*

[1] For purpose of the capacity planning adjustment, this is defined as an active commercial IND for which a document has been received in the past 18 months.

Utilizing the resource forecast algorithms, the forecasted workload volumes for FY 2021 were then converted into estimated FTE needs for CDER's PDUFA direct review-related work. The resulting expected FY 2021 FTE need for CDER was compared to current onboard capacity for direct review related work to determine the FY 2021 resource delta, as summarized in table 5.

TABLE 5—CDER FY21 PDUFA RESOURCE DELTA

Center	Current resource capacity	FY 2021 resource forecast	Predicted FY 2021 FTE delta
CDER	1,594.1	1,859.7	265.6

The projected 265.6 FTE delta was then assessed by FDA in the context of additional operational and internal factors to ensure that a fee adjustment is only made for resources that can be utilized in the fiscal year and for which funds are required to support additional review capacity. After accounting for the range of recent years historical net FTE gains within CDER and subtracting previously funded PDUFA vacancies, a range of 6 to 59 FTEs was established as a realistic adjustment for FY 2021. CDER adjusted to the lower portion of this range until the pace of net gains increases and is sustained. CDER also recognized that some resources may be required to sustain increases in PDUFA workload resulting from the impacts of the COVID–19 pandemic. In summary, after accounting for these internal factors, FDA determined that an adjustment for $3,922,113 to fund an equivalent of 13 FTEs in FY 2021 was needed and realistic.

TABLE 6—CDER FY 2021 PDUFA CPA

Center	Additional FTEs for FY 2021	Cost for each additional FTE	CDER FY21 PDUFA CPA
CDER	13	$301,701	$3,922,113

To calculate the FY 2021 PDUFA CPA for CBER, FDA followed the same approach outlined above. Table 7 summarizes the forecasted workload volumes for CBER in FY 2021 as well as the corresponding historical actuals from FY 2019 for comparison.

TABLE 7—CBER ACTUAL FY 2019 WORKLOAD VOLUMES AND PREDICTED FY 2021 WORKLOAD VOLUMES

Workload category	FY 2019 Actuals	FY 2021 predictions
Efficacy Supplements	12	15
Labeling Supplements	66	64
Manufacturing Supplements	541	576
NDA/BLA Original	7	7
PDUFA Industry Meetings Scheduled and WROs	541	738
Active Commercial INDs[1]	1,361	1,571

The forecasted CBER PDUFA workload for FY 2021 was then converted into expected FTE resources and compared to current onboard capacity for PDUFA direct review work, as summarized in table 8.

TABLE 8—CBER FY 2021 PDUFA RESOURCE DELTA

Center	Current resource capacity	FY 2021 resource forecast	Predicted FY 2021 FTE delta
CBER	322.7	385.1	62.4

The projected 62.4 FTE delta for CBER was also assessed in the context of other operational and financial factors that may impact the need and/or feasibility of obtaining the additional resources. After accounting for historical net FTE gains within CBER and subtracting previously funded PDUFA vacancies, an adjustment of 29 additional FTEs within CBER for FY 2021 was determined to be both needed and realistic to support significant growth in some PDUFA products and PDUFA workload stemming from the COVID–19 pandemic. The FY 2021 PDUFA CPA for CBER is therefore $8,641,681, as summarized in table 9.

TABLE 9—CBER FY 2021 PDUFA CPA

Center	Additional FTEs for FY 2021	Cost for each additional FTE	CBER FY 2021 PDUFA CPA
CBER	29	$297,989	$8,641,681

The CDER and CBER CPA amounts were then added together to determine the PDUFA CPA for FY 2021 of $12,563,794, as outlined in table 10.

TABLE 10—FY 2021 PDUFA CPA

Center	FY 2021 PDUFA CPA
CDER	$3,922,113
CBER	$8,641,681
Total	$12,563,794

Table 11 shows the calculation of the inflation and capacity planning adjusted amount for FY 2021. The FY 2021 base revenue amount, $1,065,707,676, shown on line 1 is multiplied by the inflation adjustment factor of 1.013493, resulting in the inflation-adjusted amount of $1,080,087,270 shown on line 3. The FY 2021 CPA of $12,563,794 is then added on line 4, resulting in the inflation and capacity planning adjusted amount of $1,092,651,064 shown on line 5.

TABLE 11.—PDUFA INFLATION AND CAPACITY PLANNING ADJUSTED AMOUNT FOR FY 2021, SUMMARY CALCULATION

FY 2021 Revenue Amount	$1,065,707,676	Line 1
Inflation Adjustment Factor for FY 2021 (1 plus 1.3493 percent)	1.013493	Line 2
Inflation-Adjusted Amount	$1,080,087,270	Line 3
Capacity Planning Adjustment for FY 2021	$12,563,794	Line 4
Inflation and Capacity Planning Adjusted Amount	$1,092,651,064	Line 5

Per the commitments made in PDUFA VI, this increase in the revenue amount will be allocated to and used by organizational review components engaged in direct review work to enhance resources and expand staff capacity and capability (see II.A.4 on p. 37 of the PDUFA VI commitment letter[6]).

[6] The PDUFA VI commitment letter can be viewed at *https://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm511438.pdf.*

C. FY 2021 Statutory Fee Revenue Adjustments for Additional Dollar Amounts

PDUFA VI provides an additional dollar amount for each of the 5 fiscal years covered by PDUFA VI for additional FTE to support PDUFA VI

enhancements outlined in the PDUFA VI commitment letter. The amount for FY 2021 is $5,426,896 (see section 736(b)(1)(F) of the FD&C Act). Adding this amount to the inflation and capacity planning adjusted revenue amount, $1,092,651,064, equals $1,098,077,960.

D. FY 2021 Statutory Fee Revenue Adjustments for Operating Reserve

PDUFA VI provides for an operating reserve adjustment to allow FDA to increase the fee revenue and fees for any given fiscal year during PDUFA VI to maintain up to 14 weeks of operating reserve of carryover user fees. If the carryover balance exceeds 14 weeks of operating reserves, FDA is required to decrease fees to provide for not more than 14 weeks of operating reserves of carryover user fees.

To determine the 14-week operating reserve amount, the FY 2021 annual base revenue adjusted for inflation, capacity planning, and additional dollar amounts, $1,098,077,960 is divided by 52, and then multiplied by 14. The 14-week operating reserve amount for FY 2021 is $295,636,374.

To determine the end of year operating reserve amount, the Agency must assess actual operating reserve at the end of the third quarter of FY 2020 and forecast collections and obligations in the fourth quarter of FY 2020. The estimated end of year FY 2020 operating reserve is $217,070,092.

Because the estimated end of year FY 2021 PDUFA operating reserve does not exceed the 14-week operating reserve for FY 2021, FDA will not reduce the FY 2021 PDUFA fee revenue in FY 2021.

E. FY 2021 Statutory Fee Revenue Adjustments for Additional Direct Cost

PDUFA VI specifies that $8,730,000, adjusted for inflation, be added in addition to the operating reserve adjustment to account for additional direct costs in FY 2021. This additional direct cost adjustment is adjusted for inflation by multiplying $8,730,000 by the Consumer Price Index for urban consumers (Washington-Baltimore, DC–MD–VA–WV; Not Seasonally Adjusted; All Items; Annual Index) for the most recent year of available data, divided by such index for 2016 (see section 736(c)(4)(B) of the FD&C Act). Because of the geographical revision made by the Bureau of Labor and Statistics, the Washington-Arlington-Alexandria index will be used in calculating the direct cost adjustment inflation factor for FY 2020 and subsequent years. The annual index for 2019, 264.777, divided by such index for 2016, 253.422, results in an adjustment factor of 1.044807, making the additional direct cost adjustment equal to $9,121,165.

The final FY 2021 PDUFA target revenue is $1,107,199,000 (rounded to the nearest thousand dollars).

III. Application Fee Calculations

A. Application Fee Revenues and Application Fees

Application fees will be set to generate 20 percent of the total target revenue amount, or $221,439,800 in FY 2021.

B. Estimate of the Number of Fee-Paying Applications and Setting the Application Fees

FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive during the next FY by averaging the number of fee-paying FAEs received in the 3 most recently completed FYs. Prior year FAE totals are updated annually to reflect refunds and waivers processed after the close of the FY.

In estimating the number of fee-paying FAEs, a full application requiring clinical data counts as one FAE. An application not requiring clinical data counts as one-half of an FAE. An application that is withdrawn before filing, or refused for filing, counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant initially paid one-half of the full application fee amount. Prior to PDUFA VI, the FAE amount also included supplements; supplements have been removed from the FAE calculation as the supplement fee has been discontinued in PDUFA VI.

As table 12 shows, the average number of fee-paying FAEs received annually in the most recent 3-year period is 77 FAEs. FDA will set fees for FY 2021 based on this estimate as the number of full application equivalents that will pay fees.

TABLE 12—FEE-PAYING FAES

FY	2017	2018	2019	3-year average
Fee-Paying FAEs	79.75	68.87	82.38	77.00

Note: Prior year FAE totals are updated annually to reflect refunds and waivers processed after the close of the FY.

The FY 2021 application fee is estimated by dividing the average number of full applications that paid fees over the latest 3 years, 77, into the fee revenue amount to be derived from application fees in FY 2021, $221,439,800. The result is a fee of $2,875,842 per full application requiring clinical data, and $1,437,921 per application not requiring clinical data.

IV. Fee Calculations for Prescription Drug Program Fees

PDUFA VI assesses prescription drug program fees for certain prescription drug products; in addition, an applicant will not be assessed more than five program fees for a fiscal year for prescription drug products identified in a single approved NDA or BLA (see section 736(a)(2)(C) of the FD&C Act). Applicants are assessed a program fee for a fiscal year only for user fee eligible prescription drug products identified in a human drug application approved as of October 1 of such fiscal year.

FDA estimates 2,793 program fees will be invoiced in FY 2021 before factoring in waivers, refunds, and exemptions. FDA approximates that there will be 124 waivers and refunds granted. In addition, FDA approximates that another 36.2 program fees will be exempted in FY 2021 based on the orphan drug exemption in section 736(k) of the FD&C Act. FDA estimates 2,632.8 program fees in FY 2021, after allowing for an estimated 160.2 waivers and reductions, including the orphan drug exemptions. The FY 2021 prescription drug program fee rate is calculated by dividing the adjusted total revenue from program fees ($885,759,200) by the estimated 2,632.8 program fees, for a FY 2021 program fee of $336,432 (rounded to the nearest dollar).

V. Fee Schedule for FY 2021

The fee rates for FY 2021 are displayed in table 13.

TABLE 13—FEE SCHEDULE FOR FY 2021

Fee Category	Fee rates for FY 2021
Application:	
Requiring clinical data	$2,875,842
Not requiring clinical data	$1,437,921
Program	$336,432

VI. Fee Payment Options and Procedures

A. Application Fees

The appropriate application fee established in the new fee schedule must be paid for any application subject to fees under PDUFA that is submitted on or after October 1, 2020. Payment must be made in U.S. currency by electronic check, check, bank draft, wire transfer, or U.S. postal money order payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express).

FDA has partnered with the U.S. Department of the Treasury to use *Pay.gov,* a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after completing the Prescription Drug User Fee Cover Sheet and generating the user fee ID number. Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* (**Note**: only full payments are accepted. No partial payments can be made online). Once an invoice is located, ''Pay Now'' should be selected to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S bank accounts as well as U.S. credit cards.

If a check, bank draft, or postal money order is submitted, make it payable to the order of the Food and Drug Administration and include the user fee ID number to ensure that the payment is applied to the correct fee(s). Payments can be mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000. If a check, bank draft, or money order is to be sent by a courier that requests a street address, the courier should deliver your payment to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery). Please make sure that the FDA post office box number (P.O. Box 979107) is written on the check, bank draft, or postal money order.

For payments made by wire transfer, include the unique user fee ID number to ensure that the payment is applied to the correct fee(s). Without the unique user fee ID number, the payment may not be applied, which could result in FDA not filing an application and other penalties. The originating financial institution may charge a wire transfer fee. Applicable wire transfer fees must be included with payment to ensure fees are fully paid. Questions about wire transfer fees should be addressed to the financial institution. The account information for wire transfers is as follows: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53–0196965.

B. Prescription Drug Program Fees

FDA will issue invoices and payment instructions for FY 2021 program fees under the new fee schedule in August 2020. Payment will be due on October 1, 2020. FDA will issue invoices in December 2020 for FY 2021 program fees that qualify for fee assessments after the August 2020 billing.

Dated: July 29, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16833 Filed 7–29–20; 4:15 pm]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3723]

Watson Laboratories, Inc.; Withdrawal of Approval of an Abbreviated New Drug Application for Oxycodone Hydrochloride and Ibuprofen Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA) Center for Drug Evaluation and Research (CDER) is withdrawing approval of an abbreviated new drug application (ANDA) for oxycodone hydrochloride and ibuprofen tablets. The basis for the withdrawal is that the holder of the ANDA has repeatedly failed to submit the required data to support a finding of bioequivalence for this ANDA. The holder of the ANDA has waived its opportunity for a hearing.

DATES: Approval is withdrawn as of August 3, 2020.

FOR FURTHER INFORMATION CONTACT: Jennifer Forde, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6228, Silver Spring, MD 20993–0002, 301–348–3035.

SUPPLEMENTARY INFORMATION: FDA's Office of Generic Drugs (OGD) approved ANDA 078394, held by Watson Laboratories, Inc. (Watson),[1] for a generic version of oxycodone hydrochloride and ibuprofen tablets, 5 milligrams (mg)/400 mg, under the requirements of section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) and FDA's implementing regulations. The OGD approved ANDA 078394 on November 26, 2007. In a notice of opportunity for a hearing (NOOH) published in the **Federal Register** of October 28, 2019 (84 FR 57739), CDER notified Watson of CDER's proposal to issue an order, under section 505(e) of the FD&C Act and § 314.150 (21 CFR 314.150), withdrawing approval of ANDA 078394 and all amendments and supplements to it on the grounds that Watson has failed to submit the required bioequivalence data necessary to demonstrate the bioequivalence of its drug product.

As noted in the October 28, 2019, NOOH, FDA issued a letter to Watson on August 9, 2011, regarding ANDA 078394 because this drug product application was supported by bioequivalence studies with the bioanalytical analysis conducted by Cetero Research at the Houston, TX, site between April 1, 2005, and June 15, 2010. As FDA noted in its August 9, 2011 correspondence, inspection findings regarding Cetero Research's bioequivalence studies raised significant concerns about the validity of the reported results of the analytical studies conducted between April 2005 and June 2010 in support of drug applications. Accordingly, FDA informed Watson that ANDA 078394 needed to be supplemented by conducting new bioequivalence studies or re-assaying

[1] In correspondence dated February 23, 2017, Watson notified FDA that Watson is an indirect, wholly-owned subsidiary of Teva Pharmaceuticals USA, Inc.

the samples from the original bioequivalence study. FDA recommended to Watson that the results of the requested bioequivalence studies or re-assays be submitted to ANDA 078394 within 6 months of the date of the August 9, 2011, letter.

In its October 28, 2019, notice of opportunity for a hearing, CDER provided Watson with an opportunity to request a hearing to show why approval of ANDA 078394 should not be withdrawn. No request for a hearing on this matter was received following publication of the notice for an opportunity for a hearing in the **Federal Register**. Failure to file a written notice of participation and request for a hearing as required by § 314.200 (21 CFR 314.200) constitutes an election by Watson not to make use of the opportunity for a hearing concerning the proposal to withdraw approval of ANDA 078394 and a waiver of any contentions concerning the legal status of the drug product. We note that in correspondence dated November 1, 2019, Watson requested withdrawal of the approval of ANDA 078394 under § 314.150(c) (21 CFR 314.150(c)). Because this application withdrawal is effectuated through the notice-of-opportunity-for-a-hearing process (see 84 FR 57739), Watson's request to withdraw approval under § 314.150(c) is moot.

FDA finds that Watson has repeatedly failed to submit the required data to support a finding of bioequivalence for ANDA 078394. In addition, under § 314.200, FDA finds that Watson has waived any contentions concerning the legal status of the drug product. Therefore, under section 505(e) of the FD&C Act, approval of ANDA 078394, and all amendments and supplements thereto, is withdrawn (see **DATES**). Introduction or delivery for introduction of this drug product into interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 355(a), 331(d))).

Dated: July 28, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–16784 Filed 7–31–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1576]

Assessing the Resource Needs of the Generic Drug User Fee Amendments; Publication of Report; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of report publication; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the publication of a report, entitled ''Independent Evaluation of the GDUFA Resource Capacity Planning Adjustment Methodology,'' providing options and recommendations for a new methodology to assess accurately changes in the resource needs of the generic drug review program. FDA, in the Generic Drug User Fee Amendments of 2017 (GDUFA II), committed to obtaining this report through a contract with an independent third party and publishing it before September 30, 2020. FDA is announcing publication of this report and the opening of a docket to receive public comment on this report.

DATES: Submit either electronic or written comments on the report by September 2, 2020 to ensure that the Agency considers your comment on this report.

ADDRESSES: You may submit comments on this report at any time prior to September 2, 2020 as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2020–N–1576 for ''Assessing the Resource Needs of the Generic Drug User Fee Amendments, Publication of Report; Request for Comments.'' Comments filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.

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

FOR FURTHER INFORMATION CONTACT: Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993–0002, 301–796–5003, Fax: 301–847–8443, *Graham.Thompson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the publication of a report, entitled ''Independent Evaluation of the GDUFA Resource Capacity Planning Adjustment Methodology,'' providing options and recommendations for a methodology to accurately assess changes in the resource needs of the generic drug review program. FDA, in the GDUFA II Commitment Letter [1] (entitled GDUFA Reauthorization Performance Goals and Program Enhancements Fiscal Years 2018–2022), committed to obtaining this report and publishing it before September 30, 2020.

The third authorization of the Prescription Drug User Fee Act (PDUFA III), which began in fiscal year 2003, introduced the concept of a Workload Adjuster. This was a mechanism to ensure that the annual revenue for the program could be adjusted based on workload levels to ensure adequate staffing levels. Since its introduction, several updates have been made to the methodology, including its renaming as the Capacity Planning Adjustment (CPA).

GDUFA does not currently have a methodology analogous to the CPA to enable adjustment of the annual target revenue. The study announced by this notice posits options and recommendations to consider regarding the potential application of an adjustment methodology for the GDUFA program.

FDA commissioned Booz Allen Hamilton to produce this report. The report is publicly available on FDA's website at: *https://www.fda.gov/industry/fda-user-fee-programs/resource-capacity-planning-and-modernized-time-reporting.* FDA will review the public comments on the report.

Dated: July 28, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–16794 Filed 7–31–20; 8:45 am]

BILLING CODE 4164–01–P

[1] Available at: *https://www.fda.gov/media/101052/download.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–4119]

Food Safety Modernization Act Third-Party Certification Program User Fee Rate for Fiscal Year 2021

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2021 annual fee rate for recognized accreditation bodies and accredited certification bodies, and the fee rate for accreditation bodies applying to be recognized in the third-party certification program that is authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). We are also announcing the fee rate for certification bodies that are applying to be directly accredited by FDA.

DATES: This fee is effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Donald Prater, Office of Food Policy and Response, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3202, Silver Spring, MD 20993, 301–348–3007.

SUPPLEMENTARY INFORMATION:

I. Background

Section 307 of FSMA, Accreditation of Third-Party Auditors, amended the FD&C Act to create a new provision, section 808, under the same name. Section 808 of the FD&C Act (21 U.S.C. 384d) directs FDA to establish a program for accreditation of third-party certification bodies [1] conducting food safety audits and issuing food and facility certifications to eligible foreign entities (including registered foreign food facilities) that meet our applicable requirements. Under this provision, we established a system for FDA to recognize accreditation bodies to accredit certification bodies, except for limited circumstances in which we may directly accredit certification bodies to participate in the third-party certification program.

Section 808(c)(8) of the FD&C Act directs FDA to establish a reimbursement (user fee) program by which we assess fees and require reimbursement for the work FDA performs to establish and administer the third-party certification program under section 808 of the FD&C Act. The user fee program for the third-party certification program was established by a final rule entitled ''Amendments to Accreditation of Third-Party Certification Bodies To Conduct Food Safety Audits and To Issue Certifications To Provide for the User Fee Program'' (81 FR 90186, December 14, 2016).

The FSMA FY 2021 third-party certification program user fee rate announced in this notice is effective on October 1, 2020, and will remain in effect through September 30, 2021.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2021

FDA must estimate its costs for each activity in order to establish fee rates for FY 2021. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all of the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology, and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2021

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours—not including overtime or holiday hours—worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: payroll, non-payroll, and rent.

[1] For the reasons explained in the third-party certification final rule (80 FR 74570 at 74578–74579, November 27, 2015), and for consistency with the implementing regulations for the third-party certification program in 21 CFR parts 1, 11, and 16, this notice uses the term ''third-party certification body'' rather than the term ''third-party auditor'' used in section 808(a)(3) of the FD&C Act.

We have used an average of past year cost elements to predict the FY 2021 cost. The FY 2021 FDA-wide average cost for payroll (salaries and benefits) is $164,103; non-payroll—including equipment, supplies, information technology, general and administrative overhead—is $94,685; and rent, including cost allocation analysis and adjustments for other rent and rent-related costs, is $25,386 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, non-payroll, and rent, brings the FY 2021 average fully supported cost to $284,174 per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for third-party certification user fees for FY 2021 prior to including travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2021 average fully supported cost of $ 284,174 per FTE by the average number of supported direct FDA work hours in FY 2019—the last FY for which data are available. See Table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2019

Total number of hours in a paid staff year	2,080
Less:	
10 paid holidays	−80
20 days of annual leave	−160
10 days of sick leave	−80
12.5 days of training	−100
26.5 days of general administration	−184
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	1,160

Dividing the average fully supported FTE cost in FY 2021 ($284,174) by the total number of supported direct work hours available for assignment in FY 2019 (1,160) results in an average fully supported cost of $245 (rounded to the nearest dollar), excluding travel costs, per supported direct work hour in FY 2021.

B. Adjusting FY 2019 Travel Costs for Inflation to Estimate FY 2021 Travel Costs

To adjust the hourly rate for FY 2021, FDA must estimate the cost of inflation in each year for FY 2020 and FY 2021. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1))), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2020 inflation rate to be 2.3964 percent; this rate was published in the FY 2020 PDUFA user fee rates notice in the **Federal Register** (August 2, 2019, 84 FR 37882). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 2.3964 percent for FY 2020 and 1.3493 percent for FY 2021, and FDA intends to use this inflation rate to make inflation adjustments for FY 2021; the derivation of this rate will be published in the **Federal Register** in the FY 2021 notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2020 and 2021, therefore, is 1.037780 (or 3.7780 percent) (calculated as 1 plus 2.3964 percent times 1 plus 1.3493 percent).

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $245 already takes into account inflation as the calculation above is based on FY 2021 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for third-party certification program fees for FY 2021 prior to including travel costs as applicable for the activity. For the purpose of estimating the fee, we are using the travel cost rate for foreign travel because we anticipate that the vast majority of onsite assessments made by FDA under this program will require foreign travel. In FY 2019, the Office of Regulatory Affairs spent a total of $3,506,000 on 463 foreign inspection trips related to FDA's Center for Food Safety and Applied Nutrition and Center for Veterinary Medicine field activities programs, which averaged a total of $7,572 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $7,572 per trip by 120 hours per trip results in a total and an additional cost of $63 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2019. To adjust $63 for inflationary increases in FY 2020 and FY 2021, FDA must multiply it by the same inflation factor mentioned previously in this document (1.037780 or 3.7780 percent), which results in an estimated cost of $65 (rounded to the nearest dollar) per paid hour in addition to $245 for a total of $310 per paid hour ($245 plus $65) for each direct hour of work requiring foreign inspection travel. FDA will use this rate in charging fees in FY 2021 when travel is required for the third-party certification program.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2021

Fee category	Fee rates for FY 2021
Hourly rate without travel	$245
Hourly rate if travel is required	310

III. Fees for Accreditation Bodies and Certification Bodies in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

The third-party certification program assesses application fees and annual fees. In FY 2021, the only fees that could be collected by FDA under section 808(c)(8) of the FD&C Act are the initial application fee for accreditation bodies seeking recognition, the annual fee for recognized accreditation bodies, the annual fee for certification bodies accredited by a recognized accreditation body, and the initial application fee for a certification body seeking direct accreditation from FDA. Table 3 provides an overview of the fees for FY 2021.

TABLE 3—FSMA THIRD-PARTY CERTIFICATION PROGRAM USER FEE SCHEDULE FOR FY 2021

Fee category	Fee rates for FY 2021
Initial Application Fee for Accreditation Body Seeking Recognition	$42,320
Annual Fee for Recognized Accreditation Body	1,966
Annual Fee for Accredited Certification Body	2,458
Initial Application Fee for a Certification Body Seeking Direct Accreditation from FDA	42,320

A. Application Fee for Accreditation Bodies Applying for Recognition in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

Section 1.705(a)(1) (21 CFR 1.705(a)(1)) establishes an application fee for accreditation bodies applying for initial recognition that represents the estimated average cost of the work FDA performs in reviewing and evaluating initial applications for recognition of accreditation bodies.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will continue to reconsider the estimated hours. Based on data we have acquired since starting the program, we estimate that it would take, on average, 80 person-hours to review an accreditation body's

submitted application, 48 person-hours for an onsite performance evaluation of the applicant (including travel and other steps necessary for a fully supported FTE to complete an onsite assessment), and 32 person-hours to prepare a written report documenting the onsite assessment.

FDA employees review applications and prepare reports from their worksites, so we use the fully supported FTE hourly rate excluding travel, $245/hour, to calculate the portion of the user fee attributable to those activities: $245/hour × (80 hours (application review) + 32 hours (written report)) = $27,440. FDA employees will likely travel to foreign countries for the onsite performance evaluations because most accreditation bodies are anticipated to be located in foreign countries. For this portion of the fee we use the fully supported FTE hourly rate for work requiring travel, $310/hour, to calculate the portion of the user fee attributable to those activities: $310/hour × 48 hours (*i.e.,* two fully supported FTEs × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $14,880. The estimated average cost of the work FDA performs in total for reviewing an initial application for recognition for an accreditation body based on these figures would be $27,440 + $14,880 = $42,320. Therefore, the application fee for accreditation bodies applying for recognition in FY 2021 will be $42,320.

B. Annual Fee for Accreditation Bodies Participating in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

To calculate the annual fee for each recognized accreditation body, FDA takes the estimated average cost of work FDA performs to monitor performance of a single recognized accreditation body and annualizes that over the average term of recognition. At this time, we assume an average term of recognition of 5 years. We also assume that FDA will monitor 10 percent of recognized accreditation bodies onsite. As the program proceeds, we will adjust the term of recognition as appropriate. We estimate that for one performance evaluation of a recognized accreditation body, it would take, on average (taking into account that not all recognized accreditation bodies would be monitored onsite), 22 hours for FDA to conduct records review, 8 hours to prepare a report detailing the records review and onsite performance evaluation, and 8 hours of onsite performance evaluation. Using the fully supported FTE hourly rates in Table 2, the estimated average cost of the work FDA performs to monitor performance of a single recognized accreditation body would be $7,350 ($245/hour × (22 hours (records review) + 8 hours (written report))) plus $2,480 ($310/hour × 8 hours (on-site evaluation)), which is $9,830. Annualizing this amount over 5 years would lead to an annual fee for recognized accreditation bodies of $1,966 for FY 2021.

C. Annual Fee for Certification Bodies Accredited by a Recognized Accreditation Body in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

To calculate the annual fee for a certification body accredited by a recognized accreditation body, FDA takes the estimated average cost of work FDA performs to monitor performance of a single certification body accredited by a recognized accreditation body and annualizes that over the average term of accreditation. At this time, we assume an average term of accreditation of 4 years. This fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. We estimate that FDA would conduct, on average, the same activities, for the same amount of time to monitor certification bodies accredited by a recognized accreditation body as we would to monitor an accreditation body recognized by FDA. Using the fully supported FTE hourly rates in Table 2, the estimated average cost of the work FDA performs to monitor performance of a single accredited certification body would be $7,350 ($245/hour × (22 hours (records review) + 8 hours (written report))) plus $2,480 ($310/hour × 8 hours (on-site evaluation)), which is $9,830. Annualizing this amount over 4 years would lead to an annual fee for accredited certification bodies of $2,458 for FY 2021.

D. Initial Application Fee for Certification Bodies Seeking Direct Accreditation from FDA in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

Section 1.705(a)(3) establishes an application fee for certification bodies applying for direct accreditation from FDA that represents the estimated average cost of the work FDA performs in reviewing and evaluating initial applications for direct accreditation of certification bodies.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 80 person-hours to review a certification body's submitted application, 48 person-hours for an onsite performance evaluation of the applicant (including travel and other steps necessary for a fully supported FTE to complete an onsite assessment), and 32 person-hours to prepare a written report documenting the onsite assessment.

FDA employees are likely to review applications and prepare reports from their worksites, so we use the fully supported FTE hourly rate excluding travel, $245/hour, to calculate the portion of the user fee attributable to those activities: $245/hour × (80 hours (application review) + 32 hours (written report)) = $27,440. FDA employees will likely travel to foreign countries for the onsite performance evaluations because most certification bodies are anticipated to be located in foreign countries. For this portion of the fee we use the fully supported FTE hourly rate for work requiring travel, $310/hour, to calculate the portion of the user fee attributable to those activities: $310/hour × 48 hours (*i.e.,* two fully supported FTEs × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $14,880. The estimated average cost of the work FDA performs in total for reviewing an initial application for direct accreditation of a certification body based on these figures would be $27,440 + $14,880 = $42,320. Therefore, the application fee for certification bodies applying for direct accreditation from FDA in FY 2021 will be $42,320.

IV. Estimated Fees for Accreditation Bodies and Certification Bodies in Other Fee Categories for FY 2021

Section 1.705(a) also establishes application fees for recognized accreditation bodies submitting renewal applications and certification bodies applying for renewal of direct accreditation. Section 1.705(b) also establishes annual fees for certification bodies directly accredited by FDA.

Although we will not be collecting these other fees in FY 2021, for transparency and planning purposes, we have provided an estimate of what these fees would be for FY 2021 based on the fully supported FTE hourly rates for FY 2021 and estimates of the number of hours it would take FDA to perform relevant activities as outlined in the Final Regulatory Impact Analysis for the Third-Party Certification Regulation. Table 4 provides an overview of the estimated fees for other fee categories.

TABLE 4—ESTIMATED FEE RATES FOR OTHER FEE CATEGORIES UNDER THE FSMA THIRD-PARTY CERTIFICATION PROGRAM

Fee category	Estimated fee rates for FY 2021
Renewal application fee for recognized accreditation body	$25,195
Renewal application fee for directly accredited certification body	25,195
Annual fee for certification body directly accredited by FDA	20,240

V. How must the fee be paid?

Accreditation bodies seeking initial recognition must submit the application fee with the application. For recognized accreditation bodies and accredited certification bodies, an invoice will be sent annually. Payment must be made within 30 days of the receipt date. The payment must be made in U.S. currency from a U.S. bank by one of the following methods: Wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using an electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (Note: Only full payments are accepted. No partial payments can be made online.) Once you have found your invoice, select ''Pay Now'' to be redirected to Pay.gov. Electronic payment options are based on the balance due. Payment by credit card is available only for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards. When paying by check, bank draft, or U.S. postal money order, please include the invoice number. Also write the FDA post office box number (P.O. Box 979108) on the enclosed check, bank draft, or money order. Mail the payment including the invoice number on the check stub to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. When paying by wire transfer, it is required that the invoice number is included; without the invoice number the payment may not be applied. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. For international wire transfers, please inquire with the financial institutions prior to submitting the payment. Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, Swift No.: FRNYUS33.

To send a check by a courier such as Federal Express, the courier must deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.) The tax identification number of FDA is 53–0196965. (Note: Invoice copies do not need to be submitted to FDA with the payments.)

VI. What are the consequences of not paying this fee?

The consequences of not paying these fees are outlined in 21 CFR 1.725. If FDA does not receive an application fee with an application for recognition, the application will be considered incomplete and FDA will not review the application. If a recognized accreditation body fails to submit its annual user fee within 30 days of the due date, we will suspend its recognition. If the recognized accreditation body fails to submit its annual user fee within 90 days of the due date, we will revoke its recognition. If an accredited certification body fails to pay its annual fee within 30 days of the due date, we will suspend its accreditation. If the accredited certification body fails to pay its annual fee within 90 days of the due date, we will withdraw its accreditation.

Dated: July 29, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16846 Filed 7–30–20; 11:15 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1692]

Generic Drug User Fee Rates for Fiscal Year 2021

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Federal Food, Drug, and Cosmetic Act (FD&C Act or statute), as amended by the Generic Drug User Fee Amendments of 2017 (GDUFA II), authorizes the Food and Drug Administration (FDA, Agency, or we) to assess and collect fees for abbreviated new drug applications (ANDAs), drug master files (DMFs), generic drug active pharmaceutical ingredient (API) facilities, finished dosage form (FDF) facilities, contract manufacturing organization (CMO) facilities, and generic drug applicant program user fees. In this document, FDA is announcing fiscal year (FY) 2021 rates for GDUFA II fees.

FOR FURTHER INFORMATION CONTACT: Andrew Bank, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 62019A, Beltsville, MD 20705–4304, 301–796–0292.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744A and 744B of the FD&C Act (21 U.S.C. 379j–41 and 379j–42) establish fees associated with human generic drug products. Fees are assessed on: (1) Certain types of applications for human generic drug products; (2) certain facilities where APIs and FDFs are produced; (3) certain DMFs associated with human generic drug products; and (4) generic drug applicants who have approved ANDAs (the program fee) (see section 744B(a)(2)–(5) of the FD&C Act).

GDUFA II provides that user fees should total $493,600,000 annually adjusted each year for inflation. For FY 2021, the generic drug fee rates are: ANDA ($196,868), DMF ($69,921), domestic API facility ($41,671), foreign API facility ($56,671), domestic FDF facility ($184,022), foreign FDF facility ($199,022), domestic CMO facility ($61,341), foreign CMO facility ($76,341), large size operation generic drug applicant program ($1,542,993), medium size operation generic drug applicant program ($617,197), and small business generic drug applicant program ($154,299). These fees are effective on October 1, 2020, and will remain in effect through September 30, 2021.

II. Fee Revenue Amount for FY 2021

GDUFA II directs FDA to use the yearly revenue amount determined under the statute as a starting point to set the fee rates for each fee type. For more information about GDUFA II, please refer to the FDA website (*https://www.fda.gov/gdufa*). The ANDA, DMF, API facility, FDF facility, CMO facility, and generic drug applicant program fee (GDUFA program fee) calculations for FY 2021 are described in this document.

The base revenue amount for FY 2021 is $513,223,160. This is the amount

calculated for the prior fiscal year, FY 2020, pursuant to the statute (see section 744B(b)(1) of the FD&C Act). GDUFA II specifies that the $513,223,160 is to be adjusted for inflation increases for FY 2021 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see sections 744B(c)(1)(B) and (C) of the FD&C Act).

The component of the inflation adjustment for PC&B costs shall be one plus the average annual percent change in the cost of all PC&B paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding fiscal years, multiplied by the proportion of PC&B costs to total FDA costs of human generic drug activities for the first 3 of the preceding 4 fiscal years (see section 744B(c)(1)(B) of the FD&C Act).

Table 1 summarizes the actual cost and total FTEs for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first 3 of the 4 fiscal years preceding FY 2021. The 3-year average is 1.2644 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

Fiscal year	2017	2018	2019	3-year average
Total PC&B	$2,581,551,000	$2,690,678,000	$2,620,052,000	.....
Total FTEs	17,022	17,023	17,144	.....
PC&B per FTE	$151,660	$158,061	$152,826	.....
Percent Change from Previous Year	2.8845	4.2206	−3.3120	1.2644

The statute specifies that this 1.2644 percent should be multiplied by the proportion of PC&B expended for human generic drug activities for the first 3 of the preceding 4 fiscal years. Table 2 shows the amount of PC&B and the total amount obligated for human generic drug activities from FY 2017 through FY 2019.

TABLE 2—PC&B AS A PERCENT OF FEE REVENUES SPENT ON THE PROCESS OF HUMAN GENERIC DRUG APPLICATIONS OVER THE LAST 3 YEARS

Fiscal year	2017	2018	2019	3-year average
PC&B	$271,748,229	$332,617,643	$356,874,114	.....
Non-PC&B	$262,058,852	$276,911,265	$290,439,277	.....
Total Costs	$533,807,081	$609,528,908	$647,313,391	.....
PC&B Percent	50.9076	54.5696	55.1316	53.5363
Non-PC&B Percent	49.0924	45.4304	44.8684	46.4637

The payroll adjustment is 1.2644 percent multiplied by 53.5363 percent (or 0.6769 percent).

The statute specifies that the portion of the inflation adjustment for non-PC&B costs for FY 2021 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items; annual index) for the first 3 of the preceding 4 years of available data multiplied by the proportion of all costs other than PC&B costs to total costs of human generic drug activities (see section 744B(c)(1)(C) of the FD&C Act). As a result of a geographical revision made by the Bureau of Labor and Statistics in January 2018,[1] the ''Washington-Baltimore, DC-MD-VA-WV'' index was discontinued and replaced with two separate indices (*i.e.,* ''Washington-Arlington-Alexandria, DC-VA-MD-WV'' and ''Baltimore-Columbia-Towson, MD''). In order to continue applying a CPI which best reflects the geographic region in which FDA is headquartered and which provides the most current data available, the Washington-Arlington-Alexandria index will be used in calculating the relevant adjustment factors for FY 2021 and subsequent years. Table 3 provides the summary data for the percent change in the specified CPI. The data are published by the Bureau of Labor Statistics and can be found on its website at: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35ASA0,CUUSS35ASA0.*

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-ARLINGTON-ALEXANDRIA AREA

Year	2017	2018	2019	3-year average
Annual CPI	256.221	261.445	264.777	.....
Annual Percent Change	1.1045	2.0389	1.2745	1.4726

To calculate the inflation adjustment for non-pay costs, we multiply the 3-year average percent change in the CPI (1.4726 percent) by the proportion of all costs other than PC&B to total costs of human generic drug activities obligated. Because 53.5363 percent was obligated for PC&B as shown in Table 2, 46.4637 percent is the portion of costs other than PC&B. The non-pay adjustment is 1.4726 percent times 46.4637 percent, or 0.6842 percent.

[1] The Bureau of Labor Statistics' announcement of the geographical revision can be viewed at *https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm.*

To complete the inflation adjustment for FY 2021, we add the PC&B component (0.6769 percent) to the non-PC&B component (0.6842 percent) for a total inflation adjustment of 1.3611 percent (rounded), and then add 1, making an inflation adjustment multiple of 1.013611. We then multiply the base revenue amount for FY 2021 ($513,223,160) by 1.013611, yielding an inflation-adjusted amount of $520,209,000 (rounded to the nearest thousand dollars).

III. ANDA Filing Fee

Under GDUFA II, the FY 2021 ANDA filing fee is owed by each applicant that submits an ANDA on or after October 1, 2020. This fee is due on the submission date of the ANDA. Section 744B(b)(2)(B) of the FD&C Act specifies that the ANDA fee will make up 33 percent of the $520,209,000, which is $171,668,970.

To calculate the ANDA fee, FDA estimated the number of full application equivalents (FAEs) that will be submitted in FY 2021. The submissions are broken down into three categories: New originals (submissions that have not been received by FDA previously); submissions that FDA refused to receive (RTR-ed) for reasons other than failure to pay fees; and applications that are resubmitted after an RTR decision for reasons other than failure to pay fees. An ANDA counts as one FAE; however, 75 percent of the fee paid for an ANDA that has been RTR-ed shall be refunded according to GDUFA II if: (1) The ANDA is refused for a cause other than failure to pay fees, or (2) the ANDA has been withdrawn prior to receipt (section 744B(a)(3)(D)(i) of the FD&C Act). Therefore, an ANDA that is considered not to have been received by FDA due to reasons other than failure to pay fees or withdrawn prior to receipt counts as one-fourth of an FAE. After an ANDA has been RTR, the applicant has the option of resubmitting. For user fee purposes, these resubmissions are equivalent to new original submissions—ANDA resubmissions are charged the full amount for an application (one FAE).

FDA utilized data from ANDAs submitted from October 1, 2018, to April 30, 2020, to estimate the number of new original ANDAs that will incur filing fees in FY 2021. For FY 2021, the Agency estimates that approximately 867 new original ANDAs will be submitted and incur filing fees. Not all of the new original ANDAs will be received by the Agency and some of those not received will be resubmitted in the same fiscal year. Therefore, the Agency expects that the FAE count for ANDAs will be 872 for FY 2021.

The FY 2021 application fee is estimated by dividing the number of FAEs that will pay the fee in FY 2021 (872) into the fee revenue amount to be derived from ANDA application fees in FY 2021 ($171,668,970). The result, rounded to the nearest dollar, is a fee of $196,868 per ANDA.

The statute provides that those ANDAs that include information about the production of active pharmaceutical ingredients other than by reference to a DMF will pay an additional fee that is based on the number of such active pharmaceutical ingredients and the number of facilities proposed to produce those ingredients (see section 744B(a)(3)(F) of the FD&C Act). FDA anticipates that this additional fee is unlikely to be assessed often; therefore, FDA has not included projections concerning the amount of this fee in calculating the fees for ANDAs.

IV. DMF Fee

Under GDUFA II, the DMF fee is owed by each person that owns a type II API DMF that is referenced, on or after October 1, 2012, in a generic drug submission by an initial letter of authorization. This is a one-time fee for each DMF. This fee is due on the earlier of the date on which the first generic drug submission is submitted that references the associated DMF or the date on which the DMF holder requests the initial completeness assessment. Under section 744B(a)(2)(D)(iii) of the FD&C Act, if a DMF has successfully undergone an initial completeness assessment and the fee is paid, the DMF will be placed on a publicly available list documenting DMFs available for reference.

To calculate the DMF fee, FDA assessed the volume of DMF submissions over time. The Agency assessed DMFs from October 1, 2018, to April 30, 2020, and concluded that averaging the number of fee-paying DMFs provided the most accurate model for predicting fee-paying DMFs for FY 2021. The monthly average of paid DMF submissions the Agency received in FY 2019 and FY 2020 is 31. To determine the FY 2021 projected number of fee-paying DMFs, the average of 31 DMF submissions is multiplied by 12 months, which results in 372 estimated FY 2021 fee-paying DMFs. FDA is estimating 372 fee-paying DMFs for FY 2021.

The FY 2021 DMF fee is determined by dividing the DMF target revenue by the estimated number of fee-paying DMFs in FY 2021. Section 744B(b)(2)(A) of the FD&C Act specifies that the DMF fees will make up 5 percent of the $520,209,000, which is $26,010,450. Dividing the DMF revenue amount ($26,010,450) by the estimated fee-paying DMFs (372), and rounding to the nearest dollar, yields a DMF fee of $69,921 for FY 2021.

V. Foreign Facility Fee Differential

Under GDUFA II, the fee for a facility located outside the United States and its territories and possessions shall be $15,000 higher than the amount of the fee for a facility located in the United States and its territories and possessions. The basis for this differential is the extra cost incurred by conducting an inspection outside the United States and its territories and possessions.

VI. FDF and CMO Facility Fees

Under GDUFA II, the annual FDF facility fee is owed by each person who owns an FDF facility that is identified in at least one approved generic drug submission owned by that person or its affiliates. The CMO facility fee is owed by each person who owns an FDF facility that is identified in at least one approved ANDA but is not identified in an approved ANDA held by the owner of that facility or its affiliates. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(C) of the FD&C Act specifies that the FDF and CMO facility fee revenue will make up 20 percent of the $520,209,000, which is $104,041,800.

To calculate the fees, data from FDA's Integrity Services (IS) were utilized as the primary source of facility information for determining the denominators of each facility fee type. IS is the master data steward for all facility information provided in generic drug submissions received by FDA. A facility's reference status in an approved generic drug submission is extracted directly from submission data rather than relying on data from self-identification. This information provided the number of facilities referenced as FDF manufacturers in at least one approved generic drug submission. Based on FDA's IS data, the FDF and CMO facility denominators are 188 FDF domestic, 278 FDF foreign, 92 CMO domestic, and 111 CMO foreign facilities for FY 2021.

GDUFA II specifies that the CMO facility fee is to be equal to one-third the amount of the FDF facility fee. Therefore, to generate the target collection revenue amount from FDF and CMO facility fees ($104,041,800), FDA must weight a CMO facility as one-third of an FDF facility. FDA set fees based on the estimate of 188 FDF

domestic, 278 FDF foreign, 30.67 CMO domestic (92 multiplied by one-third), and 37 CMO foreign facilities (111 multiplied by one-third), which equals 533.67 total weighted FDF and CMO facilities for FY 2021.

To calculate the fee for domestic facilities, FDA first determines the total fee revenue that will result from the foreign facility differential by subtracting the fee revenue resulting from the foreign facility fee differential from the target collection revenue amount ($104,041,800) as follows. The foreign facility fee differential revenue equals the foreign facility fee differential ($15,000) multiplied by the number of FDF foreign facilities (278) plus the foreign facility fee differential ($15,000) multiplied by the number of CMO foreign facilities (111), totaling $5,835,000. This results in foreign fee differential revenue of $5,835,000 from the total FDF and CMO facility fee target collection revenue. Subtracting the foreign facility differential fee revenue ($5,835,000) from the total FDF and CMO facility target collection revenue ($104,041,800) results in a remaining facility fee revenue balance of $98,206,800. To determine the domestic FDF facility fee, FDA divides the $98,206,800 by the total weighted number of FDF and CMO facilities (533.67), which results in a domestic FDF facility fee of $184,022. The foreign FDF facility fee is $15,000 more than the domestic FDF facility fee, or $199,022.

According to GDUFA II, the domestic CMO fee is calculated as one-third the amount of the domestic FDF facility fee. Therefore, the domestic CMO fee is $61,341, rounded to the nearest dollar. The foreign CMO fee is calculated as the domestic CMO fee plus the foreign fee differential of $15,000. Therefore, the foreign CMO fee is $76,341.

VII. API Facility Fee

Under GDUFA II, the annual API facility fee is owed by each person who owns a facility that is identified in: (1) At least one approved generic drug submission or (2) in a Type II API DMF referenced in at least one approved generic drug submission. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(D) of the FD&C Act specifies the API facility fee will make up 7 percent of $520,209,000 in fee revenue, which is $36,414,630.

To calculate the API facility fee, data from FDA's IS were utilized as the primary source of facility information for determining the denominator. As stated above, IS is the master data steward for all facility information provided in generic drug submissions received by FDA. A facility's reference status in an approved generic drug submission is extracted directly from submission data rather than relying on data from self-identification. This information provided the number of facilities referenced as API manufacturers in at least one approved generic drug submission.

The total number of API facilities identified was 664; of that number, 81 were domestic and 583 were foreign facilities. The foreign facility differential is $15,000. To calculate the fee for domestic facilities, FDA must first subtract the fee revenue that will result from the foreign facility fee differential. FDA takes the foreign facility differential ($15,000) and multiplies it by the number of foreign facilities (583) to determine the total fee revenue that will result from the foreign facility differential. As a result of that calculation, the foreign fee differential revenue will make up $8,745,000 of the total API fee revenue. Subtracting the foreign facility differential fee revenue ($8,745,000) from the total API facility target revenue ($36,414,630) results in a remaining balance of $27,669,630. To determine the domestic API facility fee, we divide the $27,669,630 by the total number of facilities (664), which gives us a domestic API facility fee of $41,671. The foreign API facility fee is $15,000 more than the domestic API facility fee, or $56,671.

VIII. Generic Drug Applicant Program Fee

Under GDUFA II, if a person and its affiliates own at least one but not more than five approved ANDAs on October 1, 2020, the person and its affiliates shall owe a small business GDUFA program fee. If a person and its affiliates own at least six but not more than 19 approved ANDAs, the person and its affiliates shall owe a medium size operation GDUFA program fee. If a person and its affiliates own at least 20 approved ANDAs, the person and its affiliates shall owe a large size operation GDUFA program fee. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(E) of the FD&C Act specifies the GDUFA program fee will make up 35 percent of $520,209,000 in fee revenue, which is $182,073,150.

To determine the appropriate number of parent companies for each tier, the Agency asked companies to claim their ANDAs and affiliates in the Center for Drug Evaluation and Research (CDER) NextGen Portal. The companies were able to confirm relationships currently present in the Agency's records, while also reporting newly approved ANDAs, newly acquired ANDAs, and new affiliations.

In determining the appropriate number of approved ANDAs, the Agency has factored in a number of variables that could affect the collection of the target revenue: (1) Inactive ANDAs—applicants who have not submitted an annual report for one or more of their approved applications within the past 2 years; (2) FY 2018 Program Fee Arrears List—applicants who failed to satisfy the FY 2018 program fee and were unresponsive to attempts to collect; (3) Center for Biologics Evaluation and Research (CBER) approved ANDAs— applicants and their affiliates with CBER-approved ANDAs in addition to CDER's approved ANDAs; (4) Withdrawals of approved ANDAs by April 1st— applicants who have submitted a written request for withdrawal of approval by April 1st of the previous fiscal year; and (5) Abbreviated Antibiotic Applications (AADA) conversions—ANDAs (previously AADAs) for bulk antibiotic drug substance converted and refiled as DMFs. The list of original approved ANDAs from the Generic Drug Review Platform as of April 30, 2020, shows 283 applicants in the small business tier, 67 applicants in the medium size tier, and 73 applicants in the large size tier. Factoring in all the variables for the fourth year of GDUFA II, the Agency estimates there will be 220 applicants in the small business tier, 60 applicants in the medium size tier, and 72 applicants in the large size tier for FY 2021.

To calculate the GDUFA program fee, GDUFA II provides that large size operation generic drug applicants pay the full fee, medium size operation applicants pay two-fifths of the full fee, and small business applicants pay one-tenth of the full fee. To generate the target collection revenue amount from GDUFA program fees ($182,073,150), we must weigh medium and small tiered applicants as a subset of a large size operation generic drug applicant. FDA will set fees based on the weighted estimate of 22.00 applicants in the small business tier (220 multiplied by 10 percent), 24.00 applicants in the medium size tier (60 multiplied by 40 percent), and 72 applicants in the large size tier, arriving at 118 total weighted applicants for FY 2021.

To generate the large size operation GDUFA program fee, FDA divides the target revenue amount of $182,073,150 by 118, which equals $1,542,993. The medium size operation GDUFA program fee is 40 percent of the full fee ($617,197), and the small business operation GDUFA program fee is 10 percent of the full fee ($154,299).

IX. Fee Schedule for FY 2021

The fee rates for FY 2021 are set out in Table 4.

TABLE 4—FEE SCHEDULE FOR FY 2021

Fee category	Fees rates for FY 2021
Applications:	
Abbreviated New Drug Application (ANDA)	$196,868
Drug Master File (DMF)	69,921
Facilities:	
Active Pharmaceutical Ingredient (API) Domestic	41,671
API—Foreign	56,671
Finished Dosage Form (FDF)—Domestic	184,022
FDF—Foreign	199,022
Contract Manufacturing Organization (CMO)—Domestic	61,341
CMO—Foreign	76,341
GDUFA Program:	
Large size operation generic drug applicant	1,542,993
Medium size operation generic drug applicant	617,197
Small business operation generic drug applicant	154,299

X. Fee Payment Options and Procedures

The new fee rates are effective October 1, 2020. To pay the ANDA, DMF, API facility, FDF facility, CMO facility, and GDUFA program fees, a Generic Drug User Fee Cover Sheet must be completed, available at *https://www.fda.gov/gdufa* and *https://userfees.fda.gov/OA_HTML/gdufaCAcdLogin.jsp,* and a user fee identification (ID) number must be generated. Payment must be made in U.S. currency drawn on a U.S. bank by electronic check, check, bank draft, U.S. postal money order, credit card, or wire transfer. The preferred payment method is online using electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). FDA has partnered with the U.S. Department of the Treasury to utilize *Pay.gov,* a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after completing the Generic Drug User Fee Cover Sheet and generating the user fee ID number. Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (Note: Only full payments are accepted; no partial payments can be made online.) Once an invoice is located, ''Pay Now'' should be selected to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S bank accounts as well as U.S. credit cards.

The user fee ID number must be included on the check, bank draft, or postal money order and must be made payable to the order of the Food and Drug Administration. Payments can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If checks are to be sent by a courier that requests a street address, the courier can deliver checks to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. For questions concerning courier delivery, U.S. Bank can be contacted at 314–418–4013. This telephone number is only for questions about courier delivery.) The FDA post office box number (P.O. Box 979108) must be written on the check, bank draft, or postal money order.

For payments made by wire transfer, the unique user fee ID number must be referenced. Without the unique user fee ID number, the payment may not be applied. If the payment amount is not applied, the invoice amount will be referred to collections. The originating financial institution may charge a wire transfer fee. Applicable wire transfer fees must be included with payment to ensure fees are fully paid. Questions about wire transfer fees should be addressed to the financial institution. The following account information should be used to send payments by wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, account number: 75060099, routing number: 021030004, SWIFT: FRNYUS33. FDA's tax identification number is 53–0196965.

Dated: July 28, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3406]

Food Safety Modernization Act Voluntary Qualified Importer Program User Fee Rate for Fiscal Year 2021

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2021 annual fee rate for importers approved to participate in the Voluntary Qualified Importer Program (VQIP) that is authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). This fee is effective August 1, 2020, and will remain in effect through September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Donald Prater, Office of Food Policy and Response, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3202, Silver Spring, MD 20993, 301–348–3007.

SUPPLEMENTARY INFORMATION:

I. Background

Section 302 of FSMA, Voluntary Qualified Importer Program, amended the FD&C Act to create a new provision, section 806, under the same name. Section 806 of the FD&C Act (21 U.S.C. 384b) directs FDA to establish a program to provide for the expedited review and importation of food offered for importation by importers who have voluntarily agreed to participate in such program, and a process, consistent with section 808 of the FD&C Act (21 U.S.C. 384d), for the issuance of a facility certification to accompany a food offered for importation by importers participating in the VQIP.

Section 743 of the FD&C Act (21 U.S.C. 379j–31) authorizes FDA to assess and collect fees from each importer participating in VQIP to cover FDA's costs of administering the program. Each fiscal year, fees are to be established based on an estimate of 100 percent of the costs for the year. The fee rates must be published in a **Federal Register** notice not later than 60 days before the start of each fiscal year (section 743(b)(1) of the FD&C Act). After FDA approves a VQIP application, the user fee must be paid before October 1, the start of the VQIP fiscal year, to begin receiving benefits for that VQIP fiscal year.

The FY 2021 VQIP user fee will support benefits from October 1, 2020, through September 30, 2021.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2021

FDA is required to estimate 100 percent of its costs for each activity in order to establish fee rates for FY 2021. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all of the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology (IT), and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2021

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours—not including overtime or holiday hours—worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: Payroll, non-payroll, and rent.

We have used an average of past year cost elements to predict the FY 2021 cost. The FY 2021 FDA-wide average cost for payroll (salaries and benefits) is $164,103; non-payroll—including equipment, supplies, IT, general and administrative overhead—is $94,685; and rent, including cost allocation analysis and adjustments for other rent and rent-related costs, is $25,386 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, non-payroll, and rent, brings the FY 2021 average fully supported cost to $284,174 per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for VQIP fees for FY 2021 prior to including domestic or foreign travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2021 average fully supported cost of $284,174 per FTE by the average number of supported direct FDA work hours in FY 2019—the last FY for which data are available. See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2019

Total number of hours in a paid staff year	2,080
Less:	
10 paid holidays	−80
20 days of annual leave	−160
10 days of sick leave	−80
12.5 days of training	−100
23 days of general administration	−184
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	1,160

Dividing the average fully supported FTE cost in FY 2021 ($284,174) by the total number of supported direct work hours available for assignment in FY 2019 (1,160) results in an average fully supported cost of $245 (rounded to the nearest dollar), excluding inspection travel costs, per supported direct work hour in FY 2021.

B. Adjusting FY 2019 Travel Costs for Inflation To Estimate FY 2021 Travel Costs

To adjust the hourly rate for FY 2021, FDA must estimate the cost of inflation in each year for FY 2020 and FY 2021. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2020 inflation rate to be 2.3964 percent; this rate was published in the FY 2020 PDUFA user fee rates notice in the **Federal Register** (August 2, 2019, 84 FR 37882). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 2.3964 percent for FY 2020 and 1.3493 percent for FY 2021, and FDA intends to use these inflation rates to make inflation adjustments for FY 2021; the derivation of this rate will be published in the **Federal Register** in the FY 2021 notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2020 and 2021, therefore, is 1.037780 (or 3.7780 percent) (calculated as 1 plus 2.3964 percent times 1 plus 1.3493 percent).

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $245 already takes into account inflation as the calculation above is based on FY 2021 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for VQIP fees for FY 2021 prior to including domestic or foreign travel costs as applicable for the activity.

In FY 2019, FDA's Office of Regulatory Affairs (ORA) spent a total of $5,569,000 for domestic regulatory inspection travel costs and General Services Administration Vehicle costs related to FDA's Center for Food Safety and Applied Nutrition (CFSAN) and Center for Veterinary Medicine (CVM) field activities programs. The total ORA domestic travel costs spent is then divided by the 8,540 CFSAN and CVM domestic inspections, which averages a total of $652 per inspection. These inspections average 39.35 hours per inspection. Dividing $652 per inspection by 39.35 hours per inspection results in a total and an additional cost of $17 (rounded to the nearest dollar) per hour spent for domestic inspection travel costs in FY 2019. To adjust for the $17 per hour additional domestic cost inflation increases for FY 2020 and FY 2021, FDA must multiply the FY 2020 PDUFA inflation rate adjustor (1.023964) by the FY 2021 PDUFA inflation rate adjustor (1.013493) times the $17 additional domestic cost, which results in an estimated cost of $18 (rounded to the nearest dollar) per paid hour in addition to $245 for a total of $263 per paid hour ($245 plus $18) for each direct hour of work requiring domestic inspection travel. FDA will use these rates in charging fees in FY 2021 when domestic travel is required.

In FY 2019, ORA spent a total of $3,506,000 on 463 foreign inspection trips related to FDA's CFSAN and CVM field activities programs, which averaged a total of $7,572 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $7,572 per trip by 120 hours per trip results in a total and an additional cost of $63 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2019. To adjust $63 for inflationary increases in FY 2020 and FY 2021, FDA must multiply it by the same inflation factors mentioned previously in this document (1.023964 and 1.013493), which results in an estimated cost of $65 (rounded to the nearest dollar) per paid hour in addition to $245 for a total of $310 per paid hour ($245 plus $65) for each direct hour of work requiring foreign inspection travel. FDA will use these rates in charging fees in FY 2021 when foreign travel is required.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2021

Fee category	Fee rates for FY 2021
Hourly rate without travel	$245

TABLE 2—FSMA FEE SCHEDULE FOR FY 2021—Continued

Fee category	Fee rates for FY 2021
Hourly rate if domestic travel is required	263
Hourly rate if foreign travel is required	310

III. Fees for Importers Approved To Participate in the Voluntary Qualified Importer Program Under Section 743 of the FD&C Act

FDA assesses fees for VQIP annually. Table 3 provides an overview of the fees for FY 2021.

TABLE 3—FSMA VQIP USER FEE SCHEDULE FOR FY 2021

Fee category	Fee rates for FY 2021
VQIP User Fee	$17,000

Section 743 of the FD&C Act requires that each importer participating in VQIP pay a fee to cover FDA's costs of administering the program. This fee represents the estimated average cost of the work FDA performs in reviewing and evaluating a VQIP importer. At this time, FDA is not offering an adjusted fee for small businesses. As required by section 743(b)(2)(B)(iii) of the FD&C Act, FDA previously published a set of guidelines in consideration of the burden of the VQIP fee on small businesses and provided for a period of public comment on the guidelines (80 FR 32136, June 5, 2015). While we did receive some comments in response, they did not address the questions posed, *i.e.,* how a small business fee reduction should be structured, what percentage of fee reduction would be appropriate, or what alternative structures FDA might consider in order to indirectly reduce fees for small businesses by charging different fee amounts to different VQIP participants. We plan on monitoring costs and collecting data to determine if, in future fiscal years, we will provide for a small business fee reduction. Consistent with section 743(b)(2)(B)(iii) of the FD&C Act, we will adjust the fee schedule for small businesses only through notice and comment rulemaking.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 39 person-hours to review a new VQIP application (including communication provided through the VQIP Importer's Help Desk), 28 person-hours to review a returning VQIP application (including communication provided through the VQIP Importer's Help Desk), 16 person-hours for an onsite performance evaluation of a domestic VQIP importer (including travel and other steps necessary for a fully supported FTE to complete and document an onsite assessment), and 34 person-hours for an onsite performance evaluation of a foreign VQIP importer (including travel and other steps necessary for a fully supported FTE to complete and document an onsite assessment). Additional costs include maintenance costs of information technology of administering benefits of the program. These costs are estimated to be $2,230 per VQIP importer.

FDA anticipates that there may be up to one returning VQIP applicant and up to 199 new applicants. FDA employees are likely to review new VQIP applications from their worksites, so we use the fully supported FTE hourly rate excluding travel, $245/hour, to calculate the portion of the user fee attributable to those activities: $245/hour × (39 hours) = $9,555. FDA employees are likely to review returning VQIP applications from their worksites, so we use the fully supported FTE hourly rate excluding travel, $245/hour, to calculate the portion of the user fee attributable to those activities: $245/hour × (28 hours) = $6,860.

FDA employees will conduct a VQIP inspection to verify the eligibility criteria and full implementation of the food safety and food defense systems established in the Quality Assurance Program. A VQIP importer may be located inside or outside of the United States. We have used an estimate that up to 20 percent of VQIP importers may be located outside of the United States.

FDA employees are likely to prepare for and report on the performance evaluation of a domestic VQIP importer at an FTE's worksite, so we use the fully supported FTE hourly rate excluding travel, $245/hour, to calculate the portion of the user fee attributable to those activities: $245/hour × (8 hours) = $1,960. For the portion of the fee covering onsite evaluation of a domestic VQIP importer, we use the fully supported FTE hourly rate for work requiring domestic travel, $263/hour, to calculate the portion of the user fee attributable to those activities: $263/hour × 8 hours (*i.e.,* one fully supported FTE × (1 day onsite × 8 hours)) = $2,104. Therefore, the total cost of conducting the domestic performance evaluation of a VQIP importer is determined to be $2,104 + $1,960 = $4,064.

Coordination of the onsite performance evaluation of a foreign VQIP importer is estimated to take place at an FTE's worksite, so we use the fully supported FTE hourly rate excluding travel, $245/hour, to calculate the portion of the user fee attributable to those activities: $245/hour × (10 hours) = $2,450. For the portion of the fee covering onsite evaluation of a foreign VQIP importer, we use the fully supported FTE hourly rate for work requiring foreign travel, $310/hour, to calculate the portion of the user fee attributable to those activities: $310/hour × 24 hours (*i.e.,* one fully supported FTE × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $7,440. Therefore, the total cost of conducting the foreign performance evaluation of a VQIP importer is determined to be $2,450 + $7,440 = $9,890.

Therefore, the estimated average cost of the work FDA performs in total for approving an application for a VQIP importer based on these figures would be $2,230 + ($9,555 × 0.995) + ($6,860 × 0.005) + ($4,064 × 0.8) + ($9,890 × 0.2) = $17,000.

IV. How must the fee be paid?

An invoice will be sent to VQIP importers approved to participate in the program. Payment must be made prior to October 1, 2020, in order to be eligible for VQIP participation for the benefit year beginning October 1, 2020. FDA will not refund the VQIP user fee for any reason.

The payment must be made in U.S. currency from a U.S. bank by one of the following methods: Wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using an electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (Note: Only full payments are accepted. No partial payments can be made online.) Once you have found your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available only for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

When paying by check, bank draft, or U.S. postal money order, please include the invoice number in the check stub. Also write the FDA post office box number (P.O. Box 979108) on the enclosed check, bank draft, or money order. Mail the payment including the invoice number on the check stub to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000.

When paying by wire transfer, it is required that the invoice number is included; without the invoice number the payment may not be applied. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. For international wire transfers, please inquire with the financial institutions prior to submitting the payment. Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, Swift No.: FRNYUS33.

To send a check by a courier such as Federal Express, the courier must deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.)

The tax identification number of FDA is 53–0196965. (*Note:* Invoice copies do not need to be submitted to FDA with the payments.)

V. What are the consequences of not paying this fee?

The consequences of not paying these fees are outlined in Section J of ''FDA's Voluntary Qualified Importer Program; Guidance for Industry'' document (available at *https://www.fda.gov/media/92196/download*). If the user fee is not paid before October 1, a VQIP importer will not be eligible to participate in VQIP. For the first year a VQIP application is approved, if the user fee is not paid before October 1, 2020, you are not eligible to participate in VQIP. If you subsequently pay the user fee, FDA will begin your benefits after we receive the full payment. The user fee may not be paid after December 31, 2020. For a subsequent year, if you do not pay the user fee before October 1, FDA will send a Notice of Intent to Revoke your participation in VQIP. If you do not pay the user fee within 30 days of the date of the Notice of Intent to Revoke, we will revoke your participation in VQIP.

Dated: July 28, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16791 Filed 7–29–20; 4:15 pm]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–2775]

Food Safety Modernization Act Domestic and Foreign Facility Reinspection, Recall, and Importer Reinspection Fee Rates for Fiscal Year 2021

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2021 fee rates for certain domestic and foreign facility reinspections, failures to comply with a recall order, and importer reinspections that are authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). These fees are effective on October 1, 2020, and will remain in effect through September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Tierra Ramsey, Office of Management, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD, 240–460–6951, *oraomdfobudgetformbranch@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 107 of FSMA (Pub. L. 111–353) added section 743 to the FD&C Act (21 U.S.C. 379j-31) to provide FDA with the authority to assess and collect fees from, in part: (1) the responsible party for each domestic facility and the U.S. agent for each foreign facility subject to a reinspection, to cover reinspection-related costs; (2) the responsible party for a domestic facility and an importer who does not comply with a recall order, to cover food [1] recall activities associated with such order; and (3) each importer subject to a reinspection to cover reinspection-related costs (sections 743(a)(1)(A), (B), and (D) of the FD&C Act). Section 743 of the FD&C Act directs FDA to establish fees for each of these activities based on an estimate of 100 percent of the costs of each activity for each year (sections 743(b)(2)(A)(i), (ii), and (iv)), and these fees must be made available solely to pay for the costs of each activity for which the fee was incurred (section 743(b)(3)). These fees are effective on October 1, 2020, and will remain in effect through September 30, 2021. Section 743(b)(2)(B)(iii) of the FD&C Act directs FDA to develop a proposed set of guidelines in consideration of the burden of fee amounts on small businesses. As a first step in developing these guidelines, FDA invited public comment on the potential impact of the fees authorized by section 743 of the FD&C Act on small businesses (76 FR 45818, August 1, 2011). The comment period for this request ended November 30, 2011. As stated in FDA's September 2011 ''Guidance for Industry: Implementation of the Fee Provisions of Section 107 of the FDA Food Safety Modernization Act,'' (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-implementation-fee-provisions-section-107-fda-food-safety-modernization-act*), because FDA recognizes that for small businesses the full cost recovery of FDA reinspection or recall oversight could impose severe economic hardship, FDA intends to consider reducing certain fees for those firms. FDA does not intend to issue invoices for reinspection or recall order fees until FDA publishes a guidance document outlining the process through which firms may request a reduction in fees.

In addition, as stated in the September 2011 guidance, FDA is in the process of considering various issues associated with the assessment and collection of importer reinspection fees. The fee rates set forth in this notice will be used to determine any importer reinspection fees assessed in FY 2021.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2021

FDA is required to estimate 100 percent of its costs for each activity in order to establish fee rates for FY 2021. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all of the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel,

[1] The term ''food'' for purposes of this document has the same meaning as such term in section 201(f) of the FD&C Act (21 U.S.C. 321(f)).

utility, information technology (IT), and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2021

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours—not including overtime or holiday hours—worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: payroll, nonpayroll, and rent.

We have used an average of past year cost elements to predict the FY 2021 cost. The FY 2021 FDA-wide average cost for payroll (salaries and benefits) is $164,103; nonpayroll—including equipment, supplies, IT, general and administrative overhead—is $94,685; and rent, including cost allocation analysis and adjustments for other rent and rent-related costs, is $25,386 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, nonpayroll, and rent, brings the FY 2021 average fully supported cost to $284,174 per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for reinspection and recall order fees for FY 2021 prior to including domestic or foreign travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2021 average fully supported cost of $284,174 per FTE by the average number of supported direct FDA work hours in FY 2019—the last FY for which data are available. See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2019

Total number of hours in a paid staff year	2,080
Less:	
10 paid holidays	−80
20 days of annual leave	−160
10 days of sick leave	−80
12.5 days of training	−100
23 days of general administration	−184
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	1,160

Dividing the average fully supported FTE cost in FY 2021 ($284,174) by the total number of supported direct work hours available for assignment in FY 2019 (1,160) results in an average fully supported cost of $245 (rounded to the nearest dollar), excluding inspection travel costs, per supported direct work hour in FY 2021.

B. Adjusting FY 2019 Travel Costs for Inflation To Estimate FY 2021 Travel Costs

To adjust the hourly rate for FY 2021, FDA must estimate the cost of inflation in each year for FY 2020 and FY 2021. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2020 inflation rate to be 2.3964 percent; this rate was published in the FY 2020 PDUFA user fee rates notice in the **Federal Register** (84 FR 37882, August 2, 2019). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 2.3964 percent for FY 2020 and 1.3493 percent for FY 2021 and FDA intends to use these inflation rates to make inflation adjustments for FY 2021; the derivation of this rate will be published in the **Federal Register** in the FY 2021 notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2020 and 2021, therefore, is 1.037780 (or 3.7780 percent) (calculated as 1 plus 2.3964 percent times 1 plus 1.3493 percent).

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $245 already takes into account inflation as the calculation above is based on FY 2021 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for reinspection and recall order fees for FY 2021 prior to including domestic or foreign travel costs as applicable for the activity. In FY 2019, FDA's Office of Regulatory Affairs (ORA) spent a total of $5,569,000 for domestic regulatory inspection travel costs and General Services Administration Vehicle costs related to FDA's Center for Food Safety and Applied Nutrition (CFSAN) and Center for Veterinary Medicine (CVM) field activities programs. The total ORA domestic travel costs spent is then divided by the 8,540 CFSAN and CVM domestic inspections, which averages a total of $652 per inspection. These inspections average 39.35 hours per inspection. Dividing $652 per inspection by 39.35 hours per inspection results in a total and an additional cost of $17 (rounded to the nearest dollar) per hour spent for domestic inspection travel costs in FY 2019. To adjust for the $17 per hour additional domestic cost inflation increases for FY 2020 and FY 2021, FDA must multiply the FY 2020 PDUFA inflation rate adjustor (1.023964) times the FY 2021 PDUFA inflation rate adjustor (1.013493) times the $17 additional domestic cost which results in an estimated cost of $18 (rounded to the nearest dollar) per paid hour in addition to $245 for a total of $263 per paid hour ($245 plus $18) for each direct hour of work requiring domestic inspection travel. FDA will use these rates in charging fees in FY 2021 when domestic travel is required.

In FY 2019, ORA spent a total of $3,506,000 on 463 foreign inspection trips related to FDA's CFSAN and CVM field activities programs, which averaged a total of $7,572 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $7,572 per trip by 120 hours per trip results in a total and an additional cost of $63 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2019. To adjust $63 for inflationary increases in FY 2020 and FY 2021, FDA must multiply it by the same inflation factors mentioned previously in this document (1.023964 and 1.013493), which results in an estimated cost of $65 (rounded to the nearest dollar) per paid hour in addition to $245 for a total of $310 per paid hour ($245 plus $65) for each direct hour of work requiring foreign inspection travel. FDA will use these rates in charging fees in FY 2021 when foreign travel is required.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2021

Fee category	Fee rates for FY 2021
Hourly rate if domestic travel is required	$263
Hourly rate if foreign travel is required	$310

III. Fees for Reinspections of Domestic or Foreign Facilities Under Section 743(a)(1)(A)

A. What will cause this fee to be assessed?

The fee will be assessed for a reinspection conducted under section 704 of the FD&C Act (21 U.S.C. 374) to determine whether corrective actions have been implemented and are effective and compliance has been achieved to the Secretary of Health and Human Services' (the Secretary) (and, by delegation, FDA's) satisfaction at a

facility that manufactures, processes, packs, or holds food for consumption necessitated as a result of a previous inspection (also conducted under section 704 of the FD&C Act) of this facility, which had a final classification of Official Action Indicated (OAI) conducted by or on behalf of FDA, when FDA determined the non-compliance was materially related to food safety requirements of the FD&C Act. FDA considers such non-compliance to include non-compliance with a statutory or regulatory requirement under section 402 of the FD&C Act (21 U.S.C. 342) and section 403(w) of the FD&C Act (21 U.S.C. 343(w)). However, FDA does not consider non-compliance that is materially related to a food safety requirement to include circumstances where the non-compliance is of a technical nature and not food safety related (*e.g.,* failure to comply with a food standard or incorrect font size on a food label). Determining when non-compliance, other than under sections 402 and 403(w) of the FD&C Act, is materially related to a food safety requirement of the FD&C Act may depend on the facts of a particular situation. FDA intends to issue guidance to provide additional information about the circumstances under which FDA would consider non-compliance to be materially related to a food safety requirement of the FD&C Act.

Under section 743(a)(1)(A) of the FD&C Act, FDA is directed to assess and collect fees from ''the responsible party for each domestic facility (as defined in section 415(b) (21 U.S.C. 350d(b))) and the United States agent for each foreign facility subject to a reinspection'' to cover reinspection-related costs.

Section 743(a)(2)(A)(i) of the FD&C Act defines the term ''reinspection'' with respect to domestic facilities as ''1 or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified non-compliance materially related to a food safety requirement of th[e] Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction.''

The FD&C Act does not contain a definition of ''reinspection'' specific to foreign facilities. In order to give meaning to the language in section 743(a)(1)(A) of the FD&C Act to collect fees from the U.S. agent of a foreign facility subject to a reinspection, the Agency is using the following definition of ''reinspection'' for purposes of assessing and collecting fees under section 743(a)(1)(A) of the FD&C Act, with respect to a foreign facility: ''1 or more inspections conducted by officers or employees duly designated by the Secretary subsequent to such an inspection which identified non-compliance materially related to a food safety requirement of the FD&C Act, specifically to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction.''

This definition allows FDA to fulfill the mandate to assess and collect fees from the U.S. agent of a foreign facility in the event that an inspection reveals non-compliance materially related to a food safety requirement of the FD&C Act, causing one or more subsequent inspections to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction. By requiring the initial inspection to be conducted by officers or employees duly designated by the Secretary, the definition ensures that a foreign facility would be subject to fees only in the event that FDA, or an entity designated to act on its behalf, has made the requisite identification at an initial inspection of non-compliance materially related to a food safety requirement of the FD&C Act. The definition of ''reinspection-related costs'' in section 743(a)(2)(B) of the FD&C Act relates to both a domestic facility reinspection and a foreign facility reinspection, as described in section 743(a)(1)(A).

B. Who will be responsible for paying this fee?

The FD&C Act states that this fee is to be paid by the responsible party for each domestic facility (as defined in section 415(b) of the FD&C Act) and by the U.S. agent for each foreign facility (section 743(a)(1)(A) of the FD&C Act). This is the party to whom FDA will send the invoice for any fees that are assessed under this section.

C. How much will this fee be?

The fee is based on the number of direct hours spent on such reinspections, including time spent conducting the physical surveillance and/or compliance reinspection at the facility, or whatever components of such an inspection are deemed necessary, making preparations and arrangements for the reinspection, traveling to and from the facility, preparing any reports, analyzing any samples or examining any labels if required, and performing other activities as part of the OAI reinspection until the facility is again determined to be in compliance. The direct hours spent on each such reinspection will be billed at the appropriate hourly rate shown in table 2 of this document.

IV. Fees for Non-Compliance With a Recall Order Under Section 743(a)(1)(B)

A. What will cause this fee to be assessed?

The fee will be assessed for not complying with a recall order under section 423(d) (21 U.S.C. 350l(d)) or section 412(f) of the FD&C Act (21 U.S.C. 350a(f)) to cover food recall activities associated with such order performed by the Secretary (and by delegation, FDA) (section 743(a)(1)(B) of the FD&C Act). Non-compliance may include the following: (1) not initiating a recall as ordered by FDA; (2) not conducting the recall in the manner specified by FDA in the recall order; or (3) not providing FDA with requested information regarding the recall, as ordered by FDA.

B. Who will be responsible for paying this fee?

Section 743(a)(1)(B) of the FD&C Act states that the fee is to be paid by the responsible party for a domestic facility (as defined in section 415(b) of the FD&C Act) and an importer who does not comply with a recall order under section 423 or under section 412(f) of the FD&C Act. In other words, the party paying the fee would be the party that received the recall order.

C. How much will this fee be?

The fee is based on the number of direct hours spent on taking action in response to the firm's failure to comply with a recall order. Types of activities could include conducting recall audit checks, reviewing periodic status reports, analyzing the status reports and the results of the audit checks, conducting inspections, traveling to and from locations, and monitoring product disposition. The direct hours spent on each such recall will be billed at the appropriate hourly rate shown in table 2 of this document.

V. How must the fees be paid?

An invoice will be sent to the responsible party for paying the fee after FDA completes the work on which the invoice is based. Payment must be made within 90 days of the invoice date in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Detailed payment information will be included with the invoice when it is issued.

The payment must be made in U.S. currency from a U.S. bank by one of the following methods: Wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The

preferred payment method is online using an electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (Note: Only full payments are accepted. No partial payments can be made online.) Once you have found your invoice, select '' ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available only for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

When paying by check, bank draft, or U.S. postal money order, please include the invoice number in the check stub. Also write FDA's post office box number (P.O. Box 979108) on the enclosed check, bank draft, or money order. Mail the payment including the invoice number on the check stub to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000.

When paying by wire transfer, it is required that the invoice number is included; without the invoice number the payment may not be applied. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. For international wire transfers, please inquire with the financial institutions prior to submitting the payment. Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, SWIFT No.: FRNYUS33.

To send a check by a courier such as Federal Express, the courier must deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.)

The tax identification number of FDA is 53–0196965. (Note: Invoice copies do not need to be submitted to FDA with the payments.)

VI. What are the consequences of not paying these fees?

Under section 743(e)(2) of the FD&C Act, any fee that is not paid within 30 days after it is due shall be treated as a claim of the U.S. Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

Dated: July 29, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16838 Filed 7–30–20; 11:15 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0814]

Pediatric Study Plans: Content of and Process for Submitting Initial Pediatric Study Plans and Amended Initial Pediatric Study Plans; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Pediatric Study Plans: Content of and Process for Submitting Initial Pediatric Study Plans and Amended Initial Pediatric Study Plans.'' The purpose of this guidance is to provide information to sponsors regarding the submission of an initial pediatric study plan (iPSP) and any amendments to the iPSP. Specifically, this guidance addresses the FDA's current thinking regarding implementation of the requirement for sponsors to submit an iPSP as described in the Federal Food, Drug, and Cosmetic Act (FD&C Act). This guidance finalizes the draft guidance of the same name issued on March 9, 2016.

DATES: The announcement of the guidance is published in the **Federal Register** on August 3, 2020.

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

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2013–D–0814 for ''Pediatric Study Plans: Content of and Process for Submitting Initial Pediatric Study Plans and Amended Initial Pediatric Study Plans.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- 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.

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

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: George Greeley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6402, Silver Spring, MD 20993–0002, 301–796–2200; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Pediatric Study Plans: Content of and Process for Submitting Initial Pediatric Study Plans and Amended Initial Pediatric Study Plans.'' The purpose of this guidance is to assist sponsors in the submission of an iPSP and any amendments to an iPSP. Specifically, this guidance addresses FDA's current thinking regarding the requirement for sponsors to submit an iPSP under section 505B(e) of the FD&C Act (21 U.S.C. 355c(e)).

This guidance finalizes the draft guidance entitled ''Pediatric Study Plans: Content of and Process for Submitting Initial Pediatric Study Plans and Amended Pediatric Study Plans'' issued March 9, 2016 (81 FR 12508). Changes made took into consideration comments received.

The following topics are addressed in this guidance: (1) Applications that require submission of an iPSP; (2) timelines for iPSP submission; (3) content of the iPSP; (4) the relationship of an agreed iPSP to the requirement to submit a pediatric study plan with a marketing application; (5) content and timing of a requested amendment to an iPSP; (6) what is meant by a non-agreed iPSP; and (7) processes for reaching agreement with FDA on a non-agreed iPSP. This guidance also includes a template that should be used for submission of an iPSP.

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

II. Paperwork Reduction Act of 1995

This guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required.

However, this guidance refers to previously approved FDA collections of information. These collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information related to expedited review programs for serious conditions have been approved under OMB control number 0910–0765. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *http://www.regulations.gov.*

Dated: July 28, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–16785 Filed 7–31–20; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3505]

Medical Device User Fee Rates for Fiscal Year 2021

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2021. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Medical Device User Fee Amendments of 2017 (MDUFA IV), authorizes FDA to collect user fees for certain medical device submissions and annual fees both for certain periodic reports and for establishments subject to registration. This notice establishes the fee rates for FY 2021, which apply from October 1, 2020, through September 30, 2021. To avoid delay in the review of your application, you should pay the application fee before or at the time you submit your application to FDA. The fee you must pay is the fee that is in effect on the later of the date that your application is received by FDA or the date your fee payment is recognized by the U.S. Treasury. If you want to pay a reduced small business fee, you must qualify as a small business before making your submission to FDA; if you do not qualify as a small business before making your submission to FDA, you will have to pay the higher standard fee. Please note that the establishment registration fee is not eligible for a

reduced small business fee. As a result, if the establishment registration fee is the only medical device user fee that you will pay in FY 2021, you should not submit a Small Business Certification Request. This document provides information on how the fees for FY 2021 were determined, the payment procedures you should follow, and how you may qualify for reduced small business fees.

FOR FURTHER INFORMATION CONTACT: *For information on Medical Device User Fees: https://www.fda.gov/industry/fda-user-fee-programs/medical-device-user-fee-amendments-mdufa.*

For questions relating to the MDUFA Small Business Program, please visit the Center for Devices and Radiological Health's website: https://www.fda.gov/medical-devices/premarket-submissions/reduced-medical-device-user-fees-small-business-determination-sbd-program.

For questions relating to this notice: David Haas, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 62041A, Beltsville, MD 20705, 240–402–9845.

SUPPLEMENTARY INFORMATION:

I. Background

Section 738 of the FD&C Act (21 U.S.C. 379j) establishes fees for certain medical device applications, submissions, supplements, notices, and requests (for simplicity, this document refers to these collectively as ''submissions'' or ''applications''); for periodic reporting on class III devices; and for the registration of certain establishments. Under statutorily defined conditions, a qualified applicant may receive a fee waiver or may pay a lower small business fee (see 21 U.S.C. 379j(d) and (e)).

Under the FD&C Act, the fee rate for each type of submission is set at a specified percentage of the standard fee for a premarket application (a premarket application is a premarket approval application (PMA), a product development protocol (PDP), or a biologics license application (BLA)). The FD&C Act specifies the base fee for a premarket application for each year from FY 2018 through FY 2022; the base fee for a premarket application received by FDA during FY 2021 is $328,000. From this starting point, this document establishes FY 2021 fee rates for certain types of submissions, and for periodic reporting, by applying criteria specified in the FD&C Act.

The FD&C Act specifies the base fee for establishment registration for each year from FY 2018 through FY 2022; the base fee for an establishment registration in FY 2021 is $4,975. There is no reduction in the registration fee for small businesses. Each establishment that is registered (or is required to register) with the Secretary of Health and Human Services under section 510 of the FD&C Act (21 U.S.C. 360) because such establishment is engaged in the manufacture, preparation, propagation, compounding, or processing of a device is required to pay the annual fee for establishment registration.

II. Revenue Amount for FY 2021

The total revenue amount for FY 2021 is $211,748,789, as set forth in the statute prior to the inflation adjustment (see 21 U.S.C. 379j(b)(3)). MDUFA directs FDA to use the yearly total revenue amount as a starting point to set the standard fee rates for each fee type. The fee calculations for FY 2021 are described in this document.

Inflation Adjustment

MDUFA specifies that the $211,748,789 is to be adjusted for inflation increases for FY 2021 using two separate adjustments—one for payroll costs and one for non-payroll costs (see 21 U.S.C. 379j(c)(2)). The base inflation adjustment for FY 2021 is the sum of one plus the two separate adjustments and is compounded as specified in the statute (see 21 U.S.C. 379j(c)(2)(C) and 379j(c)(2)(B)).

The component of the inflation adjustment for payroll costs is the average annual percent change in the cost of all personnel compensation and benefits (PC&B) paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding FYs, multiplied by 0.60, or 60 percent (see 21 U.S.C. 379j(c)(2)(C)).

Table 1 summarizes the actual cost and FTE data for the specified FYs, and provides the percent change from the previous FY and the average percent change over the first 3 of the 4 FYs preceding FY 2021. The 3-year average is 1.2644 percent (rounded).

TABLE 1—FDA PC&BS EACH YEAR AND PERCENT CHANGE

Fiscal year	2017	2018	2019	3-Year average
Total PC&B	$2,581,551,000	$2,690,678,000	$2,620,052,000	.....
Total FTE	17,022	17,023	17,144	.....
PC&B per FTE	$151,660	$158,061	$152,826	.....
Percent change from previous year	2.8845	4.2206	–3.3120	1.2644

The payroll adjustment is 1.2644 percent multiplied by 60 percent, or 0.7586 percent. The statute specifies that the component of the inflation adjustment for non-payroll costs for FY 2021 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; Not Seasonally Adjusted; All Items; Annual Index) for the first 3 of the preceding 4 years of available data multiplied by 0.40, or 40 percent (see 21 U.S.C. 379j(c)(2)(C)). As a result of a geographical revision made by the Bureau of Labor and Statistics in January 2018,[1] the ''Washington-Baltimore, DC-MD-VA-WV'' index was discontinued and replaced with two separate indices (*i.e.,* ''Washington-Arlington-Alexandria, DC-VA-MD-WV'' and ''Baltimore-Columbia-Towson, MD''). In order to continue applying a CPI that best reflects the geographic region in which FDA is headquartered and that provides the most current data available, the Washington-Arlington-Alexandria index will be used in calculating the relevant adjustment factors for FY 2021 and subsequent years.

Table 2 provides the summary data and the 3-year average percent change in the specified CPI for the Washington-Arlington-Alexandria area. These data are published by the Bureau of Labor Statistics and can be found on their website under series Id CUURS35ASA0 at: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35ASA0,CUUSS35ASA0.*

[1] The Bureau of Labor Statistics' Announcement of the geographical revision can be viewed at *https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm.*

TABLE 2—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN WASHINGTON-ARLINGTON-ALEXANDRIA AREA CPI

Fiscal year	2017	2018	2019	3-Year average
Annual CPI	256.221	261.445	264.777	
Annual Percent Change	1.1045	2.0389	1.2745	
3-Year Average Percent Change in CPI				1.4726

The non-payroll adjustment is 1.4726 percent multiplied by 40 percent, or 0.5890 percent. Next, the payroll adjustment (0.7586 percent or 0.007586) is added to the non-payroll adjustment (0.5890 percent or .005890), for a total of 1.3476 percent (or 0.013476). To complete the inflation adjustment, 1 (100 percent or 1.0) is added for a total base inflation adjustment of 1.013476 for FY 2021.

MDUFA IV provides for this inflation adjustment to be compounded for FY 2021 and each subsequent fiscal year (see 21 U.S.C. 379j(c)(2)(B)(ii)). To complete the compounded inflation adjustment for FY 2021, the FY 2020 compounded adjustment (1.099985) is multiplied by the FY 2021 base inflation adjustment (1.013476) to reach the applicable inflation adjustment of 1.114808 (rounded) for FY 2021. We then multiply the total revenue amount for FY 2021 ($211,748,789) by 1.114808, yielding an inflation adjusted total revenue amount of $236,059,000 (rounded to the nearest thousand dollars).

III. Fees for FY 2021

Under the FD&C Act, all submission fees and the periodic reporting fee are set as a percent of the standard (full) fee for a premarket application (see 21 U.S.C. 379j(a)(2)(A)).

A. Inflation Adjustment

MDUFA specifies that the base fees of $328,000 (premarket application) and $4,975 (establishment registration) are to be adjusted for FY 2021 using the same methodology as that for the total revenue inflation adjustment in section II (see 21 U.S.C. 379j(c)(2)(D)(i)). Multiplying the base fees by the compounded inflation adjustment of 1.114808 yields inflation adjusted base fees of $365,657 (premarket application) and $5,546 (establishment registration).

B. Further Adjustments

After the applicable inflation adjustment to fees is done, FDA may increase, if necessary to achieve the inflation adjusted total revenue amount, the base fee amounts on a uniform proportionate basis (see 21 U.S.C. 379j(c)(2)(D)(ii)). If necessary after this adjustment, FDA may further increase the base establishment registration fees to generate the inflation adjusted total revenue amount (see 21 U.S.C. 379j(c)(3)).

C. Calculation of Fee Rates

Table 3 provides the last 3 years of fee-paying submission counts and the 3-year average. These numbers are used to project the fee-paying submission counts that FDA will receive in FY 2021.

TABLE 3—THREE-YEAR AVERAGE OF FEE-PAYING SUBMISSIONS

Application type	FY 2017 actual	FY 2018 actual	FY 2019 actual	3-Year average
Full Fee Applications	37	38	32	36
Small Business	6	7	8	7
Panel-Track Supplement	22	23	14	20
Small Business	2	5	4	4
De Novo Classification Request [1]		27	12	20
Small Business [1]		29	37	33
180-Day Supplements	167	133	124	141
Small Business	33	27	23	28
Real-Time Supplements	187	169	213	190
Small Business	19	34	43	32
510(k)s	2,969	2,122	2,069	2,387
Small Business	1,072	1,385	1,558	1,338
30-Day Notice	998	1,058	925	994
Small Business	78	98	111	96
513(g) (21 U.S.C. 360c(g)) Request for Classification Information	93	84	75	84
Small Business	41	33	54	43
Annual Fee for Periodic Reporting [2]	618	624	629	624
Small Business [2]	57	74	96	76
Establishment Registration	27,115	27,544	27,734	27,464

[1] Two-year average for De Novo is based on actuals from available data.
[2] Includes collection of quarter 4 billing for FY 2019 during FY 2020.

The information in table 3 is necessary to estimate the amount of revenue that will be collected based on the fee amounts. Table 4 displays the FY 2021 base fees set in statute (column one) and the inflation adjusted base fees (per calculations in section III.A.) (column two). Using the inflation adjusted fees and the 3-year averages of fee-paying submissions, collections are projected to total $236,842,961, which is $783,961 higher than the inflation adjusted total revenue amount (in section II). The fees in column two are those we are establishing in FY 2021, which are the standard fees.

TABLE 4—FEES NEEDED TO ACHIEVE NEW FY 2021 REVENUE TARGET

Application type	FY 2021 statutory fees (base fees)	FY 2021 inflation adjusted statutory base fees (standard fees)	3-Year average of fee-paying submissions	FY 2021 revenue from adjusted fees
Full Fee Applications	$328,000	$365,657	36	$13,163,652
Small Business	82,000	91,414	7	639,898
Panel-Track Supplement	246,000	274,243	20	5,484,860
Small Business	61,500	68,561	4	274,244
De Novo Classification Request	98,400	109,697	20	2,193,940
Small Business	24,600	27,424	33	904,992
180-Day Supplements	49,200	54,849	141	7,733,709
Small Business	12,300	13,712	28	383,936
Real-Time Supplements	22,960	25,596	190	4,863,240
Small Business	5,740	6,399	32	204,768
510(k)s	11,152	12,432	2,387	29,675,184
Small Business	2,788	3,108	1,338	4,158,504
30-Day Notice	5,248	5,851	994	5,815,894
Small Business	2,624	2,926	96	280,896
513(g) Request for Classification Information	4,428	4,936	84	414,624
Small Business	2,214	2,468	43	106,124
Annual Fee for Periodic Reporting	11,480	12,798	624	7,985,952
Small Business	2,870	3,200	76	243,200
Establishment Registration	4,975	5,546	27,464	152,315,344
Total				236,842,961

The standard fee (adjusted base amount) for a premarket application, including a BLA, and for a premarket report and a BLA efficacy supplement, is $365,657 for FY 2021. The fees set by reference to the standard fee for a premarket application are:

- For a panel-track supplement, 75 percent of the standard fee;
- For a de novo classification request, 30 percent of the standard fee;
- For a 180-day supplement, 15 percent of the standard fee;
- For a real-time supplement, 7 percent of the standard fee;
- For an annual fee for periodic reporting concerning a class III device, 3.5 percent of the standard fee;
- For a 510(k) premarket notification, 3.4 percent of the standard fee;
- For a 30-day notice, 1.6 percent of the standard fee; and
- For a 513(g) request for classification information, 1.35 percent of the standard fee.

For all submissions other than a 30-day notice and a 513(g) request for classification information, the small business fee is 25 percent of the standard (full) fee for the submission (see 21 U.S.C. 379j(d)(2)(C) and (e)(2)(C)). For a 30-day notice and a 513(g) request for classification information, the small business fee is 50 percent of the standard (full) fee for the submission (see 21 U.S.C. 379j(d)(2)(C)).

The annual fee for establishment registration, after adjustment, is set at $5,546 for FY 2021. There is no small business rate for the annual establishment registration fee; all establishments pay the same fee.

Table 5 summarizes the FY 2021 rates for all medical device fees.

TABLE 5—MEDICAL DEVICE FEES FOR FY 2021

Application fee type	Standard fee (as a percent of the standard fee for a premarket application)	FY 2021 standard fee	FY 2021 small business fee
Premarket application (a PMA submitted under section 515(c)(1) of the FD&C Act (21 U.S.C. 360e(c)(1)), a PDP submitted under section 515(f) of the FD&C Act, or a BLA submitted under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262)).	Base fee specified in statute.	$365,657	$91,414
Premarket report (submitted under section 515(c)(2) of the FD&C Act)	100	365,657	91,414
Efficacy supplement (to an approved BLA under section 351 of the PHS Act)	100	365,657	91,414
Panel-track supplement	75	274,243	68,561
De novo classification request	30	109,697	27,424
180-day supplement	15	54,849	13,712
Real-time supplement	7	25,596	6,399
510(k) premarket notification submission	3.40	12,432	3,108
30-day notice	1.60	5,851	2,926
513(g) request for classification information	1.35	4,936	2,468
Annual Fee Type			
Annual fee for periodic reporting on a class III device	3.50	12,798	3,200
Annual establishment registration fee (to be paid by the establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a device, as defined by 21 U.S.C. 379i(14)).	Base fee specified in statute.	5,546	5,546

IV. How To Qualify as a Small Business for Purposes of Medical Device Fees

If your business, including your affiliates, has gross receipts or sales of no more than $100 million for the most recent tax year, you may qualify for reduced small business fees. If your business, including your affiliates, has gross sales or receipts of no more than $30 million, you may also qualify for a waiver of the fee for your first premarket application (*i.e.* PMA, PDP, or BLA) or premarket report. If you want to pay the small business fee rate for a submission or you want to receive a waiver of the fee for your first premarket application or premarket report, you should submit the materials showing you qualify as a small business at least 60 days before you send your submission to FDA. FDA will review your information and determine whether you qualify as a small business eligible for the reduced fee and/or fee waiver. If you make a submission before FDA finds that you qualify as a small business, you must pay the standard (full) fee for that submission.

If your business qualified as a small business for FY 2020, your status as a small business will expire at the close of business on September 30, 2020. You must re-qualify for FY 2021 in order to pay small business fees during FY 2021.

If you are a domestic (U.S.) business and wish to qualify as a small business for FY 2021, submit the following to FDA:

1. A completed MDUFA Small Business Certification Request For a Business Headquartered in the U.S. (Form FDA 3602). Form FDA 3602 is provided in the FDA Forms database: *https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM573420.pdf.*

2. A signed copy of your Federal (U.S.) Income Tax Return for the most recent tax year. The most recent tax year will be 2020, except:

If you submit your MDUFA Small Business Certification Request for FY 2021 before April 15, 2021, and you have not yet filed your return for 2020, you may use tax year 2019.

If you submit your MDUFA Small Business Certification Request for FY 2021 on or after April 15, 2021, and have not yet filed your 2020 return because you obtained an extension, you may submit your most recent return filed prior to the extension.

3. For each of your affiliates, either:

- If the affiliate is a domestic (U.S.) business, a signed copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year, or
- If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected. The business must also submit a statement signed by the head of the business's firm or by its chief financial officer that the business has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the business has no affiliates.

If you are a foreign business, and wish to qualify as a small business for FY 2021, submit the following:

1. A completed MDUFA Foreign Small Business Certification Request For a Business Headquartered Outside the United States (Form FDA 3602A). Form FDA 3602A is provided in the FDA Forms database: *https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM573423.pdf.*

2. A National Taxing Authority Certification, completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected.

3. For each of your affiliates, either:

- If the affiliate is a domestic (U.S.) business, a signed copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year (2020 or later), or
- If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates for the gross receipts or sales collected. The business must also submit a statement signed by the head of the business's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the business has no affiliates.

V. Procedures for Paying Application Fees

If your application or submission is subject to a fee and your payment is received by FDA between October 1, 2020, and September 30, 2021, you must pay the fee in effect for FY 2021. The later of the date that the application is received in the reviewing center's document room or the date the U.S. Treasury recognizes the payment determines whether the fee rates for FY 2020 or FY 2021 apply. FDA must receive the correct fee at the time that an application is submitted, or the application will not be accepted for filing or review.

FDA requests that you follow the steps below before submitting a medical device application subject to a fee to ensure that FDA links the fee with the correct application. (*Note:* Do not send your user fee check to FDA with the application.)

A. Secure a Payment Identification Number (PIN) and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment

Log into the User Fee System at: *https://userfees.fda.gov/OA_HTML/mdufmaCAcdLogin.jsp.* Complete the Medical Device User Fee cover sheet. Be sure you choose the correct application submission date range. (Two choices will be offered until October 1, 2020. One choice is for applications and fees that will be received on or before September 30, 2020, which are subject to FY 2020 fee rates. A second choice is for applications and fees received on or after October 1, 2020, which are subject to FY 2021 fee rates.) After completing data entry, print a copy of the Medical Device User Fee cover sheet and note the unique PIN located in the upper right-hand corner of the printed cover sheet.

B. Electronically Transmit a Copy of the Printed Cover Sheet With the PIN

When you are satisfied that the data on the cover sheet is accurate, electronically transmit that data to FDA according to instructions on the screen. Applicants are required to set up a user account and password to assure data security in the creation and electronic submission of cover sheets.

C. Submit Payment for the Completed Medical Device User Fee Cover Sheet

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). FDA has partnered with the U.S. Department of the Treasury to utilize *Pay.gov*, a web-based payment system, for online electronic payment. You may make a payment via electronic check or credit card after submitting your cover sheet. Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* Note: Only full payments are accepted. No partial payments can be made online. Once you search for your invoice, select ''Pay Now'' to be redirected to *Pay.gov*. Electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

2. If paying with a paper check:

• All paper checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. If needed, FDA's tax identification number is 53–0196965.

• Please write your application's unique PIN (from the upper right-hand corner of your completed Medical Device User Fee cover sheet) on your check.

• *Mail the paper check and a copy of the completed cover sheet to:* Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

If you prefer to send a check by a courier, the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery).

3. If paying with a wire transfer:

• Please include your application's unique PIN (from the upper right-hand corner of your completed Medical Device User Fee cover sheet) in your wire transfer. Without the PIN, your payment may not be applied to your cover sheet and review of your application may be delayed.

• The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee it is required that you add that amount to the payment to ensure that the invoice is paid in full.

Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33.

FDA records the official application receipt date as the later of the following: (1) The date the application was received by the FDA Document Control Center for the reviewing Center or (2) the date the U.S. Treasury recognizes the payment. It is helpful if the fee arrives at the bank at least 1 day before the application arrives at FDA.

D. Submit Your Application to FDA With a Copy of the Completed Medical Device User Fee Cover Sheet

Please submit your application and a copy of the completed Medical Device User Fee cover sheet to the address located at *https://www.fda.gov/cdrhsubmissionaddress.*

VI. Procedures for Paying the Annual Fee for Periodic Reporting

You will be invoiced at the end of the quarter in which your PMA Periodic Report is due. Invoices will be sent based on the details included on your PMA file. You are responsible for ensuring that FDA has your current billing information, and you may update your contact information for the PMA by submitting an amendment to the pending PMA or a supplement to the approved PMA.

1. The preferred payment method is online using electronic check (ACH also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* (*Note:* Only full payments are accepted. No partial payments can be made online). Once you search for your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Note that electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

2. If paying with a paper check:

The check must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. If needed, FDA's tax identification number is 53–0196965.

• Please write your invoice number on the check.

• *Mail the paper check and a copy of the invoice to:* Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

To send a check by a courier, the courier must deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery).

3. When paying by a wire transfer, it is required that the invoice number is included; without the invoice number the payment may not be applied. If the payment amount is not applied, the invoice amount would be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required that you add that amount to the payment to ensure that the invoice is paid in full.

Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33.

VII. Procedures for Paying Annual Establishment Registration Fees

To pay the annual establishment registration fee, firms must access the Device Facility User Fee (DFUF) website at *https://userfees.fda.gov/OA_HTML/furls.jsp.* (FDA has verified the website address, but FDA is not responsible for any subsequent changes to the website address after this document publishes in the **Federal Register**.) Create a DFUF order and you will be issued a PIN when you place your order. After payment has been processed, you will be issued a payment confirmation number (PCN). You will not be able to register your establishment if you do not have a PIN and a PCN. An establishment required to pay an annual establishment registration fee is not legally registered in FY 2021 until it has completed the steps below to register and pay any applicable fee (see 21 U.S.C. 379j(f)(2)).

Companies that do not manufacture any product other than a licensed

biologic are required to register in the Blood Establishment Registration (BER) system. FDA's Center for Biologics Evaluation and Research (CBER) will send establishment registration fee invoices annually to these companies.

A. Submit a DFUF Order With a PIN From FDA Before Registering or Submitting Payment

To submit a DFUF Order, you must create or have previously created a user account and password for the user fee website listed previously in this section. After creating a user name and password, log into the Establishment Registration User Fee FY 2021 store. Complete the DFUF order by entering the number of establishments you are registering that require payment. When you are satisfied that the information in the order is accurate, electronically transmit that data to FDA according to instructions on the screen. Print a copy of the final DFUF order and note the unique PIN located in the upper right-hand corner of the printed order.

B. Pay For Your DFUF Order

Unless paying by U.S. credit card, all payments must be in U.S. currency and drawn on a U.S. bank.

1. If paying by credit card or electronic check (ACH or eCheck):

The DFUF order will include payment information, including details on how you can pay online using a credit card or electronic check. Follow the instructions provided to make an electronic payment.

2. If paying with a paper check:

The check must be in U.S. currency and drawn on a U.S. bank, and mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. (*Note:* This address is different from the address for payments of application and annual report fees and is to be used only for payment of annual establishment registration fees.)

If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.)

Please make sure that both of the following are written on your check: (1) The FDA post office box number (P.O. Box 979108) and (2) the PIN that is printed on your order. Include a copy of your printed order when you mail your check.

3. If paying with a wire transfer:

Wire transfers may also be used to pay annual establishment registration fees. To send a wire transfer, please read and comply with the following information:

Include your order's unique PIN (in the upper right-hand corner of your completed DFUF order) in your wire transfer. Without the PIN, your payment may not be applied to your facility and your registration may be delayed.

The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required that you add that amount to the payment to ensure that the invoice is paid in full. Use the following account information when sending a wire transfer: U.S. Dept. of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53–0196965.

C. Complete the Information Online to Update Your Establishment's Annual Registration for FY 2021, or To Register a New Establishment for FY 2021

Go to the Center for Devices and Radiological Health's website at *https://www.fda.gov/medical-devices/how-study-and-market-your-device/device-registration-and-listing* and click the ''Access Electronic Registration'' link on the left side of the page. This opens up a new page with important information about the FDA Unified Registration and Listing System (FURLS). After reading this information, click on the ''Access Electronic Registration'' link in the middle of the page. This link takes you to an FDA Industry Systems page with tutorials that demonstrate how to create a new FURLS user account, if your establishment did not create an account in FY 2020. Manufacturers of licensed biologics should register in the Biologics Establishment Registration (BER) system at *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-establishment-registration.*

Enter your existing account ID and password to log into FURLS. From the FURLS/FDA Industry Systems menu, click on the Device Registration and Listing Module (DRLM) of FURLS button. New establishments will need to register and existing establishments will update their annual registration using choices on the DRLM menu. When you choose to register or update your annual registration, the system will prompt you through the entry of information about your establishment and your devices. If you have any problems with this process, email: *reglist@cdrh.fda.gov* or call 301–796–7400 for assistance. (*Note:* This email address and this telephone number are for assistance with establishment registration only; they are not to be used for questions related to other aspects of medical device user fees.) Problems with the BER system should be directed to *https://www.accessdata.fda.gov/scripts/email/cber/bldregcontact.cfm* or call 240–402–8360.

D. Enter Your DFUF Order PIN and PCN

After completing your annual or initial registration and device listing, you will be prompted to enter your DFUF order PIN and PCN, when applicable. This process does not apply to establishments engaged only in the manufacture, preparation, propagation, compounding, or processing of licensed biologic devices. CBER will send invoices for payment of the establishment registration fee to such establishments.

Dated: July 29, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–16793 Filed 7–29–20; 4:15 pm]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0937–0025]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before October 2, 2020.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990-New-60D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, *Sherrette.funn@hhs.gov,* or call 202–795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and

utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Commissioned Corps of the U.S. Public Health Service Application.

Type of Collection: Revision.

OMB No. 0937–0025—Office Within OS—Specific Program Collecting the Data Is Commissioned Corps Headquarters

Abstract: The principal purpose of this revision is a result of the Coronavirus Aid, Relief, and Economic Security (CARES) Act that was signed into law on March 27, 202. The Public Health Service Act was amended to provide for a Ready Reserve corps in times of public health emergencies, in addition to national emergencies. Collecting the information is to permit HHS to determine eligibility for appointment of applicants into the Regular Corps and Ready Reserve Corps of the Commissioned Corps of the U.S. Public Health Service Corps (Corps). The Corps is one of the seven Uniformed Services of the United States (37 U.S.C. 101(3), and appointments in the Corps are made pursuant to 42 U.S.C. 204 *et seq.* and 42 CFR 21.58.

Type of respondent: Candidates/Applicants to the Regular and Ready Reserve Corps of the Commissioned Corps of the U.S. Public Health Service.

ANNUALIZED BURDEN HOUR TABLE

Type of respondent	Form name	Number of Regular Corps respondents	Number of Reserve Corps respondents	No response per respondent	Average burden per responses (in hours)	Total burden hours
Interested Health Professionals.	Prequalification Questionnaire.	6,000	1,000	1	10/60	1,167
Health Professionals	Form PHS–50	3,000	500	1	15/60	875
References (college professors/teachers).	Form PHS–1813	3,000	500	1	15/60	875
Health Professionals	Addendum: Commissioned Corps Personal Statement.	3,000	500	1	15/60	875
Total						3,792

Dated: July 29, 2020.

Sherrettte A. Funn,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2020–16815 Filed 7–31–20; 8:45 am]

BILLING CODE 4150–49–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV–2) and Coronavirus Disease 2019 (COVID–19) (R21, R01 Clinical Trials Not Allowed)

Date: August 17, 2020.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71B, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Lee G. Klinkenberg, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71B, Bethesda, MD 20892–9834, 301–761–7749, *lee.klinkenberg@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 28, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–16802 Filed 7–31–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Mechanism for Time-Sensitive Research Opportunities in Environmental Health Sciences.

Date: August 11, 2020.

Time: 11:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530

Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556, *allen9@niehs.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 28, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–16803 Filed 7–31–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Gastroenterology.

Date: August 7, 2020.

Time: 1:30 p.m. to 2:00 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: Alexander D, Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892 (301) 435–1150, *politisa@csr.nih.gov,*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 29, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–16822 Filed 7–31–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Repository of Mouse Models for Cytogenetic Disorders.

Date: September 11, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Bethesda, MD (Virtual Meeting).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: October 30, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Bethesda, MD (Virtual Meeting).

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer National Institutes of Health, NICHD, SRB, 6710B Rockledge Drive, Bethesda, MD 20892, 301–435–6902, *peter.zelazowski@nih.gov.*

Dated: July 28, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–16711 Filed 7–31–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies

of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs for oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs for oral fluid testing.

HHS-Certified Laboratories Certified To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Certified To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Certified To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438, (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ, 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

The following laboratory is voluntarily withdrawing from the National Laboratory Certification Program effective July 17, 2020:

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). *After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,

Policy Analyst.

[FR Doc. 2020–16716 Filed 7–31–20; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0483]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0041

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0041, Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates; without change.

Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before October 2, 2020.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2020–0483] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2020–0483], and must be received by October 2, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

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

Information Collection Request

Title: Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates.

OMB Control Number: 1625–0041.

Summary: Required by the adoption of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and other international treaties, these certificates and documents are evidence of compliance for U.S. vessels on international voyages. Without the proper certificates or documents, a U.S. vessel could be detained in a foreign port.

Need: Compliance with treaty requirements aids in the prevention of pollution from ships.

Forms:

• CG–16478, International Certificate on Inventory of Hazardous Materials (Statement of Voluntary Compliance)

Respondents: Owners, operators, or masters of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden increases 16 hours; due to a new optional form—the International Certificate on Inventory of Hazardous Materials (Statement of Voluntary Compliance) (form CG–16478).

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: July 29, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–16850 Filed 7–31–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0484]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625—NEW

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for the following collection: 1625—NEW, Transportation Worker Identification Credential (TWIC) Card Readers: Updated Risk Analysis.

Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before October 2, 2020.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2020–0484] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

In response to your comments, we may revise this ICR or decide not to seek approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2020–0484], and must be received by October 2, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

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

Information Collection Request

Title: Transportation Worker Identification Credential (TWIC) Card Readers: Updated Risk Analysis.

OMB Control Number: 1625—NEW.

Summary: The Coast Guard is conducting a risk analysis to determine which maritime facilities subject to TWIC Reader Rule would most benefit from the electronic TWIC inspection requirements. The purpose of this information collection is to gather the necessary information to conduct that analysis. This collection implements authorities set forth in the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107–295; Nov. 25, 2002; sec. 102) and Transportation Security Card Program Assessment Act (Pub. L. 114–278). Participation is voluntary.

Need: This risk analysis will satisfy the mandate of the Transportation Security Card Program Assessment Act (Pub. L. 114–278).

Forms: None.

Respondents: Maritime facility owners, operators and representatives.

Frequency: One-time interview.

Hour Burden Estimate: The estimated burden is 600 hours for this new information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: July 29, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–16851 Filed 7–31–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4551–DR; Docket ID FEMA–2020–0001]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4551–DR), dated July 9, 2020, and related determinations.

DATES: The declaration was issued July 9, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 9, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Mississippi resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of April 22 to April 23, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jose M. Girot, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Mississippi have been designated as adversely affected by this major disaster:

Amite, Claiborne, Covington, George, Jefferson Davis, Jones, Lawrence, Pike, Simpson, Smith, and Wayne Counties for Public Assistance.

All areas within the State of Mississippi are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16735 Filed 7–31–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4555–DR; Docket ID FEMA–2020–0001]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–4555–DR), dated July 10, 2020, and related determinations.

DATES: The declaration was issued July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 10, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of April 12 to April 13, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Terry L. Quarles, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alabama have been designated as adversely affected by this major disaster:

Blount, Cullman, DeKalb, Etowah, Jackson, Marshall, and Walker Counties for Public Assistance.

All areas within the State of Alabama are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16745 Filed 7–31–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4554–DR; Docket ID FEMA–2020–0001]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–4554–DR), dated July 10, 2020, and related determinations.

DATES: The declaration was issued July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 10, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from severe storms, straight-line winds, and tornadoes on April 19, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Terry L. Quarles, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alabama have been designated as adversely affected by this major disaster:

Barbour, Chilton, Coffee, Coosa, Covington, Crenshaw, Dale, Henry, Pike, and Tallapoosa Counties for Public Assistance.

All areas within the State of Alabama are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16744 Filed 7–31–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4549–DR; Docket ID FEMA–2020–0001]

Hawaii; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Hawaii (FEMA–4549–DR), dated July 9, 2020, and related determinations.

DATES: The declaration was issued July 9, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 9, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Hawaii resulting from severe storms and flooding during the period of March 27 to March 28, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Hawaii.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Colby Stanton, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Hawaii have been designated as adversely affected by this major disaster:

Kauai County for Public Assistance.

All areas within the State of Hawaii are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16738 Filed 7–31–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4548–DR; Docket ID FEMA–2020–0001]

Utah; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Utah (FEMA–4548–DR), dated July 9, 2020, and related determinations.

DATES: The declaration was issued July 9, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 9, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Utah resulting from an earthquake and aftershocks during the period of March 18 to April 17, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Utah.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kenneth G. Clark, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Utah have been designated as adversely affected by this major disaster:

Davis and Salt Lake Counties for Individual Assistance.

All areas within the State of Utah are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16737 Filed 7–31–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4547–DR; Docket ID FEMA–2020–0001]

Michigan; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Michigan (FEMA–4547–DR), dated July 9, 2020, and related determinations.

DATES: The declaration was issued July 9, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 9, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Michigan resulting from severe storms and flooding during the period of May 16 to May 22, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Michigan.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Waddy Gonzalez, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Michigan have been designated as adversely affected by this major disaster:

Arenac, Gladwin, Iosco, Midland, and Saginaw Counties for Individual Assistance.

Arenac, Gladwin, Iosco, Midland, and Saginaw Counties for Public Assistance.

All areas within the State of Michigan are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16736 Filed 7–31–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4553–DR; Docket ID FEMA–2020–0001]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–4553–DR), dated July 9, 2020, and related determinations.

DATES: The declaration was issued July 9, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 9, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from flooding during the period of April 1 to April 25, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Dakota have been designated as adversely affected by this major disaster:

Barnes, Cass, Dickey, Foster, Grand Forks, LaMoure, Logan, McIntosh, Nelson, Pembina, Ransom, Richland, Sargent, Sheridan, Steele, Stutsman, Traill, and Walsh Counties for Public Assistance.

All areas within the State of North Dakota are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16741 Filed 7–31–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2020–0024; OMB No. 1660–0149]

Agency Information Collection Activities: Proposed Collection; Comment Request; Requests for Special Priorities Assistance

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning FEMA's Request for Special Priorities Assistance, FEMA Form 009–0–142.

DATES: Comments must be submitted on or before October 2, 2020.

ADDRESSES: Submit comments at *www.regulations.gov* under Docket ID FEMA–2020–0024. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Office of Policy and Program Analysis, Marc Geier, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (telephone) 202–924–0196, or (email) *FEMA-DPA@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This information is necessary to support the President's priorities and allocations authority under Title I of the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. 4501, *et seq.*) as

implemented by the Emergency Management Priorities and Allocations System (EMPAS) regulation (44 CFR part 333) which was added by FEMA's May 13, 2020 Emergency Management Priorities and Allocations System Interim Final Rule (RIN 1660–AB04). The purpose of this authority is to ensure the timely delivery of products, materials, and services to meet current national defense requirements. The definition of ''national defense'' in Section 702(14) of the DPA provides that this term includes ''homeland security,'' ''emergency preparedness activities'' conducted pursuant to Section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5195a), and ''critical infrastructure protection and restoration.''

Collection of Information

Title: Requests for Special Priorities Assistance.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0149.

FEMA Form: FEMA Form 009–0–142, Requests for Special Priorities Assistance.

Abstract: Contractors may request Special Priorities Assistance (SPA) when placing rated orders with suppliers, to obtain timely delivery of products, materials or services from suppliers, or for any other reason under the EMPAS, in support of approved national programs. Additionally, when responding to COVID–19, State and local governments, owners, operators, and the private sector may request SPA. FEMA Form 009–0–142 is used to apply for such assistance.

Affected Public: For-Profit Business; Private Non-Profit; State, local or Tribal government.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Estimated Total Annual Burden Hours: 5.

Estimated Total Annual Respondent Cost: $288.

Estimated Respondents' Operation and Maintenance Costs: None.

Estimated Respondents' Capital and Start-Up Costs: None.

Estimated Total Annual Cost to the Federal Government: $52,857.

Comments

Comments may be submitted as indicated in the ADDRESSES caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–16837 Filed 7–31–20; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4556–DR; Docket ID FEMA–2020–0001]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–4556–DR), dated July 10, 2020, and related determinations.

DATES: The declaration was issued July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 10, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Arkansas due to damage resulting from severe storms and straight-line winds on April 12, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Roland Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Arkansas have been designated as adversely affected by this major disaster:

Arkansas, Bradley, Cleveland, Dallas, Desha, Drew, Grant, Jefferson, Lincoln, and Ouachita Counties for Public Assistance.

All areas within the State of Arkansas are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16746 Filed 7–31–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4550–DR; Docket ID FEMA–2020–0001]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4550–DR), dated July 9, 2020, and related determinations.

DATES: The declaration was issued July 9, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 9, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms, straight-line winds, and flooding during the period of May 3 to May 4, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Myra M. Shird, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Benton, Carroll, Davidson, Decatur, Dickson, Dyer, Hardin, Henderson, Henry, Hickman, Houston, Humphreys, Lake, Lawrence, Lewis, Madison, Maury, Obion, Perry, and Weakley Counties for Public Assistance.

All areas within the State of Tennessee are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16739 Filed 7–31–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4552–DR; Docket ID FEMA–2020–0001]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–4552–DR), dated July 9, 2020, and related determinations.

DATES: The declaration was issued July 9, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 9, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 3 to May 4, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John Brogan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Missouri have been designated as adversely affected by this major disaster:

Bates, Butler, Carter, Dallas, Douglas, Dunklin, Henry, Hickory, Howell, Laclede, New Madrid, Oregon, Pemiscot, Polk, Ripley, Shannon, Stoddard, Wayne, and Wright Counties for Public Assistance.

All areas within the State of Missouri are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–16740 Filed 7–31–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6230–N–01]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2020–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of one multifamily and eight healthcare mortgage loans.

SUMMARY: This notice announces HUD's intention to sell one unsubsidized multifamily and eight unsubsidized healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale on or about August 26, 2020 (MHLS 2020–1or Loan Sale). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: A Bidder's Information Package (BIP) will be made available on or about August 5, 2020. Bids for the loans must be submitted on the bid date, which is currently scheduled for August 26, 2020 between certain specified hours. HUD anticipates that an award or awards will be made on or before August 28, 2020. Closing is expected to take place between September 14 and September 18, 2020.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD website at *www.hud.gov/fhaloansales.* Please fax or email as well as mail executed original documents to JS Watkins Realty Partners, LLC: JS Watkins Realty Partners, LLC, c/o The Debt Exchange, 133 Federal Street, 10th Floor, Boston, MA 02111, Attention: MHLS 2020–1 Sale Coordinator, Fax: 1–978–967–8607, Email: *mhls2020-1@debtx.com.*

FOR FURTHER INFORMATION CONTACT: John Lucey, Director, Asset Sales, U.S. Department of Housing and Urban Development at *john.w.lucey@hud.gov.*

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell, in MHLS 2020–1, nine (9) unsubsidized first lien mortgage loans (Mortgage Loans), consisting of eight (8) first lien healthcare notes secured by assisted living facilities located in various locations within Wisconsin, Maine, Illinois, Texas, Indiana, and Arkansas, and one first lien multifamily note secured by a multifamily property located in Arkansas. The Mortgage Loans are non-performing mortgage loans. The listing of the Mortgage Loans is included in the BIP. The Mortgage Loans will be sold without FHA insurance and with HUD servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans. Qualified bidders may submit bids on one or more of the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into mortgage loan pools as appropriate. Each pool will contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans or may bid on individual loans.

Bidder eligibility criteria is set forth in the Qualification Statement. As detailed in the Qualification Statement, cetain entities/individuals may be precluded from bidding depending on their prior involvment with the loan(s).

The Bidding Process

The BIP describes in detail the procedure for bidding in MHLS 2020–1. The BIP also includes a standardized non-negotiable loan sale agreement (Loan Sale Agreement).

As part of its bid, each bidder must submit a minimum deposit of the greater of One Hundred Thousand Dollars ($100,000) or ten percent (10%) of the aggregate bid prices for all of such bidder's bids. In the event the bidder's aggregate bid is less than One Hundred Thousand Dollars ($100,000), the minimum deposit shall be not less than fifty percent (50%) of the bidder's aggregate bid. HUD will evaluate the bids submitted and determine the successful bid(s) in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price, with any amount beyond the purchase price being returned to the bidder. Deposits will be returned to unsuccessful bidders after notification to sucessful bidders on or before August 28, 2020. Closings are expected to take place between September 14 and September 18, 2020.

The Loan Sale Agreement, which is included in the BIP, contains additional terms and details. To ensure a competitive auction, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Review

The BIP describes the due diligence process for reviewing loan files in MHLS 2020–1. Qualified bidders will be able to access loan information remotely via a high-speed internet connection. Further information on performing due diligence review of the Mortgage Loans is provided in the BIP.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2020–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include the Mortgage Loans in a later sale. The Mortgage Loans will not be withdrawn after the award date except as is specifically provided for in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans, pursuant to Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997, (12 U.S.C. 1715z–11a(a)).

Mortgage Loan Sale Procedure

HUD selected a competitive auction as the method to sell the Mortgage Loans. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are among those INELIGIBLE to bid on the Mortgage Loans being sold in MHLS 2020–1:

1. A mortgagor or healthcare operator, including its principals, affiliates, family members, and assigns, with respect to one or more of the Mortgage Loans being offered in the Loan Sale, or an Active Shareholder (as such term is defined in the Qualification Statement);

2. With respect to any other HUD multifamily and/or healthcare mortgage loan not offered in the Loan Sale, any mortgagor or healthcare operator,

incuding any Related Party (as such term is defined in the Qualification Statement) of either, that has failed to file financial statements or is otherwise in default under such mortgage loan or is in violation or noncompliance of any regulatory or business agreements with HUD and that fails to cure such default or violation by no later than August 1, 2020;

3. Any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 2 of the Code of Federal Regulations, Part 2424;

4. Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for, or on behalf of, HUD in connection with MHLS 2020–1;

5. Any employee of HUD, a member of such employee's family, or an entity owned or controlled by any such employee or member of such an employee's family;

6. Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under provisions (3) through (5) above to assist in preparing its bid on any Mortgage Loan;

7. An FHA-approved mortgagee, including any principals, affiliates, or assigns thereof, that has received FHA insurance benefits for one or more of the Mortgage Loans being offered in the Loan Sale;

8. An FHA-approved mortgagee and/or loan servicer, including any principals, affiliates, or assigns thereof, that originated one or more of the Mortgage Loans being offered in the Loan Sale if the Mortgage Loan defaulted within two years of origination and resulted in the payment of an FHA insurance claim;

9. Any affiliate, principal or employee of any person or entity that, within the two-year period prior to August 1, 2020, serviced any Mortgage Loan or performed other services for or on behalf of HUD in regards to any Mortgage Loan;

10. Any contractor or subcontractor working for or on behalf of HUD that had access to information concerning any Mortgage Loan or provided services to any person or entity which, within the two-year period prior to August 1, 2020, had access to information with respect to any Mortgage Loan; and/or

11. Any employee, officer, director or any other person that provides or will provide services to the prospective bidder with respect to the Mortgage Loans during any warranty period established for the Loan Sale, that serviced the Mortgage Loans or performed other services for or on behalf of HUD or within the two-year period prior to August 1, 2020, provided services to any person or entity which serviced, performed services or otherwise had access to information with respect to any Mortgage Loan for or on behalf of HUD.

Other entities/individuals not described herein may also be restricted from bidding on the Mortgage Loans, as fully detailed in the Qualification Statement.

The Qualification Statement provides further details pertaining to eligibility requirements. Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2020–1.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2020–1, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for the Mortgage Loans, upon the closing of the sale of the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to MHLS 2020–1, HUD may be required to disclose information relating to MHLS 2020–1 pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to MHLS 2020–1 and does not establish HUD's policy for the sale of other mortgage loans.

John Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2020–16812 Filed 7–31–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2020–N092; FXMB123109WEBB0–201–FF09M26000; OMB Control Number 1018–0019]

Agency Information Collection Activities; North American Woodcock Singing Ground Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service, are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 2, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0019 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Migratory Bird Treaty Act (16 U.S.C. 703–712) designates the Department of the Interior as the primary agency responsible for managing migratory bird populations frequenting the United States and setting hunting regulations that allow for the well-being of migratory bird populations. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The North American Woodcock Singing Ground Survey is an essential part of the migratory bird management program. Federal, State, Provincial, Tribal, and local conservation agencies conduct the survey annually to provide the data necessary to determine the population status of the American woodcock. In addition, the information is vital in assessing the relative changes in the geographic distribution of the species. We use the information primarily to develop recommendations for hunting regulations. Without information on the population's status, we might promulgate hunting regulations that:

- Are not sufficiently restrictive, which could cause harm to the woodcock population, or
- Are too restrictive, which would unduly restrict recreational opportunities afforded by woodcock hunting.

The Service, State, and Provincial conservation agencies, university associates, and other interested parties use the data for various research and management projects.

Title of Collection: North American Woodcock Singing Ground Survey.

OMB Control Number: 1018–0019.

Form Number: FWS Form 3–156.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State, Provincial, local, and Tribal employees.

Total Estimated Number of Annual Respondents: 808.

Total Estimated Number of Annual Responses: 808.

Estimated Completion Time per Response: Varies from 1.75 hours to 1.88 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 1,515.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: July 29, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–16841 Filed 7–31–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2020–0035; FXES11140400000–178–FF04EF2000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink, Polk County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Cemex Construction Materials Florida, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink and blue-tailed mole skink incidental to sand mining in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before September 2, 2020.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS–R4–ES–2020–0035 at *http://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2020–0035.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2020–0035; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Alfredo Begazo, by telephone at (772) 469–4234 or via email at *Alfredo_Begazo@fws.gov.* Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Cemex Construction Materials Florida, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole skink (*Eumeces egregious lividus*) (skinks) incidental to the construction and operation of a sand mine in Polk County, Florida. We request public comment on the application, which includes the applicant's HCP, and on the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

The applicant requests a 10-year ITP to take skinks through the conversion of approximately 19.8 acres of occupied skink foraging and sheltering habitat incidental to the construction and operation of a sand mine on a 294-acre parcel in Sections 10, 11, Township 30 South, Range 28 East in Polk County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 39.6 acres of skink-occupied habitat from a

Service-approved conservation bank in Polk County. The Service would require the applicant to purchase the credits prior to engaging in any phase of the project.

Public Availability of Comments

Before including your address, phone 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 available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, construction of a sand mine, and the proposed mitigation measures, would individually and cumulatively have a minor or negligible effect on the skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP would be low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonable foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE75515D–0 to Cemex Construction Materials Florida, LLC.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2020–16814 Filed 7–31–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–FAC–2020–N088; FF05F24400–201–FXFR13350500000; OMB Control Number 1018–0127]

Agency Information Collection Activities; Horseshoe Crab and Cooperative Fish Tagging Programs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service, are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 2, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803; or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0127 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Maryland Fish & Wildlife Conservation Office (MDFWCO) will collect information on crabs and fishes captured by the public. Tag information provided by the public will be used to estimate recreational and commercial harvest rates, estimate natural mortality rates, and evaluate migratory patterns, length and age frequencies, and effectiveness of current regulations.

Horseshoe crabs play a vital role commercially, biomedically, and ecologically along the Atlantic coast. Horseshoe crabs are commercially harvested and used as bait in eel and conch fisheries. Biomedical companies along the coast also collect and bleed horseshoe crabs at their facilities. Limulus amebocyte lysate, derived from

horseshoe crab blood, is used by pharmaceutical companies to test sterility of products. Finally, migratory shorebirds also depend on the eggs of horseshoe crabs to refuel on their migrations from South America to the Arctic. One bird in particular, the rufa red knot (*Calidris canutus rufa*), feeds primarily on horseshoe crab eggs during its stopover. Effective January 12, 2015, the rufa red knot was listed as threatened under the Endangered Species Act (79 FR 73706; December 11, 2014).

In 1998, the Atlantic States Marine Fisheries Commission (ASMFC), a management organization with representatives from each State on the Atlantic coast, developed a horseshoe crab management plan. The ASMFC plan and its subsequent addenda established mandatory State-by-State harvest quotas, and created the 1,500-square-mile Carl N. Shuster, Jr., Horseshoe Crab Sanctuary off the mouth of Delaware Bay.

Restrictive measures have been taken in recent years, but populations are increasing slowly. Because horseshoe crabs do not breed until they are 9 years or older, it may take some time before the population measurably increases. Federal and State agencies, universities, and biomedical companies participate in a Horseshoe Crab Cooperative Tagging Program. The Service's MDFWCO maintains the information collected under this program and uses it to evaluate migratory patterns, survival, and abundance of horseshoe crabs.

Agencies that tag and release the crabs complete FWS Form 3–2311 (Horseshoe Crab Tagging) and provide the Service with:

- Organization name;
- Contact person name;
- Tag number;
- Sex of crab;
- Prosomal width; and
- Capture site, latitude, longitude, waterbody, State, and date.

Members of the public who recover tagged crabs provide the following information using FWS Form 3–2310 (Horseshoe Crab Recapture Report):

- Tag number;
- Whether or not tag was removed;
- Condition of crab;
- Date captured/found;
- Crab fate;
- Finder type;
- Capture method;
- Capture location;
- Reporter information; and
- Comments.

At the request of the public participant reporting the tagged crab, we send data pertaining to the tagging program and tag and release information on the horseshoe crab tag that was found.

Fish will be tagged with an external tag containing a toll-free number for MDFWCO. Tagged species of fish include striped bass (*Morone saxatilis*), Atlantic (*Acipenser oxyrinchus*) and shortnose sturgeon (*Acipenser brevirostrum*), northern snakehead (*Channa argus*), and American shad (*Alosa sapidissima*). Members of the public reporting a tag will be asked a series of questions pertaining to the fish that they are referencing. The Service uses the following four forms to collect information used by fisheries managers throughout the Atlantic Coast (DOI regions 1 and 2), depending on species:

- Form 3–2493, ''American Shad Recapture Report'';
- Form 3–2494, ''Snakehead Recapture Report'';
- Form 3–2495, ''Striped Bass Recapture Report''; and
- Form 3–2496, ''Sturgeon Recapture Report.''

American shad are tagged by the New York Department of Environmental Conservation (NYDEC), which retains all fish tagging information. The public reports tags to MDFWCO, who provides information on tag returns to NYDEC. Tag return data are used to monitor migration and abundance of shad along the Atlantic coast.

Northern snakehead is an invasive species found in many watersheds throughout the mid-Atlantic region. It has been firmly established in the Potomac River since at least 2004. Federal and State biologists within the Potomac River watershed have been tasked with managing the impacts of northern snakehead. Tagging of northern snakehead is used to learn more about the species so that control efforts can be better informed. Tagging is also used to estimate population sizes to monitor trends in abundance. Recreational and commercial fishers reporting tags provide information on catch rates and migration patterns as well.

Striped bass are cooperatively managed by Federal and State agencies through the Atlantic States Marine Fisheries Commission (ASMFC). The ASMFC uses fish tag return data to conduct stock assessments for striped bass. The database and collection are housed within MDFWCO, while the tagging is conducted by State agencies participating in striped bass management. Without this data collection, striped bass management would likely suffer from a lack of quality data.

Sturgeon are tagged by Federal, State, and university biologists and nongovernmental organizations along the U.S. east coast and into Canada, and throughout the United States and Canada. Local populations of Atlantic sturgeon have been listed as either threatened or endangered since 2012, and shortnose populations have been listed since 1973. The information collected provides data on tag retention and sturgeon movement along the east coast. The data are also used to address some of the management and research needs identified by amendment 1 to the ASMFC's Atlantic Sturgeon Fishery Management Plan.

Data collected across these tagging programs are similar in nature, including:

- Tag number;
- Date of capture;
- Waterbody of capture;
- Capture method;
- Fish length, weight, and fate (whether released or killed); and
- Fisher type (*i.e.,* commercial, recreational, etc.).

In addition, if the tag reporter desires more information on their tagged fish or wants the modest reward that comes with reporting a tag, we ask their address so that we can mail them the information.

Title of Collection: Horseshoe Crab and Cooperative Fish Tagging Programs.

OMB Control Number: 1018–0127.

Form Number: FWS Forms 3–2310, 3–2311, and 3–2493 through 3–2496.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Respondents include Federal and State agencies, universities, and biomedical companies who conduct tagging, and members of the general public who provide recapture information.

Total Estimated Number of Annual Respondents: 2,026.

Total Estimated Number of Annual Responses: 3,648.

Estimated Completion Time per Response: Varies from 5 minutes to 95 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 2,241.

Respondent's Obligation: Voluntary.

Frequency of Collection: Respondents will provide information on occasion, upon tagging or upon encounter with a tagged crab or fish.

Total Estimated Annual Nonhour Burden Cost: None.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: July 29, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–16842 Filed 7–31–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2020–0080; FXIA16710900000–190–FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service, have issued permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act and Marine Mammal Protection Act.

ADDRESSES: Information about the applications for the permits listed in this notice is available online at *www.regulations.gov.* See **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have issued permits to conduct certain activities with endangered and threatened species in response to permit applications that we received under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*).

After considering the information submitted with each permit application and the public comments received, we issued the requested permits subject to certain conditions set forth in each permit. For each application for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Availability of Documents

The permittees' original permit application materials, along with public comments we received during public comment periods for the applications, are available for review. To locate the application materials and received comments, go to *www.regulations.gov* and search for the appropriate permit number (*e.g.,* 12345C) provided in the following table:

Endangered Species

Permit No.	Applicant	Permit issuance date
44888D	City of San Jose dba Happy Hollow Zoo	February 12, 2020.
08877D	Florida International University	February 20, 2020.
704025	H&L Sales, Inc	February 12, 2020.
15052D	Potter Park Zoo, Ingham County	February 24, 2020.
40838D	Elyse Ellsworth	February 25, 2020.
35106D	Gulf Breeze Zoo, LLC	February 21, 2020.
44974D	New Jersey Aquarium, Adventure Aquarium	February 25, 2020.
219951	Texas Tech University	February 26, 2020.
21468B	Joan Hemker	February 26, 2020.
64737A	Palfam Ranch Management LLC	February 26, 2020.
36848D	4 J Conservation Center, Inc	February 26, 2020.
36949D	Stevens Forest	February 26, 2020.
46450D	Stevens Forest	February 26, 2020.
34708D	Sacramento Zoo	March 3, 2020.
33775D	Fresno Chaffee Zoo	March 3, 2020.
17189D	The Wild Animal Sanctuary	March 4, 2020.
18004D	The Wild Animal Sanctuary	March 4, 2020.
85048C	Kyle Wildlife Limited Partnership	July 22, 2019.
816505	Ross Popenoe	March 20, 2020.
03134B	White Oak Conservation Holdings, LLC	April 28, 2020.
49149D	Toledo Zoological Society dba Toledo Zoo	April 28, 2020.
49667D	James A. Badman	May 6, 2020.
38051D	The Wild Animal Sanctuary	May 6, 2020.
796988	Stephen Hall	May 6, 2020.
44219B	Kristine A. Holmberg	May 6, 2020.
695190	Western Foundation of Vertebrate Zoology	June 10, 2020.
56427D	Dallas Zoo Management, Inc	June 10, 2020.
54979D	H. Yturria Land and Cattle Company	May 5, 2020.
86124C	H. Yturria Land and Cattle Company	May 5, 2020.
54616D	John Ball Zoo	June 11, 2020.
59204D	Center for the Conservation of Tropical Ungulates, LLC	June 11, 2020.

Authorities

We issue this notice under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.*) and their implementing regulations.

Brenda Tapia,

Management Analyst/Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2020–16847 Filed 7–31–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–NWRS–2020–N055; FXRS12630900000–190–FF09R81000; OMB Control Number 1018–0102]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Wildlife Refuge Special Use Permit Applications and Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before September 2, 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. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control 1018–0102 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On September 13, 2019, we published a notice in the **Federal Register** (84 FR 48368) announcing our intent to request renewal of this information collection. We solicited public comment for 60 days, ending on November 12, 2019. We received one comment in response to the notice; however, the commenter did not address the information collection requirements. No response is required.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The National Wildlife Refuge System Administration Act of 1966 (Administration Act, 16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, consolidated all refuge units into a single National Wildlife Refuge System (System). It also authorized us to offer visitor and public programs, including those facilitated by commercial visitor and management support services, on lands of the System when we find that the activities are appropriate and compatible with the purpose(s) for which the refuge was established and the System's mission. The Refuge Recreation Act of 1962 (Recreation Act, 16 U.S.C. 460k–460k-4) allows the use of refuges for public recreation when it is not inconsistent or does not interfere with the primary purpose(s) of the refuge. The Alaska National Interest Lands Conservation Act (ANILCA, 16 U.S.C. 3101 *et seq.*) provides specific authorization and guidance for the administration and management of national wildlife refuges within the State of Alaska. Its provisions provide for the issuance of permits under certain circumstances.

We issue special use permits for a specific period as determined by the type and location of the management activity or visitor service provided. These permits authorize activities such as:

- Agricultural activities (haying and grazing, 50 CFR 29.1 and 29.2).
- Beneficial management tools that we use to provide the best habitat possible on some refuges (50 CFR 30.11, 31.14, 31.16, and 36.41).
- Special events, group visits, and other one-time events (50 CFR 25.41, 25.61, 26.36, and 36.41).
- Recreational visitor service operations (50 CFR 25.41, 25.61, and 36.41).
- Guiding for fishing, hunting, wildlife education, and interpretation (50 CFR 25.41 and 36.41).
- Commercial filming (43 CFR 5, 50 CFR 27.71) and other commercial activities (50 CFR 29.1 and 36.41).
- Building and using cabins to support subsistence or commercial activities (in Alaska) (50 CFR 26.35 and 36.41).
- Research, inventory and monitoring, and other noncommercial activities (50 CFR 26.36 and 36.41).

We use three forms to collect applicant information:

- FWS Form 3–1383–G (General Activities Special Use Application).

• FWS Form 3–1383–C (Commercial Activities Special Use Application).

• FWS Form 3–1383–R (Research and Monitoring Special Use Application).

The information we collect helps ensure that: (1) Applicants are aware of the types of information that may be needed for permit issuance; (2) requested activities are appropriate and compatible with the purpose(s) for which the refuge was established and the System's mission; and (3) the applicant is eligible or is the most qualified applicant to receive the special use permit.

We may collect the necessary information in a non-form format (through discussions in person or over the phone, over the internet, by email, or by letter). In some instances, respondents will be able to provide information verbally. Often, a simple email or letter describing the activity will suffice. For activities that might have a large impact on refuge resources (*e.g.,* commercial visitor services, research, etc.), we may require applicants to provide more detail on operations, techniques, and locations. Because of the span of activities covered by special use permits and the different management needs and resources at each refuge, respondents may not be required to answer all questions. Depending on the requested activity, refuge managers have the discretion to ask for less information than appears on the forms. However, refuge managers must not ask for more or different information.

We issue permits for a specific period as determined by the type and location of the use or service provided. We use these permits to ensure that the applicant is aware of the requirements of the permit and his/her legal rights. Refuge-specific special conditions may be required for the permit. We identify conditions as an addendum to the permit. Most of the special conditions pertain to how a permitted activity may be conducted and do not require the collection of information. However, some special conditions, such as activity reports, before and after site photographs, or data sharing, would qualify as an information collection, and we have included the associated burden below.

Proposed Revision

We are proposing to revise this collection to request OMB approval of a new form, FWS Form 3–1384, ''Bid Sheet—National Wildlife Refuge System.'' We developed this form to streamline collection of the necessary pre-award information from applicants during bidding processes to conduct economic uses on Service lands, such as livestock, harvesting hay and stock feed, or removing timber (50 CFR 29.21). This form will simplify the pre-award selection/bidding process for bidders and for refuge staff.

Currently, the only form approved for collection of this information is the Commercial Activities Special Use Permit Application (FWS Form 3–1383–C), which bidders and refuge staff alike find confusing and complicated; this hampers the Service's ability to collect the basic information necessary to determine which applicants will be awarded economic use privileges. The proposed Bid Sheet will be much clearer for bidders, better enabling them to understand what information the refuge needs in order to select bids for economic use, and, therefore, reducing the time and burden for the public and Service staff in the pre-award selection bidding process. This form is also easily customizable to the individual economic use being awarded. We will continue to use the Commercial Special Use Permit as the actual award document that will outline the terms and conditions of the economic use on Service lands.

Title of Collection: National Wildlife Refuge Special Use Permit Applications and Reports, 50 CFR 25, 26, 27, 29, 30, 31, 32, & 36.

OMB Control Number: 1018–0102.

Form Number: FWS Forms 3–1383–G, 3–1383–C, 3–1383–R, and 3–1384.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals and households; businesses and other for-profit organizations; nonprofit organizations; farms; and State, local, or tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports.

Total Estimated Annual Nonhour Burden Cost: $259,500 for fees associated with applications for commercial use activities ($100.00 x an estimated 2,595 applications (individuals and private sector respondents only)).

Requirement	Annual number of respondents	Total annual responses	Completion time per response (hours)	Total annual burden hours *
General Special Use Application (Form 3–1383–G)				
Individuals	2,285	2,285	0.5	1,143
Private Sector	1,219	1,219	0.5	610
Government	305	305	0.5	153
Commercial Activities Special Use Application (Form 3–1383–C)				
Individuals	1,595	1,595	4	6,380
Private Sector	1,000	1,000	4	4,000
Government	108	108	4	432
Research and Monitoring Special Use Application (Form 3–1383–R)				
Individuals	209	209	5	1,045
Private Sector	403	403	5	2,015
Government	135	135	5	675
Bid Sheet—National Wildlife Refuge System (Form 3–1384)				
Private Sector	250	250	1	250

Requirement	Annual number of respondents	Total annual responses	Completion time per response (hours)	Total annual burden hours *
Activity Reports				
Individuals	40	40	0.5	20
Private Sector	466	466	0.5	233
Government	100	100	0.5	50
Totals	8,115	8,115		17,006

* Rounded.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: July 29, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–16825 Filed 7–31–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2020–0081; FXIA16710900000–201–FF09A30000]

Foreign Endangered Species Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on an application to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by September 2, 2020.

ADDRESSES: *Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2020–0081.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2020–0081.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2020–0081; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with

endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Louisiana State University, Baton Rouge, LA; Permit No. 003005

The applicant requests authorization to export and reimport nonliving museum specimens of endangered species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Jerry Fife, Laveen, AZ; Permit No. 76243D

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for Madagascar radiated tortoise (*Geochelone radiata* syn *Astrochelys radiata*) and Galapagos tortoise (*Geochelone nigra* syn *Chelonoidis niger*), to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: 777 Ranch, Hondo, TX; Permit No. 76665D

The applicant requests a permit authorizing the culling of excess Arabian oryx (*Oryx leucoryx*), barasingha (*Rucervus duvaucelli*), and Eld's deer (*Rucervus eldii*) from the captive herd maintained at their facility, to enhance the species' propagation and survival. This notification covers activities to be conducted by the applicant over a 3-year period.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *http://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to regulations.gov and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Management Analyst/Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2020–16848 Filed 7–31–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2020–0075; FXIA16710900000–201–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by September 2, 2020.

ADDRESSES: *Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2020–0075.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2020–0075.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2020–0075; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Monica Thomas, by phone at 703–358–2185, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be

made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Luke Michael Wildenberg, Oak Grove, MN; Permit No. 59836D

The applicant requests a permit to import a sport-hunted Cape Mountain zebra (*Equus zebra zebra*) from a captive herd, Swartberg Private Wildlife Estate, South Africa, for the purpose of enhancing the propagation or survival of the species. This notification is for a single import activity.

Applicant: Wade Harrell, Whooping Crane Recovery Plan Coordinator, U.S. Fish and Wildlife Service, Southwest Region, Austwell, TX; PRT–93380C

The applicant requests renewal of a permit to export/re-export captive-held/captive hatched and wild live specimens, captive-bred/wild collected viable eggs, biological samples and salvaged materials from captive-bred/wild specimens of whooping cranes (*Grus americana*) to Canada, for completion of identified tasks and objectives mandated under the Whooping Crane Recovery Plan. Salvaged materials may include, but are not limited to, whole or partial specimens, feathers, eggs, and egg shell fragments. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Priour Brothers Ranch, Mountain Home, TX; Permit No. 672849

The applicant requests an amendment to their captive-bred wildlife registration under 50 CFR 17.21(g) for Arabian oryx (*Oryx leucoryx*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 2-year period.

Applicant: Steven Wierzgacz, Mesa, AZ; Permit No. 35231A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoises (*Astrochelys radiata*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Priour Brothers Ranch, Mountain Home, TX; Permit No. 707102

The applicant requests an amendment to their permit authorizing the culling of excess Arabian oryx (*Oryx leucoryx*) from the captive herd maintained at their facility, to enhance the species' propagation and survival. This notification covers activities to be conducted by the applicant over a 2-year period.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *http://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to regulations.gov and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Management Analyst/Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2020–16849 Filed 7–31–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–ES–2020–N056; FF07CAMM00.FX.ES111607MRG02; OMB Control Number 1018–0066]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Marine Mammal Marking, Tagging, and Reporting Certificates, and Registration of Certain Dead Marine Mammal Hard Parts

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before September 2, 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. Please provide a copy of your comments to Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0066 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the

impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on December 2, 2019 (84 FR 65997). We did not receive any comments in response to that notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Under section 101(b) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361–1407), Alaska Natives residing in Alaska and dwelling on the coast of the North Pacific or Arctic Oceans may harvest polar bears, northern sea otters, and Pacific walruses for subsistence or handicraft purposes. Section 109(i) of the MMPA authorizes the Secretary of the Interior to prescribe marking, tagging, and reporting regulations applicable to the Alaska Native subsistence and handicraft take.

On behalf of the Secretary, we implemented regulations at 50 CFR 18.23(f) for Alaska Natives harvesting polar bears, northern sea otters, and Pacific walruses. These regulations enable us to gather data on the Alaska Native subsistence and handicraft harvest and on the biology of polar bears, northern sea otters, and Pacific walruses in Alaska to determine what effect such take may be having on these populations. The regulations also provide us with a means of monitoring the disposition of the harvest to ensure that any commercial use of products created from these species meets the criteria set forth in section 101(b) of the MMPA. We use three forms to collect the information: FWS Form 3–2414 (Polar Bear Tagging Certificates), FWS Form 3–2415 (Walrus Tagging Certificates), and FWS Form 3–2416 (Sea Otter Tagging Certificates). The information we collect includes, but is not limited to:

- Date of kill;
- Sex of the animal;
- Kill location;
- Age of the animal (*i.e.,* adult, subadult, cub, or pup);
- Form of transportation used to make the kill of polar bears;
- Amount of time (*i.e.,* hours/days hunted) spent hunting polar bears;
- Type of take (live-killed or beach-found) for walrus;
- Number of otters present in and number of otters harvested from pod;
- Condition of the polar bear and whether or not bear cubs were present; and
- Name of the hunter or possessor of the specified parts at the time of marking, tagging, and reporting.

We use FWS Form 3–2406 (Registration of Certain Dead Marine Mammal Hard Parts) to record the collection of bones, teeth, or ivory of dead marine mammals by non-Native and Natives not eligible to harvest marine mammals under the MMPA. It is legal to collect such parts from a beach or from land within a quarter of a mile of the ocean (50 CFR 18.26). The information we collect via Form 3–2406 includes, but is not limited to:

- Date and location found.
- Age, sex, and size of the animal.
- Tag numbers.
- Name, address, phone number, and birthdate of the collector.

Proposed Changes to Form 3–2414, ''Polar Bear Tagging Certificate''

With the changing environment, we are making a few needed changes to the Form 3–2414. These changes are:

A. Age Class (Five different categories).

B. Bear Condition (Three different categories).

C. Research Marks/Tags (New Question).

D. Conflict or Problem Bear? (New question).

E. Defense of Life (Property removed).

F. Hunter Available for Post Hunt Interview? (Yes/No). Phone # (New question).

Post-Interview Questions (if the hunter agrees):

a. Was there a food source/attractant that the bear was interested in? What was the attractant?

b. Was there any attempt to haze the bear to get it to leave?

c. Was it believed that the bear could be a threat to people?

NOTE: These are typical post-hunt questions that would only be asked if the biologist needed information on a bear that was marked as a problem bear. There is no standardized questioning.

G. We removed the ''Time Spent Hunting'' and ''Vehicle Use While Hunting'' questions, as this information has not proved valuable.

Title of Collection: Marine Mammal Marking, Tagging, and Reporting Certificates, and Registration of Certain Dead Marine Mammal Hard Parts, 50 CFR 18.23(f) and 18.26.

OMB Control Number: 1018–0066.

Form Number: FWS Forms 3–2406, 3–2414, 3–2415, and 3–2416.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals and households, private sector, and State/local/Tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Activity	Number of respondents	Number of responses	Completion time per response	Total annual burden hours *
3–2414 (Polar Bear)	20	30	15 minutes	8
3–2415 (Walrus)	90	300	15 minutes	75

Activity	Number of respondents	Number of responses	Completion time per response	Total annual burden hours *
3–2416 (Sea Otter)	60	1,500	15 minutes	375
3–2406 (Beach Found)	200	200	15 minutes	50
Totals:	370	2,030		508

* Rounded.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: July 29, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–16821 Filed 7–31–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030578; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Baylor University's Mayborn Museum Complex, (Formerly Baylor University's Strecker Museum; Formerly Baylor University Museum), Waco, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Baylor University's Mayborn Museum Complex (formerly Baylor University's Strecker Museum; formerly Baylor University Museum) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Baylor University's Mayborn Museum Complex. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Baylor University's Mayborn Museum Complex at the address in this notice by September 2, 2020.

ADDRESSES: Anita L. Benedict, Baylor University's Mayborn Museum Complex, One Bear Place #97154, Waco, TX 76798–7154, telephone (254) 710–4835, email *anita_benedict@baylor.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Baylor University's Mayborn Museum Complex, Waco, TX. The human remains and associated funerary objects were removed from Madison Parish, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Baylor University's Mayborn Museum Complex professional staff in consultation with representatives of the Jena Band of Choctaw Indians; The Choctaw Nation of Oklahoma; and The Muscogee (Creek) Nation (hereafter referred to as ''The Consulted Tribes'').

An invitation to consult was extended to the Alabama-Quassarte Tribal Town; Caddo Nation of Oklahoma; Cherokee Nation; Chitimacha Tribe of Louisiana; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Kialegee Tribal Town; Miccosukee Tribe of Indians; Mississippi Band of Choctaw Indians; Poarch Band of Creeks (previously listed as Poarch Band of Creek Indians of Alabama); Quapaw Nation (previously listed as The Quapaw Tribe of Indians); Seminole Tribe of Florida (previously listed as Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Chickasaw Nation; The Osage Nation (previously listed as Osage Tribe); The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; Tunica-Biloxi Indian Tribe; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

Sometime prior to 1909, human remains representing, at minimum, one individual were removed from Mound, Madison Parish, LA. Mound was named for an American Indian mound that stood at the original town site. In 1909, the presumed collector, a J.M. Carter, donated this collection to Baylor University. J.M. Carter might be James Michelle Carter (1849–1928), whose father was a Baylor University Trustee after the Civil War.

In 2003, the human remains and associated funerary objects were located in a cigar box that lay under a whale skull exhibit. The human remains were labeled with the numbers 4047 and 4359 through 4389. Catalog number 4047 corresponds to an entry in the Strecker Catalog Book No. 3, which reads ''4047 . . .. Bones & Other Materials from Mound, Louisiana J.M. Carter.'' The numbers 4359 through 4389 do not relate to any currently known catalog. As number 4047 had been reused, new catalog numbers were assigned to the human remains and associated funerary objects. The human remains (AR 20806) include a phalange, limb bone, talus, calcaneus fragment, and two mandible fragments with teeth. No known individual was identified. The two associated funerary objects (AR 20849) are one lot of animal bones and one pottery sherd.

Determinations Made by Baylor University's Mayborn Museum Complex

Officials of Baylor University's Mayborn Museum Complex have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological context.

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.

• According to other authoritative government sources, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Jena Band of Choctaw Indians; Mississippi Band of Choctaw Indians; The Choctaw Nation of Oklahoma; and The Muscogee (Creek) Nation (hereafter referred to as ''The Tribes'').

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Anita L. Benedict, Baylor University's Mayborn Museum Complex, One Bear Place #97154, Waco, TX 76798–7154, telephone (254) 710–4835, email *anita_benedict@baylor.edu,* by September 2, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Baylor University's Mayborn Museum Complex is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: July 6, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–16780 Filed 7–31–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030585; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: California State University, Sacramento, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the California State University, Sacramento. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the California State University, Sacramento at the address in this notice by September 2, 2020.

ADDRESSES: Dr. Dianne Hyson, Dean of the College of Social Sciences and Interdisciplinary

Studies, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 278–6504, email *dhyson@csus.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the California State University, Sacramento, Sacramento, CA that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item(s)

Sometime during the 1920s and 1930s, 42 unassociated funerary objects were removed from a burial on private property, CA–SAC–157 (Wamser Mound), located on the south bank of the American River, near River Bend Park of Rancho Cordova, in north-central Sacramento County, CA. The unassociated funerary objects were in the possession of Anthony Zallio, a private collector, who posthumously donated his collection in 1951 to the Department of Anthropology at Sacramento State College, CA (now California State University, Sacramento). The 42 unassociated funerary objects are one broken bone tube, one small foot of a harpoon, one reworked obsidian biface, and 39 shell ornaments of various styles. (California State University, Sacramento does not have control of the associated human remains, and does not know their whereabouts.)

Archeological data from the site indicates occupation occurred during the Middle and Late Horizons and terminated sometime during the historic period. Geographical data from ethnohistoric and ethnographic sources indicate that the site was most likely occupied by Nisenan-speaking groups at the beginning of the historic period. Ethnographic data and expert testimony from Indian Tribes support the high level of interaction between groups in the lower Sacramento Valley and Delta regions that crosscut linguistic boundaries. In summary, the ethnographic, historical, and geographical evidence indicate that the funerary objects listed above are most closely affiliated with contemporary descendants of the Nisenan with more distant ties to neighboring groups, such as the Miwok.

Determinations Made by the California State University, Sacramento

Officials of the California State University, Sacramento have determined that:

• Pursuant to 25 U.S.C. 3001(3)(B), the 42 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary

objects and the Ione Band of Miwok Indians of California and the Wilton Rancheria, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Dr. Dianne Hyson, Dean of the College of Social Sciences and Interdisciplinary Studies, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 278–6504, email *dhyson@csus.edu,* by September 2, 2020. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects jointly to the Ione Band of Miwok Indians of California and the Wilton Rancheria, California may proceed.

The California State University, Sacramento is responsible for notifying the Ione Band of Miwok Indians of California and the Wilton Rancheria, California that this notice has been published.

Dated: July 6, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–16782 Filed 7–31–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030555; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Davis, Davis, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of California, Davis (UC Davis), has completed an inventory of human remains and associated funerary objects housed in the UC Davis Department of Anthropology Museum, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to UC Davis. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to UC Davis at the address in this notice by September 2, 2020.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of California, Davis, Davis, CA. The human remains and associated funerary objects were removed from Sacramento County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by UC Davis professional staff in consultation with Indian Tribes. The following Tribes were consulted or invited to consult: Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Buena Vista Rancheria of Me-Wuk Indians of California, Cahto Tribe of the Laytonville Rancheria; California Valley Miwok Tribe, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians, California (previously listed as Dry Creek Rancheria of Pomo Indians of California); Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Guidiville Rancheria of California; Habematolel Pomo of Upper Lake, California; Hopland Band of Pomo Indians, California (previously listed as Hopland Band of Pomo Indians of the Hopland Rancheria, California); Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians (previously listed as Jackson Rancheria of Me-Wuk Indians of California); Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lytton Rancheria of California; Manchester Band of Pomo Indians of the Manchester Rancheria, California (previously listed as Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California); Middletown Rancheria of Pomo Indians of California; Picayune Rancheria of Chukchansi Indians of California; Pinoleville Pomo Nation, California (previously listed as Pinoleville Rancheria of Pomo Indians of California); Potter Valley Tribe, California; Redding Rancheria, California; Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (previously listed as Redwood Valley Rancheria of Pomo Indians of California); Reno-Sparks Indian Colony, Nevada; Robinson Rancheria (previously listed as Robinson Rancheria Band of Pomo Indians, California and the Robinson Rancheria of Pomo Indians of California); Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Scotts Valley Band of Pomo Indians of California; Sherwood Valley Rancheria of Pomo Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Susanville Indian Rancheria, California; Table Mountain Rancheria (previously listed as Table Mountain Rancheria of California); Tule River Indian Tribe of the Tule River Reservation, California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; United Auburn Indian Community of the Auburn Rancheria of California; Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community & Washoe Ranches); and the Wilton Rancheria, California (hereafter referred to as ''The Tribes Consulted or Invited to Consult'').

History and Description of the Remains

In 1987, human remains representing, at minimum, one individual were removed from CA–SAC–725 near Rancho Murieta in Sacramento County, CA, by Charles Slaymaker and Suzanne

Griset (Accession 391). The human remains were discovered eroding out of a drainage ditch. No known individual was identified. The four associated funerary objects are one pestle fragment, two flakes, and one soil sample.

The human remains have been determined to be Native American based on the associated materials and archeological context of the surrounding site. Radiocarbon dates indicates that the human remains date to 1533–1587 years before present (uncalibrated). Geographic, anthropological, archeological, historical, linguistic, and oral traditional sources provide evidence of cultural affiliation between the human remains and contemporary Plains Miwok and Foothill Nisenan people. The following Tribes identify as Plains Miwok and Foothill Nisenan, and are culturally affiliated with the above human remains and associated funerary objects: Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians (previously listed as Jackson Rancheria of Me-Wuk Indians of California); Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California (hereafter referred to as ''The Affiliated Tribes'')

In 1930, human remains representing one individual was removed from a village along the Sacramento River in Sacramento County, CA (Accession 462). No known individual was identified. No associated funerary objects are present.

The human remains have been determined to be Native American. Radiocarbon dates indicate that the human remains date to 515 to 555 years B.P. (uncalibrated). Geographic, anthropological, archeological, historical, linguistic, and traditional sources provide evidence of cultural affiliation between the human remains and contemporary Plains Miwok people. The following tribes identify as Plains Miwok and are culturally affiliated with the above human remains: Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok (formerly Sheep Ranch Rancheria); Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians (previously listed as the Jackson Rancheria of Me-Wuk Indians of California); Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California (hereafter referred to as ''The Affiliated Tribes'').

Determinations Made by the University of California, Davis

Officials of the University of California, Davis have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Affiliated Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501 email *mnoble@ucdavis.edu,* by September 2, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Affiliated Tribes may proceed.

UC Davis is responsible for notifying The Tribes Consulted and Invited to Consult that this notice has been published.

Dated: June 30, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–16777 Filed 7–31–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030586; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: San Diego Museum of Man, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The San Diego Museum of Man has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the San Diego Museum of Man. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the San Diego Museum of Man at the address in this notice by September 2, 2020.

ADDRESSES: Kara Vetter, Director of Cultural Resources of the San Diego Museum of Man, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001 Ext. 44, email *kvetter@museumofman.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the San Diego Museum of Man, San Diego, CA. The human remains and associated funerary objects were removed from Jamul Indian Village, San Diego, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the San Diego

Museum of Man professional staff in consultation with representatives of the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California); Ewiiaapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation); Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; and the Sycuan Band of the Kumeyaay Nation (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

Sometime between 1930 and 1950, human remains representing, at a minimum, one individual were removed by Malcolm J. Rogers, on behalf of the San Diego Museum of Man, from W–323, an archeological site located just south-east of Jamul in San Diego County, CA, for the purpose of archeological research. The age and sex of this individual could not be determined. No known individual was identified. The 78 associated funerary objects are three faunal bones, one decorated sherd, 11 undecorated sherds, two bifaces, two choppers, two cores, six core tools, two projectile points, 16 scrapers, seven unworked flakes, 13 utilized flakes, three manos, one shaft straightener, two historic glass sherds, one ecofact, one unmodified shell, and five battered stones.

Site W–323 has been estimated to be approximately 8,000 years old based on associated lithics. There are signs of continuous occupation from prehistoric times to the present. This site falls well within the established Kumeyaay territory, and is geographically situated on the Jamul Indian Village Reservation. Kumeyaay oral history, and ethnographic and historical records specific to the Jamul Indian Village of California are consistent with the archeological findings.

Determinations Made by the San Diego Museum of Man

Officials of the San Diego Museum of Man have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 78 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Jamul Indian Village of California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Kara Vetter, Director of Cultural Resources of the San Diego Museum of Man, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001 Ext. 44, email *kvetter@museumofman.org,* by September 2, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Jamul Indian Village of California may proceed.

The San Diego Museum of Man is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: July 6, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–16781 Filed 7–31–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030584; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Warren Anatomical Museum, Harvard University, Boston, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology and Warren Anatomical Museum, Harvard University, have completed an inventory of human remains, in consultation with the appropriate Indian Tribes, and have determined that there is a cultural affiliation between the human remains and present-day Indian Tribes. Representatives of any Indian Tribe that believes itself to be culturally affiliated with the human remains may contact the Peabody Museum of Archaeology and Ethnology, Harvard University. Repatriation of the human remains to the Indian Tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian Tribe that believes it has a cultural affiliation with the human remains should contact the Peabody Museum of Archaeology and Ethnology, Harvard University at the address below by September 2, 2020.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Warren Anatomical Museum, Harvard University, Boston, MA. The human remains were removed from Dedham, Norfolk County, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology and Warren Anatomical Museum professional staff in consultation with representatives of the Mashpee Wampanoag Tribe (previously listed as Mashpee Wampanoag Indian Tribal Council, Inc.); Wampanoag Tribe of Gay Head (Aquinnah); and the Assonet Band of the Wampanoag Nation, a non-federally recognized Indian group.

History and Description of the Remains

In 1856, human remains representing, at minimum, one individual, Mr. Alexander Quapish, were removed from Dedham in Norfolk County, MA, by Dr.

Henry Jacob Bigelow. Bigelow transferred Mr. Quapish's remains to the Warren Anatomical Museum. Museum records describe the decedent as ''Qualish, the last of the Indian tribe at Dedham, Mass.; was buried in 1774; aet. 68.'' There is no additional information in museum records about the context in which these human remains were found. No associated funerary objects are present.

Museum information shows by a preponderance of the evidence that the human remains are of the Native American individual Alexander Quapish, whose name is recorded variously in the historical record, for example as: Qualish, Quapes, Quapish, Queppish. Primary records and secondary histories indicate Mr. Quapish and his wife, Sarah David, were Native Americans living in Dedham. According to a local historian and to vital records for the Town of Dedham, Massachusetts, Mr. Quapish was from Yarmouth, Massachusetts, Wampanoag territory. Mr. Quapish may have moved to Dedham because both Dedham and Yarmouth were associated with a network of Native American Christianized settlements. Shortly after Sarah David's death in 1774, Mr. Quapish enlisted in the Continental Army. Alexander Quapish reportedly died in 1776, at the age of 34, in Needham, Massachusetts, and may have been buried in Needham or Natick, rather than Dedham. The possibility of repatriation to lineal descendants was explored in consultation with Wampanoag representatives. After consultation and genealogical review, however, no lineal descendants have been identified.

Osteological examination of the human remains indicates that they are probably of an adult male and are of Native American ancestry. This information most closely matches the documented history of Alexander Quapish. Although some documented elements of his personal history, including burial in Needham or Natick, death in 1776, and age at death do not match information in Warren Anatomical Museum records, historical documentation and osteological examination indicate by a preponderance of the evidence that this individual is Alexander Quapish.

Determinations Made by the Peabody Museum of Archaeology and Ethnology and the Warren Anatomical Museum, Harvard University

Officials of the Peabody Museum of Archaeology and Ethnology and the Warren Anatomical Museum, Harvard University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Mashpee Wampanoag Tribe (previously listed as Mashpee Wampanoag Indian Tribal Council, Inc.) and the Wampanoag Tribe of Gay Head (Aquinnah), Indian Tribes that represent people of Wampanoag descent.

Additional Requestors and Disposition

Representatives of any Indian Tribe that believes itself to be culturally affiliated with the human remains should contact Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, by September 2, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Mashpee Wampanoag Tribe (previously listed as Mashpee Wampanoag Indian Tribal Council, Inc.) and the Wampanoag Tribe of Gay Head (Aquinnah) may proceed.

The Peabody Museum of Archaeology and Ethnology on behalf of the Warren Anatomical Museum, Harvard University is responsible for notifying the Mashpee Wampanoag Tribe (previously listed as Mashpee Wampanoag Indian Tribal Council, Inc.); Wampanoag Tribe of Gay Head (Aquinnah); and the Assonet Band of the Wampanoag Nation, a non-federally recognized Indian group, that this notice has been published.

Dated: July 6, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–16776 Filed 7–31–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030514; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, Harpers Ferry, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Effigy Mounds National Monument. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Effigy Mounds National Monument at the address in this notice by September 2, 2020.

ADDRESSES: Jim Nepstad, Superintendent, Effigy Mounds National Monument, 151 Hwy 76, Harpers Ferry, IA 52146, telephone (563) 873–3491 Ext. 101, email *jim_nepstad@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, Harpers Ferry, IA. The human remains and associated funerary objects were removed from sites in Allamakee and Clayton Counties, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Effigy Mounds National Monument.

Consultation

A detailed assessment of the human remains was made by Effigy Mounds National Monument professional staff in consultation with representatives of the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South

Dakota; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Ponca Tribe of Nebraska; Prairie Island Indian Community in the State of Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

The human remains described below, with the exception of the one individual removed from Marquette Rockshelter, were stolen from Effigy Mounds National Monument in 1990 and recovered in 2011 and 2012.

Because the mounds at Effigy Mounds National Monument are burial mounds, all artifacts that come from these mounds are considered funerary objects. All of the funerary objects are considered associated funerary objects because, even though these types of items likely had other uses within the culture, it is reasonable to believe that these specific funerary objects were made exclusively for burial purposes and therefore pursuant to 25 U.S.C. 3001(3)(A) are associated funerary objects regardless of the location of the connected human remains.

At an unknown date, human remains representing, at minimum, one individual were removed from the Marquette Rockshelter, Clayton County, IA, by unknown persons. It is not known how the remains entered the collection at Effigy Mounds National Monument. No known individuals were identified. The 837 associated funerary objects are 450 faunal bones, 231 pottery sherds, three utilized flakes, 45 unmodified stones, two flakes, 92 pieces of shell, one bone tool, 10 pieces of shatter, two modified flakes, and one gorget fragment.

In 1950, human remains representing, at minimum, three individuals were removed from the Nazekaw Terrace Mound Group in Allamakee County, IA, by NPS archeologist Paul Beaubien. No known individuals were identified. The 33 associated funerary objects are two Snyders projectile points, one bear canine tooth, one flake tool, four unmodified stones, two pieces of shatter, two faunal bones, two projectile points, four burnt animal tooth fragments, one pottery sherd, nine non-human bone, two pieces of burned earth, and three pieces of charcoal.

In 1952, human remains representing, at minimum, one individual were removed from the Sny Magill Mound Group in Clayton County, IA, by NPS archeologist Paul Beaubien. No known individuals were identified. The 96 associated funerary objects are one faunal bone, one Madison Triangular projectile point, one broken projectile point, one biface, two biface fragments, 15 flakes, 11 utilized flakes, five modified flakes, one Manker or Koster projectile point, one red ocher sample, 34 pottery sherds, one projectile point base, seven pieces of shatter, three unmodified stones, one Kramer projectile point, two Agate Basin lanceolate blades, five copper beads, one scraper, one expanding stemmed projectile point, one straight stemmed projectile point, and one hammerstone.

In 1952 and 1962, human remains representing, at minimum, five individuals were removed from the Fire Point Mound Group in Allamakee County, IA, by NPS archeologists Wilfred Logan and Garland Gordon. No known individuals were identified. The 152 associated funerary objects are one copper breastplate, one mica sheet, one drill, one scraper, 109 unmodified stones, nine pieces of shatter, six flakes, one nut shell, one test core, five pieces of burned earth, three fire cracked rocks, one flat bone fragment, nine freshwater mussel shell fragments, and four pottery sherds.

In 1954, human remains representing, at minimum, 14 individuals were removed from the Highway 76 Rockshelter in Clayton County, IA. Excavations were initiated by Leland Cooper from Hamline University and finished by NPS archeologist Wilfred Logan. No known individuals were identified. The 1,572 associated funerary objects are 8 fragments of miniature pots, 189 pottery sherds, 1,166 faunal bones, 159 freshwater mussel and land snail shells, 11 unmodified stones, three charcoal samples, one rectangular polished turtle shell, one Waubesa projectile point, two Madison Triangular projectile points, one clay sample, eight bone tools, six flakes, four pieces of shatter, one core, five utilized flakes, two modified flakes, one soil sample, two freshwater pearls, one bone artifact, and one biface tool.

In 1961, 12 cultural items were removed from the Marching Bear Mound Group in Clayton County, IA, by NPS archeologist John Ingmanson during the mound rehabilitation project. The 12 associated funerary objects are two pieces of burnt limestone, three utilized flakes, three flakes, and four pieces of shatter.

In 1962, 427 cultural items were removed from the Nazekaw Terrace Mound Group in Allamakee County, IA, by NPS archeologist Garland Gordon during the mound rehabilitation project. The 427 associated funerary objects are 12 bifaces, 40 utilized flakes, 162 unmodified stones, 74 flakes, six cores, 92 pieces of shatter, 25 pottery sherds, one drill fragment, one Durst projectile point, one possible Little Sioux projectile point, one small corner notched projectile point, eight modified flakes, one stone tool, one utilized spall, and two charcoal samples.

In 1962, two cultural items were removed from the Yellow River Mound Group in Allamakee County, IA, by NPS archeologist Garland Gordon during the mound rehabilitation project. The two associated funerary objects are pottery sherds.

In 1965, human remains representing, at minimum, one individual were removed from the Fire Point Mound Group in Allamakee County, IA, by NPS archeologist Garland Gordon during the mound rehabilitation project. No known individuals were identified. The 13 associated funerary objects are 10 unmodified stones, one flake, one land snail shell, and one soil sample.

In 1965, soil samples were collected from various mound sites in Effigy Mounds National Monument by the University of Wisconsin-Madison during the mound rehabilitation project. In 2016, the processed soil samples were returned to Effigy Mounds National Monument. One soil sample had lost its provenience information, so the mound site from which it was removed is unknown. All other soil samples were repatriated and reburied in 2019 or are described elsewhere in this notice. The one associated funerary object is a soil sample.

Based on archeological context, ethnographic information, and oral traditions the human remains and associated funerary objects described above are identified as belonging to the Woodland tradition.

The Woodland tradition transitions into the Oneota tradition which is identified as being clearly ancestral to the Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Ponca Tribe of Nebraska; and the Winnebago Tribe of Nebraska.

The First Treaty of Prairie Du Chien of August 19, 1825 between the United States and the Sac and Fox, Dakota Sioux, Ioway, Ho-Chunk, Winnebago, Potawatomi, Chippewa, Menominee, and Ottawa demonstrates the variety of Tribes living in the area in the 1800s who have historic affiliation with Effigy Mounds National Monument.

The First Treaty of Prairie du Chien, as well as linguistic, oral tradition, temporal and geographic evidence, reasonably indicates that the following Sioux Indian Tribes possess ancestral ties to the Effigy Mounds National Monument region and the human remains and associated funerary objects described above: Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota.

Determinations Made by the U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument

Officials of the U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 25 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 3,145 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and to have been made exclusively for burial purposes or to contain human remains.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Ponca Tribe of Nebraska; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jim Nepstad, Superintendent, Effigy Mounds National Monument, 151 Hwy 76, Harpers Ferry, IA 52146, telephone (563) 873–3491 Ext. 101, email *jim_nepstad@nps.gov,* by September 2, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: June 25, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–16778 Filed 7–31–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030517; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, Harpers Ferry, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to Effigy Mounds National Monument. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Effigy Mounds National Monument at the address in this notice by September 2, 2020.

ADDRESSES: Jim Nepstad, Superintendent, Effigy Mounds National Monument, 151 Hwy 76, Harpers Ferry, IA 52146, telephone (563) 873–3491 Ext. 101, email *jim_nepstad@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, Harpers Ferry, IA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Effigy Mounds National Monument.

History and Description of the Cultural Items

At an unknown date, three cultural items were removed from an unknown site, likely in Allamakee County, IA. It is not known how they came to be in collections at Effigy Mounds National Monument. Originally accessioned as a loan from a local collector, in 1985 the lender claimed they were not part of his collection. In 1986, human remains that had been collected with the objects were transferred to the Iowa Office of the State Archaeologist for analysis. The remains were retained and reburied by the Office of the State Archaeologist under the authority of the 1976 Iowa Burial Law. The three unassociated funerary objects are two flakes and one sample of red ocher.

In 1950, 112 cultural items were removed from a slumped talus deposit below the Hanging Rock Shelter, in

Allamakee County, IA, by NPS archeologist Paul Beaubien. The railroad had cut through the deposit, exposing human remains and artifacts. The human remains did not enter Effigy Mounds National Monument collections and their whereabouts is unknown. The 112 unassociated funerary objects are 110 pottery sherds and two fish bones.

Sometime between 1958 and 1963, 277 cultural items were removed from the Waukon Junction Rockshelter in Allamakee County, IA, by unknown persons, probably as the site was being impacted by highway construction. In 1986, human remains collected with the objects were transferred to the Iowa Office of the State Archaeologist and retained under the authority of the 1976 Iowa Burial Law. The 277 unassociated funerary objects are one shell tool, 87 freshwater mussel shells, two bifaces, one flake, eight unmodified stones, 20 pottery sherds, four utilized flakes, one bone ornament, one modified flake, 147 faunal bones, one stone tool, two woodland variant Tama projectile points, one piece of shatter, and one bone awl.

Based on archeological context, ethnographic information, and oral traditions the unassociated funerary objects described above are identified as belonging to the Woodland tradition. The Woodland tradition transitions into the Oneota tradition which is identified as being clearly ancestral to the Ho-Chunk Nation of Wisconsin.

Determinations Made by the U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument

Officials of the U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 392 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Ho-Chunk Nation of Wisconsin.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Jim Nepstad, Superintendent, Effigy Mounds National Monument, 151 Hwy 76, Harpers Ferry, IA 52146, telephone (563) 873–3491 Ext. 101, email *jim_nepstad@nps.gov,* by September 2, 2020. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Ho-Chunk Nation of Wisconsin may proceed.

The U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument is responsible for notifying the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Ponca Tribe of Nebraska; Prairie Island Indian Community in the State of Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: June 25, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–16779 Filed 7–31–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1145]

Certain Botulinum Toxin Products, Processes for Manufacturing or Relating to Same and Certain Products Containing Same; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination on Section 337 Violation and a Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, should the Commission find a violation. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

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.* The public record for this investigation may be viewed on the Commission's electronic docket (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: Section 337 of the Tariff Act of 1930 (''Section 337'') provides that if the Commission finds a violation it shall exclude the articles concerned from the United States unless the public interest factors listed in 19 U.S.C. 1337(d)(1) prevent such action. A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation, specifically whether the Commission should issue: (1) A limited exclusion order (''LEO'') against certain botulinum toxin products that are imported, sold for importation, and/or sold after importation by respondents Daewoong Pharmaceuticals Co., Ltd. of Seoul, South Korea (''Daewoong'') and Evolus, Inc. of Irvine, California (''Evolus''); and (2) a cease and desist order (''CDO'') against Evolus.

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's

Recommended Determination on Remedy and Bonding issued in this investigation on July 6, 2020. Comments should address whether issuance of the LEO and CDO in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainants, their licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainants, complainants' licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the LEO and CDO would impact consumers in the United States.

Written submissions from the public must be filed no later than by close of business on August 18, 2020.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1145'') in a prominent place on the cover page and/or the first page. *See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.* Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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: July 28, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16724 Filed 7–31–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–577]

Raspberries for Processing: Conditions of Competition Between U.S. and Foreign Suppliers, with a Focus on Washington State; Change in Form of Public Hearing

AGENCY: United States International Trade Commission.

ACTION: Change in form of public hearing.

SUMMARY: The Commission has changed the form of the hearing to be held in Investigation No. 332–577: *Raspberries for Processing: Conditions of Competition between U.S. and Foreign Suppliers, with a Focus on Washington State,* from an in-person hearing to a videoconference hearing due to COVID–19. With the exception of an additional date for filing electronic copies of oral statements for the hearing, dates previously announced in the notice of investigation remain the same.

DATES:

August 27, 2020: Deadline for filing requests to appear at the public hearing.

September 8, 2020: Deadline for filing prehearing briefs and statements.

September 15, 2020: Deadline for filing electronic copies of oral statements to be presented at the hearing.

September 17, 2020: Public hearing via videoconference.

September 24, 2020: Deadline for filing post-hearing briefs and statements.

December 6, 2020: Deadline for filing all other written submissions.

June 9, 2021: Transmittal of Commission report to the United States Trade Representative.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.* Please note the Secretary's Office will accept only electronic filings at this time (see **SUPPLEMENTARY INFORMATION** or Written Submissions for more information).

FOR FURTHER INFORMATION CONTACT: Project Leader Jessica Pugliese (202–941–9537 or *jessica.pugliese@usitc.gov*) or Deputy Project Leader Mary Roop (202–708–2277 or *mary.roop@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: The public hearing in this investigation will be held beginning at 9:30 a.m. on September 17, 2020, using a videoconference platform. More

detailed information about the hearing, including how to participate, will be posted on the Commission's website at *https://usitc.gov/research_and_analysis/what_we_are_working_on.htm.* Once on that web page, scroll down to the entry for investigation No. 332–577, *Raspberries for Processing: Conditions of Competition between U.S. and Foreign Suppliers, with a Focus on Washington State,* and click on the link to ''Hearing Information.'' Interested parties should check the Commission's website periodically for updates.

Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., August 27, 2020, in accordance with the requirements in the ''Written Submissions'' section below. All prehearing briefs and statements should be filed not later than 5:15 p.m., September 8, 2020, and all post-hearing briefs and statements should be filed not later than 5:15 p.m., September 24, 2020. Post-hearing briefs and statements should address matters raised at the hearing. To facilitate the hearing, including the preparation of an accurate written transcript of the hearing, oral testimony to be presented at the hearing must be submitted to the Commission electronically no later than the close of business September 15, 2020. In the event that, as of the close of business on September 8, 2020, no witnesses are scheduled to appear at the hearing, the hearing will be canceled.

The Commission published notice of institution of the investigation to the **Federal Register** on May 20, 2020 (85 FR 30736). In that notice, the Commission announced it would hold a public hearing on September 17, 2020, in the Commission's building and it also set dates by which requests to appear at the hearing, briefs, and other written submissions should be filed. Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. The scope of the investigation remains the same as published in the **Federal Register** on May 20, 2020.

Written submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., December 6, 2020. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802) or consult the Commission's Handbook on Filing Procedures.

Confidential business information. Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

As requested by the USTR, the Commission will not include any confidential business information in the report that it sends to the USTR or makes available to the public. However, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a manner that would reveal the operations of the firm supplying the information.

Summaries of written submissions: The Commission intends to publish summaries of the positions of interested persons in an appendix to the report. Persons wishing to have a summary of their position included in the report should include a summary with their written submission. The summary may not exceed 500 words, should be in a format that can be easily converted to MS Word, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will identify the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: July 29, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16844 Filed 7–31–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1144]

Certain Dental and Orthodontic Scanners and Software; Commission Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding; Extension of the Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to review in part a final initial determination (''ID'') of the presiding administrative law judge (''ALJ''). The Commission requests written submissions from the parties on the issues under review and submissions from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below. The target date is extended to September 28, 2020.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General

information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 5, 2019. 84 FR 7933–34 (March 5, 2019) based on a complaint filed on behalf of Align Technology, Inc. of San Jose, California (''Align''). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain dental and orthodontic scanners and software by reason of infringement of one or more claims of U.S. Patent Nos. 9,299,192 (''the '192 patent''); 7,077,647 (''the '647 patent''); 7,156,661 (''the '661 patent''); 9,848,958 (''the '958 patent''); and 8,102,538 (''the '538 patent''). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named as respondents 3Shape A/S of Copenhagen, Denmark; 3Shape, Inc. of Warren, New Jersey; and 3Shape Trios A/S of Copenhagen, Denmark (together, ''3Shape''). *Id.* The Office of Unfair Import Investigations (''OUII'') is not participating in the investigation. *Id.*

The Commission subsequently terminated the investigation with respect to the '958 patent based on Align's withdrawal of those allegations. Order No. 17 (Jul. 2, 2019), *not reviewed* Notice (Jul. 23, 2019). On October 8, 2019, Align stated that it would no longer pursue a violation with respect to claims 4 and 20 of the '647 patent, claims 1 and 19 of the '661 patent, and claims 1, 3–5, and 22 of the '192 patent. On October 21, 2019, Align stated that it would no longer pursue a violation with respect to claim 2 of the '647 patent. Accordingly, at the time of the Final ID, Align asserted claims 1 and 18 of the '647 patent, claims 2 and 20 of the '661 patent, claims 1 and 2 of the '538 patent, and claims 2, 28, and 29 of the '192 patent.

On April 30, 2020, the ALJ issued the Final ID finding a violation of section 337 with respect to the '647 and '661 patents, and no violation with respect to the '538 and '192 patents. Specifically, the ALJ found that claims 1 and 18 of the '538 patent are not infringed and that claims 2, 28, and 29 of the '192 patent are invalid. The ALJ found that Align satisfied the remaining requirements for a violation with respect to the '538 and '192 patents.

On May 12, 2020, 3Shape and Align each filed a petition for review of the Final ID. On May 20, 2020, the parties responded to each other's petitions. The Commission also received four comments on the public interest.

Having reviewed the record of the investigation, including the final ID and the parties' petitions and responses, the Commission has determined to review the ID in part. Specifically, the Commission has determined to review: (1) The findings regarding importation and induced infringement; (2) the construction of limitation 1.5/18.5 of the '647 patent (''individually matching [match] each of the dental objects in the subsequent digital model with a dental object in the initial digital model to determine corresponding dental objects, the matching comprising [including instructions to]'') in the asserted claims of the '647 patent, and the application of that construction regarding infringement, invalidity, and the technical prong of the domestic industry; (3) the findings regarding whether the asserted claims of the '647 and '661 patents are directed to patentable subject matter; (4) the construction of the limitation ''wherein the device is configured for maintaining a spatial disposition with respect to the portion that is substantially fixed during operation of the optical scanner and imaging means'' in the asserted claims of the '538 patent, and the application of that construction regarding infringement, invalidity, and the technical prong of the domestic industry requirement; (5) the findings regarding whether Okamato anticipates the asserted claims of the '538 patent; (6) the findings regarding whether Paley-Kriveshko anticipates or renders obvious the asserted claims of the '192 patent; and (7) the findings regarding the satisfaction of the economic prong of the domestic industry requirement.

In connection with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

(1) Please explain whether it is proper to construe the limitation ''wherein the device is configured for maintaining a spatial disposition with respect to the portion that is substantially fixed during operation of the optical scanner and imaging means'' to mean ''the operation of the optical scanner and imaging means is substantially or effectively simultaneous.'' Please note that this proposed construction removes the following requirement of the ALJ's construction: ''such that movement (*i.e.,* a change in spatial disposition) can be ignored and depth data and color data correspond to the same reference array.'' Additionally, please explain how the above construction would impact findings on infringement, invalidity, and the domestic industry requirement.

(2) Please explain, with citations to the record, whether there is a motivation to modify Paley-Kriveshko in a way that renders invalid as obvious the asserted claims of the '192 patent.

(3) What information, if any, is contained in the record concerning Align's employee headcount and salary and compensation expenditures outside the United States pertaining to Align's DI Products? What information, if any, is contained in the record concerning the value added in the United States to Align's DI Products?

(4) Please explain, with citations to the record, whether Align's investments in plant and equipment under a sales-based allocation are significant.

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order would have on: (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public

interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the Asserted Patents expire, the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on August 11, 2020. Reply submissions must be filed no later than the close of business on August 18, 2020. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Initial submissions are limited to 40 pages. Reply submissions are limited to 20 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1144) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The target date is extended to September 28, 2020.

The Commission vote for this determination took place on July 28, 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).

By order of the Commission.

Issued: July 28, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16723 Filed 7–31–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1070A (Third Review)]

Crepe Paper From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on crepe paper from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted August 3, 2020. To be assured of consideration, the deadline for responses is September 2, 2020. Comments on the adequacy of responses may be filed with the Commission by October 16, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On January 25, 2005, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of certain crepe paper products from China (70 FR 3509). Following first five-year reviews by Commerce and the Commission, effective May 13, 2010, Commerce issued a continuation of the antidumping duty order on imports of crepe paper from China (75 FR 26919). Following the second five-year reviews by Commerce and the Commission, effective September 22, 2015, Commerce issued a continuation of the antidumping duty order on imports of certain crepe paper products from China

(80 FR 57149). The Commission is now conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Like Product* as crepe paper, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers (whether integrated or converters) of crepe paper.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 2, 2020. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 16, 2020. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 20–5–466, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2014.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2019, except as noted (report quantity data in square meters and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in square meters and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in square meters and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2014, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 28, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16732 Filed 7–31–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1465 (Final)]

4th Tier Cigarettes From Korea; Scheduling of the Final Phase of an Anti-Dumping Duty Investigation

AGENCY: United States International Trade Commission

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1465 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of 4th tier cigarettes from Korea, provided for in subheading 2402.20.80 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be sold at less-than-fair-value.

DATES: July 15, 2020.

FOR FURTHER INFORMATION CONTACT: Nitin Joshi ((202) 708–1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of this investigation, Commerce has defined the subject merchandise as certain tobacco cigarettes, commonly referred to as ''4th tier cigarettes.'' The subject cigarettes are composed of a tobacco blend rolled in paper, have a nominal minimum total length of 7.0 cm but do not exceed 12.0 cm in total nominal length, and have a nominal diameter of less than 1.3 cm. These sizes of cigarettes are frequently referred to as ''Kings'' and ''100's,'' but subject merchandise that meets the physical description of the scope is included regardless of the marketing description of the size of the cigarettes. Subject merchandise typically has a tobacco blend that consists of 10% or more tobacco stems.

Subject merchandise is typically sold in packs of 20 cigarettes per pack which generally includes the marking ''20 Class A Cigarettes'' but are included regardless of packaging. 4th tier cigarette packages are typically sold in boxes without a rounded internal corner and without embossed aluminum foil inside the pack.

Both menthol and non-menthol cigarettes and cigarettes with or without a filter attached are covered by the scope of this investigation.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2402.20.8000. This HTSUS subheading is provided for convenience and customs purposes; the written description of the scope of the investigation is dispositive.

Background.—The final phase of this investigation is being scheduled, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), as a result of an affirmative preliminary determination by Commerce that imports of 4th tier cigarettes from Korea are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on December 18, 2019, by the Coalition Against Korean Cigarettes (''CAKC''), the coalition members are Xcaliber International, Pryor, Oklahoma and Cheyenne International, Grover, North Carolina.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names

and addresses of all persons, or their representatives, who are parties to the investigation.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on September 15, 2020, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Thursday, September 30, 2020. Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* Interested parties should check the Commission's website periodically for updates.

Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 24, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on September 24, 2020, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is September 22, 2020. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 7, 2020. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before October 7, 2020. On October 23, 2020, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 27, 2020, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: July 29, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16817 Filed 7–31–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1092 (Second Review)]

Diamond Sawblades and Parts Thereof From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on diamond sawblades and parts thereof from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted August 3, 2020. To be assured of consideration, the deadline for responses is September 2, 2020. Comments on the adequacy of responses may be filed with the Commission by October 16, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—Effective January 23, 2009, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of diamond sawblades and parts thereof from China (74 FR 57145, November 4, 2009). Following the first five-year reviews by Commerce and the Commission, effective September 18, 2015, Commerce issued a continuation of the antidumping duty order on imports of diamond sawblades and parts thereof from China (80 FR 56441). The Commission is now conducting a second review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its full first five-year review determination, the Commission defined the *Domestic Like Product* as diamond sawblades and parts thereof, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its full first five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of diamond sawblades, including the assemblers in addition to all domestic producers of finished diamond sawblades and component parts. The Commission also determined that appropriate circumstances existed to exclude certain companies from the domestic industry under the related parties provision.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 2, 2020. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 16, 2020. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each

document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 20–5–467, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be provided in response to this notice of institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2014.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2019, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject*

Merchandise in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2014, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 28, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16733 Filed 7–31–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–130 (Fifth Review)]

Chloropicrin From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted August 3, 2020. To be assured of consideration, the deadline for responses is September 2, 2020. Comments on the adequacy of responses may be filed with the Commission by October 16, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 22, 1984, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of chloropicrin from China (49 FR 10691). Following first five-year reviews by Commerce and the Commission, effective April 14, 1999, Commerce issued a continuation of the antidumping duty order on imports of chloropicrin from China (64 FR 42655, August 15, 1999). Following second five-year reviews by Commerce and the Commission, effective August 23, 2004, Commerce issued a continuation of the antidumping duty order on imports of chloropicrin from China (69 FR 51811). Following third five-year reviews by Commerce and the Commission, effective May 18, 2010, Commerce issued a continuation of the antidumping duty order on imports of chloropicrin from China (75 FR 27704). Following the fourth five-year reviews by Commerce and the Commission, effective September 22, 2015, Commerce issued a continuation of the antidumping duty order on imports of chloropicrin from China (80 FR 57149). The Commission is now conducting a fifth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its expedited first and second five-year review determinations, its full third five-year review

determination, and its expedited fourth five-year review determination, the Commission defined the *Domestic Like Product* as chloropicrin, consistent with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, its expedited first and second five-year review determinations, its full third five-year review determination, and its expedited fourth five-year review determination, the Commission defined the *Domestic Industry* as all U.S. producers of chloropicrin.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 2, 2020. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 16, 2020. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 20–5–468, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution:

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2014.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2019, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2014, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including

barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (*Optional*) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 28, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16734 Filed 7–31–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–776–779 (Fourth Review)]

Certain Preserved Mushrooms From Chile, China, India, and Indonesia; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on certain preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted August 3, 2020. To be assured of consideration, the deadline for responses is September 2, 2020. Comments on the adequacy of responses may be filed with the Commission by October 16, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 2, 1998, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of certain preserved mushrooms from Chile (63 FR 66529) and on February 19, 1999, Commerce issued antidumping duty orders on imports of certain preserved mushrooms from China, India, and Indonesia (64 FR 8308–8312). Commerce subsequently revoked in part the order on imports from Indonesia (68 FR 39521, July 2, 2003). Following first five-year reviews by Commerce and the Commission, effective November 17, 2004, Commerce issued a continuation of the antidumping duty orders on imports of certain preserved mushrooms from Chile, China, India, and Indonesia (69 FR 67308). Following the second five-year reviews by Commerce and the Commission, effective April 28, 2010, Commerce issued a continuation of the antidumping duty orders on imports of certain preserved mushrooms from Chile, China, India, and Indonesia (75 FR 22369). Following the third five-year reviews by Commerce and the Commission, effective September 2, 2015, Commerce issued a continuation of the antidumping duty orders on imports of certain preserved mushrooms from Chile, China, India, and Indonesia (80 FR 53104). The Commission is now conducting fourth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Chile, China, India, and Indonesia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its full first five-year review determinations, and its expedited second and third five-year review determinations, the Commission found one *Domestic Like Product* consisting of certain preserved mushrooms corresponding to the scope of Commerce's investigations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first five-year review determinations, and its expedited second and third five-year review determinations, the Commission defined the *Domestic Industry* to consist of all domestic producers of certain preserved mushrooms. Certain Commissioners defined the *Domestic Industry* differently in the original investigations.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 2, 2020. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 16, 2020. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 20–5–465, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be provided in response to this notice of institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in

general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2014.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2019, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2014, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 28, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16743 Filed 7–31–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1158]

Certain Digital Video Receivers, Broadband Gateways, and Related Hardware and Software Components; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge (''ALJ'') has issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation of section 337. This notice is soliciting public interest comments from the public only.

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competition conditions in the United States economy, the production of like or directly competitive articles in the United States consumers, it finds that such articles should not be excluded from entry. 19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation. The ALJ recommended that the Commission issue a limited exclusion order directed to certain digital video receivers, broadband gateways, and related hardware and software components that are imported, sold for importation, and/or sold after importation by respondents Comcast Corporation, Comcast Cable Communications, LLC, Comcast Cable Communications Management, LLC, and Comcast Holdings Corporation, all of Philadelphia, Pennsylvania (collectively, ''Comcast''), and cease and desist orders directed to Comcast.

The Commission is interested in further development of the record on the public interest in its investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bond issued in this investigation on July 28, 2020. Comments should address whether issuance of remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed by the close of business on August 28, 2020.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1158'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary at (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 29, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16818 Filed 7–31–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–499–500 and 731–TA–1215–1216, 1221–1223 (Review)]

Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing duty orders on oil country tubular goods (OCTG) from India and Turkey and the antidumping duty orders on OCTG from India, Korea, Turkey, Ukraine, and Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on June 3, 2019 (84 FR 25570), and determined on September 6, 2019, that it would full reviews (84 FR 50069, September 24, 2019). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 21, 2020 (85 FR 3419). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, and in accordance with 19 U.S.C. 1677c(a)(1), the Commission conducted its hearing by video conference on May 21, 2020 and written witness testimony; all persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on July 29, 2020. The views of the Commission are contained in USITC Publication 5090 (July 2020), entitled *Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam:* Investigation Nos. 701–TA–499–500 and 731–TA–1215–1216, 1221–1223 (Review).

By order of the Commission.

Issued: July 29, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–16826 Filed 7–31–20; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Information Warfare Research Project Consortium

Notice is hereby given that, on July 14, 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''), Information Warfare Research Project Consortium (''IWRP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. 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, 502 Design Services, Inc., Palm Harbor, FL; Alluvionic Inc., Melbourne, FL; Arganteal, Corp, Austin, TX; Arkham Technology Limited, Irvine, CA; Ascentium, LLC, Fairfax, VA; Attollo, LLC, Cumberland, RI; Axellio Inc., Colorado Springs, CO; Black Cape, Inc., Arlington, VA; Blue Arc, LLC, Aberdeen Proving Ground, MD; Bowhead Professional Solutions, LLC, Springfield, VA; BridgeComm Inc., Denver, CO; Broadband Antenna Tracking Systems Inc. (BATS Wireless), Indianopolis, IN; Cape Henry Associates, Inc., Virginia Beach, VA; Channel Logistics, LLC dba Space Eyes, Camden, NJ; CIS Mobile, Ashburn, VA; Clear Align LLC, Nashua, NH, CoAspire, LLC, Fairfax, VA; Cog Systems, Inc., Lake Zurich, IL; Constellation Software Engineering dba CSEngineering, Annapolis, MD; Convergent Solutions, Inc., McLean, VA; CP Technologies, LLC, San Diego, CA; Critical Frequency Design, LLC, Melbourne, FL; Crystal Group, Inc., Hiawatha, IA; Dark Wolf Solutions, LLC, Chantilly, VA; DataDirect Networks Federal, LLC, Columbia, MD; Decision Sciences Incorporated, Ft. Walton Beach, FL; Digital Global Systems, Inc., Studio 1A, VA; Dualos, LLC, Tacoma, WA; DY4 Inc. dba Curtiss-Wright, Ashburn, VA; Dynamic Integrated Services, LLC, Pensacola, FL; Eduworks Corporation, Corvallis, OR; Eridan Communications, Inc., Mountain View, CA; Federal Data Systems LLC, Columbia, MD; Foresight Data Systems LLC, Columbia, SC; FragCity Inc., Fredericksburg, VA; Haivision Network Video Inc., Deerfield, IL; Hawks Nest Solutions, Inc. dba Marjau Systems Corporation, Tampa, FL; Honeywell International, Inc., Clearwater, FL; Hughes Network Systems, LLC, Germantown, MD; InfoGuard Staffing Partners, LLC dba Fortress Government Solutions, Orlando, FL; Intel Federal LLC, Fairfax, VA; Intelligent Waves, LLC, Reston, VA; Interdigital Communications, Inc., Wilmington, DE; Intrinsix Corp., Marlborough, MA; Irvin Technologies, Inc., Winter Springs, FL; IT Consulting Partners, LLC, Jackson, WY; Jupiter LLC, Silver Spring, MD; Key Cyber Solutions LLC, Richmond, VA; Knight Sky, LLC, Frederick, MD; Knowledge Vortex Inc., Madison, AL; Kopis Mobile LLC, Flowood, MS; Kriaanet, Inc., Quantico, VA; L3 Systems Company, Camden, NJ; MicroHealth, LLC, Vienna, VA; Milpower, Nampda, ID; MindPoint Group, LLC, Alexandria, VA; NEC Corporation of America, Arlington, VA; Netizen Corporation, Allentown, PA; Old Dominion University Research Foundation, Norfolk, VA; Omni Federal, Gainesville, VA; Omni Technologies, Aberdeen Proving Ground, MD; Onoffblock Inc. DBA Xenesis, New Lenox, IL; Oteote Inc., Encinitas, CA; Pathfinder Wireless Corp., Seattle, WA; PDC America, Seneca, SC; Perspecta Risk Decision Inc., Loveland, CO; PhasorLab, Inc., Billerica, MA; Poplicus, Inc DBA Govini, Arlington, VA; Procentrix, Inc., Herndon, VA; Q Networks LLC, Menlo Park, CA; Quantitative Scientific Solutions, LLC (QS–2), Arlington, VA; QuickFlex Inc., San Antonio, TX; Red Octopus Digital Services, LLC, Arlington, VA; Research and Development Solutions, Inc. (RDSI), McLean, VA; Sabel Systems Technology Solutions, LLC, Gainesville, VA; Saildrone Inc., Alameda, CA; SecureG, Inc., Herndon, VA; Sherpa 6 Inc., Littleton, CO; Smartronix, LLC, Hollywood, MD; srcLogic, LLC, Vienna, VA; SRI International, Menlo Park, CA; Stephenson Stellar Corporation, Baton Rouge, LA; Sterling Computers Corporation, North Sioux City, SD; Systems & Technology Research (STR), Woburn, MA; Systems and Proposal Engineering Company (Spec Innovations), Manassas, VA; Systems Planning and Analysis, Inc. (SPA), Alexandria, VA; Tableau Software, LLC., Seattle, WA; Tachyon Networks, LLC, San Diego, CA; Tech Wizards, Inc., King George, VA; The KeyW Corporation, Hanover, MD; Torch Research, LLC (Torch AI), Leawood, KS; Tribalco, LLC, Bethesda, MD; Two Six

Labs, LLC, Arlington, VA; Velocity Works LLC, Pittsburgh, PA; Virginia Tech Applied Research Corporation, Arlington, VA; Virtualitics, Inc., Pasadena, CA; Visible Assets, Inc., Stratham, NH; Whitney Strategic Services LLC, New York, NY; Wind River Systems, Inc., Alameda, CA; Wind Talker Innovations, Inc., Fife, WA; and XTAR, LLC, Ashburn, VA have been added as parties to this venture.

Also, Affordable Engineering Services, Inc. (AES), San Diego, CA; Alamo City Engineering Services Inc. (ACES), San Antonio, TX; Applied Research Associates, Inc., Albuquerque, NM; Centurum Information Technology, Inc., Marlton, NJ; DUST Identity, Inc., Needham, MA; GPS Source, Inc., Pueblo, CO; Guidon Technology Solutions, Inc., Issaquah, WA; HaloTech Solutions LLC, Columbia, MD; Jasper Solutions Inc., Huntington Station, NY; Johns Hopkins University Applied Physics Laboratory LLC (JHU APL), Laurel, MD; Louisiana Technology Group Inc. (LATG), New Orleans, LA; Netsync Network Solutions, Inc., Houston, TX; Parsons Government Services, Inc., Pasadena, CA; Recogniti LLP, Hagertown, MD; Rudram Engineering, Inc., Rockledge, FL; SafeNet Assured Technologies LLC, Arbingdon, MD; Sea Machines Robotics Inc., Boston, MA; Sentient Science Corporation, Buffalo, NY; Space Sciences Corporation, Lemitar, NM; Subsystem Technologies Inc., Arlington, VA; The Pennsylvania State University, University Park, PA; The University of New Orleans, New Orleans, LA; Tkacz Engineering LLC, Myrtle Beach, SC; and Warrant Technologies, LLC, Bloomington, IN, have withdrawn from this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IWRP intends to file additional written notifications disclosing all changes in membership.

On October 15, 2018, IWRP 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 October 23, 2018 (83 FR 53499).

The last notification was filed with the Department on April 15, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 5, 2020 (85 FR 26711).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–16700 Filed 7–31–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–692]

Bulk Manufacturer of Controlled Substances Application: American Radiolabeled Chemicals, Inc

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before October 2, 2020.

DATES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 13, 2020, American Radiolabeled Chemicals, Inc, 101 Arc Drive

Saint Louis, Missouri 63146–3502, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Ibogaine	7260	I
Lysergic acid diethylamide	7315	I
Tetrahydrocannabinols	7370	I
Dimethyltryptamine	7435	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
Dihydromorphine	9145	I
Heroin	9200	I
Normorphine	9313	I
Amphetamine	1100	II
Methamphetamine	1105	II
Amobarbital	2125	II
Phencyclidine	7471	II
Phenylacetone	8501	II
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Ecgonine	9180	II
Hydrocodone	9193	II
Meperidine	9230	II
Metazocine	9240	II
Methadone	9250	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Oxymorphone	9652	II
Phenazocine	9715	II
Carfentanil	9743	II
Fentanyl	9801	II

The company plans to manufacture small quantities of the above-listed controlled substances as radiolabeled compounds for biochemical research. No other activities for these drug codes are authorized for this registration.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–16775 Filed 7–31–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–694]

Importer of Controlled Substances Application: Chattem Chemicals Inc

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 2, 2020. Such persons may also file a written request for a hearing on the application on or before September 2, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 20, 2020, Chattem Chemicals Inc., 3801 Saint Elmo Avenue, Chattanooga, Tennessee 37409–1237, applied to be registered as an importer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Methamphetamine.	1105	II
4-Anilino-N-phenethyl-4-piperidine (ANPP).	8333	II
Phenylacetone ..	8501	II
Coca Leaves	9040	II
Opium, raw	9600	II
Poppy Straw Concentrate.	9670	II
Tapentadol	9780	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for sale to its customers. The company plans to import an intermediate of Tapentadol (9780), to bulk manufacture Tapentadol for distribution to its customers.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–16773 Filed 7–31–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–690]

Importer of Controlled Substances Application: Curium US LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 2, 2020. Such persons may also file a written request for a hearing on the application on or before September 2, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 8, 2020, Curium US LLC, 2703 Wagner Place, Maryland Heights, Missouri 63043–3421, applied to be registered as an importer of the following basic class(es) of a controlled substance:

Controlled substance	Drug code	Schedule
Ecgonine	9180	II

The company plans to import small quantities of the above-listed controlled substance to be used in diagnostic testing.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–16774 Filed 7–31–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0009]

Fire Brigades Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the collection of information contained in the Fire Brigades Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by October 2, 2020.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://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 these methods, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0009, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the OSHA 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 the OSHA docket number (OSHA–2011–0009) for the Information Collection Request (ICR). All comments, including any personal information you provide, such as social security number and date of birth, are placed in the public docket without change, and may be made available online at *http://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 materials in the docket, go to *http://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 *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney or Seleda Perryman at (202) 693–2222 to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Seleda Perryman, 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 requirements in accordance with the Paperwork Reduction Act (PRA) (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 (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 OSHA to 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).

OSHA does not mandate that employers establish fire brigades; however, if they do so, they must comply with the provisions of the Fire Brigades Standard. The provisions of the standard, including the paperwork requirements, apply to fire brigades, industrial fire departments, and private or contract fire departments, but not to airport crash rescue units or forest firefighting operations. Paragraphs (b)(1), (b)(2), and (c)(4) contain the paperwork requirements of the standard.

Under paragraph (b)(1) of the standard, employers must develop and maintain an organizational statement that establishes the: Existence of a fire brigade; the basic organizational structure of the brigade; type, amount, and frequency of training provided to brigade members; expected number of members in the brigade; and functions that the brigade is to perform. This paragraph also specifies that the organizational statement must be available for review by workers, their designated representatives, and OSHA compliance officers. The organizational statement describes the functions performed by the brigade members and, thereby, determines the level of training and type of personal protective equipment (PPE) necessary for these members to perform their assigned functions safely. Making the statement available to workers, their designated representatives, and OSHA compliance officers ensures that the elements of the statement are consistent with the functions performed by the brigade members and the occupational hazards they experience, and that employers are providing training and PPE appropriate to these functions and hazards.

To permit a worker with known heart disease, epilepsy, or emphysema to participate in fire brigade emergency activities, paragraph (b)(2) of the standard requires employers to obtain a physician's certificate of the worker's fitness. This provision provides employers with a direct and efficient means of ascertaining whether or not they can safely expose workers with these medical conditions to the hazards of firefighting operations.

Paragraph (c)(4) of the standard requires employers to inform fire brigade members of special hazards, such as the storage and use of flammable liquids and gases, toxic chemicals, radioactive sources, water-reactive substances that may be present during fires and other emergencies, and any changes in these special hazards. It also requires that employers develop written procedures describing the actions that brigade members are to take when special hazards are present, and to make these procedures available in the education and training program and for review by brigade members.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements 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 information collection requirements, 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 extend the approval of the information collection requirements contained in the Fire Brigades Standard (29 CFR 1910.156). The agency is requesting an adjustment increase in the number of burden hours from 2,693 to 2,767, a total increase of 74 hours. The adjustment is due to an increase in the estimated number of manufacturing facilities with 100 or more workers from 24,856 to 25,546. The agency will summarize the 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 collection.

Title: Fire Brigades Standards (29 CFR 1910.156).

OMB Control Number: 1218–0075.

Affected Public: Business or other for-profits.

Number of Respondents: 25,546.

Number of Responses: 3,832.

Frequency of Responses: On occasion.

Average Time per Response: Varied.

Estimated Total Burden Hours: 2,767.

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 *http://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–2011–0009). 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.

Due to 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 *http://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 *http://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 *http://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 July 29, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–16819 Filed 7–31–20; 8:45 am]

BILLING CODE 4510–26–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 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.

1. NSF issued a permit (ACA 2018–013) to Linnea Pearson on October 16, 2017. The issued permit allows the permit holder to handle Weddell seal pups per year for the purposes of studying the thermoregulatory strategies by which the pups maintain euthermia in air and in water and examine the development of diving capability as the animals prepare for independent foraging. On October 18, 2019, NSF approved a modification to the permit to allow changes to the sedation procedures, take numbers, tag attachment, sample collection, and antibiotic treatment.

Now the permit holder has requested the following modification to allow for full antibiotic treatment of pups in the study, should the need arise. 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: November 8, 2019–October 1, 2020.

The permit modification was issued on November 8, 2019.

2. NSF issued a permit (ACA 2017–012) to George Watters. The issued permit allows the permit holder and agents to engage in take, harmful interference, ASPA entry, and import in support of the marine mammal and avian research activities conducted by National Oceanic and Atmospheric Administration's (NOAA) Antarctic Marine Living Resources (AMLR) Program.

Now the permit holder proposes a permit modification to collect fresh penguin fecal material (feces, scat, guano) samples to aid in a study of microplastics levels in the diets of seabirds. The samples would be collected during the course of research activities that are already permitted and would not cause any additional disturbance to the penguins. Therefore, there is no request for additional take or harmful interference. The samples would be preserved in ethanol and transported to a laboratory in the U.S. for microscopic analysis. The sample collection would begin in the 2019/2020 season and continue for the duration of the 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: November 21, 2019–July 30, 2021.

The permit modification was issued on November 21, 2019.

3. NSF issued a permit (ACA 2017–029) to John Durban. The issued permit allows the permit holder and agents to engage in take and import into the USA. Manner of taking includes using a remotely piloted aircraft system (RPAS) for photogrammetry and blow sample

collection from whales; boat-based photography for individual recognition and species identification; and projectile biopsy sampling for collection of skin and blubber samples. Whole or parts of dead animals may be salvaged for chemical analysis or genetic determination of species for unidentified prey parts. Samples are imported into the USA and archived at the NOAA Southwest Fisheries Science Center.

Now the permit holder proposes a permit modification to collect floating fecal samples from killer whales to fill key data gaps on their dietary composition using genetic techniques. The samples would be collected during the course of research activities that are already permitted and would not cause any additional disturbance to whales. Therefore, there is no request for additional takes. The samples would be transported to a laboratory in the U.S. for analysis. The sample collection would begin in the 2019/2020 season and continue for the duration of the 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: November 21, 2019–May 31, 2021.

The permit modification was issued on November 21, 2019.

4. NSF issued a permit (ACA 2017–019) to Jerry McDonald, Principal in Charge, Leidos Innovations Group, Antarctic Support Contract, to allow entry into five Antarctic Specially Protected Areas (ASPAs) in the Antarctic Peninsula region. The Antarctic Support Contractor's staff provides routine logistics support in the transport of science teams and supporting personnel, and in field camp put-in and take-out. Entry into an ASPA would occur only to support a science project for which a permit has been issued. Entry needs and requirements will be reviewed by ASC Environmental Health and Safety Department prior to entry and reported per standard procedures.

On March 9, 2017, the permit was modified to include entry into one additional ASPA (Byers Peninsula, #126) and on October 6, 2017 the permit was modified to include entry into into two additional ASPAs: ASPA No. 161, Terra Nova Bay, Ross Sea and ASPA No. 173, Cape Washington and Silverfish Bay, Terra Nova bay, Ross Sea.

Now the permit holder is requesting entry into five additional ASPAs in order to support scientific research activities funded and supported by NSF and the US Antarctic Program. The permit holder and agents would enter ASPA 107, Emperor Island; ASPA 108, Green Island; ASPA 115, Lagotellerie Island; ASPA 134, Cierva Point and offshore islands; and ASPA 170, Marion Nunatuks, Charcot Island. 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: January 8, 2020–September 1, 2021.

The permit modification was issued on January 8, 2020.

5. NSF issued a permit (ACA 2020–013) to Nicholas Teets on January 2, 2020. The issued permit allows the permit holder and agents to access sites along the Antarctic Peninsula, including ASPAs 108, 126, and 134, to collect midges (*Belgica antarctica*) for physiology and genetic studies as described in the attached permit application.

Now the applicant proposes a permit modification to enter APSA 149, Cape Shirreff and San Telmo Island, Livingston Island, South Shetland Islands, to survey the area for the presence midges and to make collections of the insects in accordance with the conditions and details of their 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: January 17, 2020–July 1, 2022.

The permit modification was issued on January 17, 2020.

6. NSF issued a permit (ACA 2017–012) to George Watters. The issued permit allows the permit holder and agents to engage in take, harmful interference, ASPA entry, and import in support of the marine mammal and avian research activities conducted by National Oceanic and Atmospheric Administration's (NOAA) Antarctic Marine Living Resources (AMLR) Program.

A recent modification to this permit, dated November 21, 2019, permitted the applicant to collect fresh penguin fecal material samples to study the presence of microplastics in seabird diets.

Now the applicant proposes a permit modification to add the take and harmful interference of king penguins, *Aptenodytes patagonicus,* to the permit. The permit holder identified a king penguin in the study area and would approach for photographs and to confirm the presence of an egg. 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: January 17, 2020–July 30, 2021.

The permit modification was issued on January 17, 2020.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2020–16783 Filed 7–31–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0028]

Development of an Ex Situ Performance Testing Protocol for Nuclear Power Plant Flood Penetration Seals

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG, NUREG–2240, ''Development of an Ex Situ Performance Testing Protocol for Nuclear Power Plant Flood Penetration Seals.'' This draft NUREG summarizes a research project that developed a test protocol for evaluating flood penetration seals using simulated flooding conditions in a laboratory setting.

DATES: Submit comments by September 2, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0028. Address questions about NRC docket 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments,

see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Thomas Aird, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2442; email: *Thomas.Aird@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0028 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0028.
- *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 reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft NUREG–2240 is available in ADAMS under Accession ML20206L359.

B. Submitting Comments

Please include Docket ID NRC–2018–0028 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *https://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

Draft NUREG–2240 summarizes the results of a research project on flood penetration seals installed at nuclear power plants (NPPs). The objectives of this research project were to characterize flood penetration seals currently installed at NPPs and to develop a test protocol that evaluated the effectiveness and performance of flood penetration seals in their installed configurations. The test protocol described in draft NUREG–2240 is intended to support the evaluation of the flood mitigation performance of penetration seals that are installed to protect openings in barriers (walls/floors) that have been otherwise credited as having a flood resistance rating in support of a flood mitigation program at NPPs.

The overall research project consisted of three phases: (1) Profiling of flood penetration seals currently used in U.S. NPPs; (2) developing a draft ex-situ performance testing protocol; and (3) performing limited testing of several seal types and applications to evaluate and refine the testing protocol. Project materials including a draft test protocol from phases 1 and 2 were published in the **Federal Register** for public comment on February 20, 2018 (83 FR 7239). After a 30-day public comment period, the public comments were assessed, and the draft test protocol was updated as necessary.

As part of the third and final phase of this research project, a limited series of flood tests were conducted to assess the effectiveness and viability of the developed testing protocol. As the flood experiments took place, the draft protocol was assessed using the test data. Informal observations of individual flood seal performance were recorded and described in the draft NUREG, but such observations should not be considered exhaustive or as ascribing specific properties/qualifications to the flood seals themselves. The overall results of these tests and subsequent amendments to the test protocol are outlined in draft NUREG–2240.

This document is not intended for interim use. The NRC will review public comments received on the document and incorporate suggested changes as appropriate.

Dated: July 28, 2020.

For the Nuclear Regulatory Commission.

Mark H. Salley,

Chief, Fire and External Hazard Analysis Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2020–16717 Filed 7–31–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0153]

Changes to Subsequent License Renewal Guidance Documents Regarding Reactor Vessel Internal Components in Pressurized Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on draft interim staff guidance (ISG) that proposes changes to the NRC's subsequent license renewal guidance documents. Specifically, this ISG revises guidance contained in NUREG–2191, ''Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report,'' and NUREG–2192, ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants.'' NUREG–2191 and NUREG–2192 were published in July 2017 and are not scheduled to be updated for several years. The proposed changes to these documents are contained in a draft ISG entitled, ''Draft SLR–ISG–PWRVI–2020–XX; Updated Aging Management Criteria for Reactor Vessel Internal Components in Pressurized Water Reactors.''

DATES: Submit comments by September 2, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0153. Address questions about NRC docket 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory

Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William (Butch) Burton, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6332; email: *William.Burton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0153 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0153.
- *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 reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's License Renewal Interim Staff Guidance Website:* SLR–ISG documents are available online at *https://www.nrc.gov/reading-rm/doc-collections/isg/license-renewal.html.*

B. Submitting Comments

Please include Docket ID NRC–2020–0153 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

The NRC staff has completed its safety reviews of the first three Subsequent License Renewal Applications (SLRAs), for Turkey Point Nuclear Generating Units 3 and 4, Peach Bottom Atomic Power Station, Units 2 and 3, and Surry Power Station, Units 1 and 2. The NRC staff used the guidance contained in NUREG–2191, ''Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report,'' and NUREG–2192, ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants,'' to conduct its SLRA safety reviews for those SLRAs. Through the first three SLRA reviews, the NRC staff, the Nuclear Energy Institute (NEI), and members of the nuclear industry identified potential changes to NUREG–2191 and NUREG–2192 to improve the effectiveness and efficiency of future SLRA safety reviews. Since March 2019, the NRC staff held several public meetings to consider lessons learned from these safety reviews and identify areas where the technical guidance in NUREG–2191 and NUREG–2192 could be improved or clarified and where new technical guidance was warranted. The meeting summaries and respective ADAMS Accession Numbers are listed under the ''Availability of Documents'' section of this document.

III. Specific Requests for Comments

The NRC is soliciting public comment on a draft ISG that proposes changes to the NRC's subsequent license renewal guidance in NUREG–2191 and NUREG–2192. NUREG–2191 and NUREG–2192 were published in July 2017 and are not scheduled to be updated for several years. The process of updating these NUREGs involves major review and evaluation by the staff, the nuclear industry, and the public and will take approximately five years once the process begins. Several SLRAs are scheduled for submittal to the NRC for review within the next two years. Issuance of this ISG is intended to provide improvements in the effectiveness and efficiency of the preparation and review of the SLRAs, and would become effective before the updates to NUREG–2191 and NUREG–2192 are completed.

The proposed changes to NUREG–2191 and NUREG–2192 are contained in a draft ISG that updates aging management criteria for PWR reactor vessel internal components. In addition, minor edits are proposed where errors were identified in the existing guidance.

Draft SLR–ISG–PWRVI–2020–XX, ''Updated Aging Management Criteria for Reactor Vessel Internal Components in Pressurized Water Reactors''

The reactor vessel internal components ISG is titled, ''Draft SLR–ISG–PWRVI–2020–XX; Updated Aging Management Criteria for Reactor Vessel Internal Components in Pressurized Water Reactors,'' and is available in ADAMS under Accession No. ML20156A343. In addition to addressing lessons learned from the initial SLRA safety reviews, this draft ISG also incorporates the conclusions of the NRC staff's April 25, 2019 safety evaluation of Electric Power Research Institute Technical Report No. 3002017168, ''Materials Reliability Program: Pressurized Water Internals Inspection and Evaluation Guidelines (MRP–227, Revision 1–A).'' The NRC staff's safety evaluation for the MRP–227, Revision 1–A report may be accessed in ADAMS under Accession No. ML19081A001.

Draft SLR–ISG–PWRVI–2020–XX revises the following aging management guidance:

- Standard Review Plan—Subsequent License Renewal (SRP–SLR) Table 3.1–1, ''Summary of Aging Management Programs for Reactor Vessel, Internals, and Reactor Coolant System Evaluated in Chapter IV of the GALL–SLR Report''.
- Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report Tables IV.B2, IV.B3, IV.B4, IV.E.
- SRP–SLR sections 3.1.2.2.9 and 3.1.3.2.9.
- Aging Management Program XI.M16A, ''PWR Vessel Internals'' and GALL–SLR Report Table XI–01, ''FSAR Supplement Summaries for GALL–SLR Report Chapter XI Aging Management Programs''.
- GALL–SLR Report Table IX.C, ''Use of Terms for Materials,'' to add the term ''Stellite''.
- SRP–SLR Table 4.7–1, ''Examples of Potential Plant-Specific TLAA Topics''.

IV. Availability of Documents

The documents identified in the following table are available in ADAMS, as indicated.

Document	ADAMS accession No.
NUREG–2191, ''Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report''	ML16274A389, ML16274A399
NUREG-2192, ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants''	ML16274A402
Draft SLR–ISG–PWRVI–2020–XX; Updated Aging Management Criteria for Reactor Vessel Internal Components in Pressurized Water Reactors.	ML20156A343
MRP–227, Revision 1–A, ''Materials Reliability Program: Pressurized Water Reactor Internals Inspection and Evaluation Guidelines'' dated December 2019.	ML19339G350
Final Safety Evaluation For Electric Power Research Institute Topical Report MRP–227, Revision 1, ''Materials Reliability Program: Pressurized Water Reactor Internals Inspection And Evaluations Guideline'' dated April 2019.	ML19081A001
March 28, 2019, Summary Of Category 2 Public Meeting On Lessons Learned From The Review Of The First Subsequent License Renewal Applications.	ML19112A206
Summary of December 12, 2019, Category 2 Public Meeting On Lessons Learned From The Review Of The First Subsequent License Renewal Applications..	ML20016A347
February 20, 2020, Summary of Category 2 Public Meeting on Lessons Learned from the Review of the First Subsequent License Renewal Applications.	ML20076E074
Summary of March 25, 2020 Meeting with Industry Related to Revisions to Subsequent License Renewal Guidance Documents.	ML20107F702
Summary of April 3, 2020 Meeting with Industry Regarding Changes to Subsequent License Renewal Guidance Documents.	ML20107F733
Summary of April 7, 2020 Meeting with Industry Regarding Revisions to the Subsequent License Renewal Guidance Documents.	ML20107F699

The NRC may post additional materials to the Federal Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2020–0153. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2020–0153); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Dated: July 28, 2020.

For the Nuclear Regulatory Commission.

Robert Caldwell,

Deputy Director, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–16699 Filed 7–31–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–206 and CP2020–233]

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:* August 5, 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:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

[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).

II. Docketed Proceeding(s)

1. Docket No(s).: MC2020–206 and CP2020–233; Filing Title: USPS Request to Add Priority Mail Express & Priority Mail Contract 116 to Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: July 28, 2020; Filing Authority: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; Public Representative: Kenneth R. Moeller; Comments Due: August 5, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–16845 Filed 7–31–20; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89411; File No. SR–NYSENAT–2020–22]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Add the Consolidated Audit Trail Industry Member Compliance Rules To the List of Minor Rule Violations in Rule 10.9217

July 28, 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 July 21, 2020, NYSE National, Inc. (''NYSE National'' 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

The Exchange proposes to add the Consolidated Audit Trail (''CAT'') industry member compliance rules to the list of minor rule violations in Rule 10.9217. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add NYSE National's CAT industry member compliance rules (the ''CAT Compliance Rules'') to the list of minor rule violations in Rule 10.9217. This proposal is based upon the Financial Industry Regulatory Authority, Inc. (''FINRA'') filing to amend FINRA Rule 9217 in order to add FINRA's corresponding CAT Compliance Rules to FINRA's list of rules that are eligible for minor rule violation plan treatment and the filing of the Exchange's affiliate the New York Stock Exchange LLC (''NYSE'') to add NYSE's corresponding CAT Compliance Rules to the list of minor rule violations in NYSE Rule 9217.[4]

Proposed Rule Change

The Exchange recently adopted the CAT Compliance Rules in the Rule 6.6800 Series in order to implement the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[5] The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,[6] and each Plan Participant accordingly has adopted the same compliance rules in the Exchange's Rule 6.6800 Series. The common compliance rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurately customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

Rule 10.9217 sets forth the list of rules under which an ETP Holder or Associated Person may be subject to a fine under Rule 10.9216(b). Rule 10.9217 permits the Exchange to impose a fine of up to $5,000 on any ETP Holder or Associated Person for a minor violation of an eligible rule. The Exchange proposes to amend Rule 10.9217 to add the CAT Compliance Rules in the Rule 6.6800 Series to the list of rules in Rule 10.9217 eligible for disposition pursuant to a minor fine under Rule 10.9216(b).[7]

The Exchange is coordinating with FINRA and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants' CAT Compliance Rules. The Commission recently approved a Rule 17d–2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant (''common members'').[8] Under the Rule 17d–2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d–2 Plan, responsibility for common members of multiple other Plan Participants and not a member of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to NYSE National pursuant to the Rule 17d–2 Plan, if any, the Exchange and FINRA entered into a Regulatory Services Agreement (''RSA'') pursuant to which FINRA will conduct surveillance, investigation, examination,

[4] *See* Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR–FINRA–2020–013); Securities Exchange Act Release No. 89123 (June 23, 2020), 85 FR 39016 (June 29, 2020) (SR–NYSE–2020–51).

[5] *See* Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR–NSX–2017–03).

[6] 17 CFR 242.613.

[7] FINRA's maximum fine for minor rule violations under FINRA Rule 9216(b) is $2,500. Like the NYSE, the Exchange will apply an identical maximum fine amount for eligible violations of the Rule 6.6800 Series to achieve consistency with FINRA and also to amend its minor rule violation plan (''MRVP'') to include such fines. Like FINRA and the NYSE, the Exchange would be able to pursue a fine greater than $2,500 for violations of the Rule 6.6800 Series in a regular disciplinary proceeding or an acceptance, waiver, and consent (''AWC'') under the Rule 10.9000 Series as appropriate. Any fine imposed in excess of $2,500 or not otherwise covered by Rule 19d–1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d-1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. *See* text accompanying notes 9–10, *infra.*

[8] *See* Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020) (File No. 4–618).

and enforcement activity in connection with the CAT Compliance Rules on the Exchange's behalf (with the exception of such matters once a complaint is filed which in such instance is no longer administered through the MRVP). We expect that the other exchanges would be entering into a similar RSA.

In order to achieve consistency with FINRA and the other Plan Participants, the Exchange proposes to adopt fines up to $2,500 in connection with minor rule fines for violations of the CAT Compliance Rules in the Rule 6.6800 Series under Rule 10.9217 and the Exchange's MRVP.

FINRA, in connection with its proposed amendment to FINRA Rule 9217 to make FINRA's CAT Compliance Rules MRVP eligible, has represented that it will apply the minor fines for CAT Compliance Rules in the same manner that FINRA has for its similar existing audit trail-related rules.[9] Accordingly, in order to promote regulatory consistency, the Exchange plans to do the same. Specifically, application of a minor rule fine with respect to CAT Compliance Rules will be guided by the same factors that FINRA referenced in its filing. However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;
- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;
- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.[10]

Upon effectiveness of this rule change, the Exchange will publish a regulatory bulletin notifying its ETP Holders of the rule change and the specific factors that will be considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed rule change will result in a coordinated, harmonized approach to CAT compliance rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, because 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.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through an AWC if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Rather, the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the CAT Compliance Rules in the Rule 6.6800 Series where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct.

In connection with the fine level specified in the proposed rule change, adding language that minor rule fines for violations of the CAT Compliance Rules in the Rule 6.6800 Series shall not exceed $2,500 would further the goal of transparency and add clarity to the Exchange's rules. Adopting the same cap as FINRA and the NYSE for minor rule fines in connection with the CAT Compliance Rules would also promote regulatory consistency across self-regulatory organizations.

The Exchange further believes that the proposed amendments to Rule 10.9217 are consistent with Section 6(b)(6) of the Act,[13] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of the Rule 6.6800 Series pursuant to the Exchange's rules.

Finally, the Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[14] Rule 10.9217 does not preclude an ETP Holder or Associated Person from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with making the CAT Compliance Rules in the Rule 6.6800 Series eligible for a minor rule fine disposition, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

[9] *See* SR–FINRA–2020–013; *see also* FINRA Notice to Members 04–19 (March 2004) (providing specific factors used to inform dispositions for violations of OATS reporting rules).

[10] *See id.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(6).

[14] 15 U.S.C. 78f(b)(7) and 78f(d).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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–NYSENAT–2020–22 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–NYSENAT–2020–22. 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–NYSENAT–2020–22 and should be submitted on or before August 24, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act [17] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[18] which governs minor rule violation plans.

As stated above, the Exchange proposes to add the CAT Compliance Rules to the list of minor rule violations in Rule 10.9217 to be consistent with the approach FINRA has taken for minor violations of its corresponding CAT Compliance Rules.[19] The Commission has already approved FINRA's treatment of CAT Compliance Rules violations when it approved the addition of CAT Compliance Rules to FINRA's MRVP.[20] As noted in that order, and similarly herein, the Commission believes that Exchange's treatment of CAT Compliance Rules violations as part of its MRVP provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects that, as with FINRA, the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. Accordingly, the Commission believes the proposal raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[21] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds the CAT Compliance Rules to the Exchange's MRVP and harmonizes its application with FINRA's application of CAT Compliance Rules under its own MRVP. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [22] and Rule 19d–1(c)(2) thereunder,[23] that the proposed rule change (SR–NYSENAT–2020–22) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16707 Filed 7–31–20; 8:45 am]

BILLING CODE 8011–01–P

[15] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[18] 17 CFR 240.19d–1(c)(2).

[19] As discussed above, the Exchange has entered into a Rule 17d–2 Plan and an RSA with FINRA with respect to the CAT Compliance Rules. The Commission notes that, unless relieved by the Commission of its responsibility, as may be the case under the Rule 17d–2 Plan, the Exchange continues to bear the responsibility for self-regulatory conduct and liability for self-regulatory failures, not the self-regulatory organization retained to perform regulatory functions on the Exchange's behalf pursuant to an RSA. *See* Securities Exchange Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031), note 93 and accompanying text.

[20] *See supra* note 4.

[21] 15 U.S.C. 78s(b)(2).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 240.19d–1(c)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89410; File No. SR–NYSECHX–2020–21]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Add the Consolidated Audit Trail Industry Member Compliance Rules to the List of Minor Rule Violations in Article 12, Rule 8

July 28, 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 July 21, 2020, the NYSE Chicago, Inc. (''NYSE Chicago'' 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add the Consolidated Audit Trail (''CAT'') industry member compliance rules to the list of minor rule violations in Article 12, Rule 8. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add NYSE Chicago's CAT industry member compliance rules (the ''CAT Compliance Rules'') to the list of minor rule violations in Article 12, Rule 8. This proposal is based upon the Financial Industry Regulatory Authority, Inc. (''FINRA'') filing to amend FINRA Rule 9217 in order to add FINRA's corresponding CAT Compliance Rules to FINRA's list of rules that are eligible for minor rule violation plan treatment and the filing of the Exchange's affiliate the New York Stock Exchange LLC (''NYSE'') to add NYSE's corresponding CAT Compliance Rules to the list of minor rule violations in NYSE Rule 9217.[4]

Proposed Rule Change

The Exchange recently adopted the CAT Compliance Rules in the Rule 6.6800 Series in order to implement the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[5] The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,[6] and each Plan Participant accordingly has adopted the same compliance rules in the Exchange's Rule 6.6800 Series. The common compliance rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurately customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

Article 12, Rule 8 sets forth the list of rules under which a Participant, associated person, or registered or non-registered employee of a Participant may be subject to a minor fine. Article 12, Rule 8 permits the Exchange to impose a fine of up to $5,000 on any Participant, associated person, or registered or non-registered employee of a Participant for a minor violation of an eligible rule. The Exchange proposes to amend Article 12, Rule 8 to add the CAT Compliance Rules in the Rule 6.6800 Series to the list of rules eligible for disposition pursuant to a minor fine.[7]

The Exchange is coordinating with FINRA and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants' CAT Compliance Rules. The Commission recently approved a Rule 17d–2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant (''common members'').[8] Under the Rule 17d–2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d–2 Plan, responsibility for common members of multiple other Plan Participants and not a member of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to NYSE Chicago pursuant to the Rule 17d–2 Plan, if any, the Exchange and FINRA entered into a Regulatory Services Agreement (''RSA'') pursuant to which FINRA will conduct surveillance, investigation, examination, and enforcement activity in connection with the CAT Compliance Rules on the Exchange's behalf (with the exception of such matters once a complaint is filed which in such instance is no longer administered through the MRVP). We expect that the other exchanges would be entering into a similar RSA.

In order to achieve consistency with FINRA and the other Plan Participants, the Exchange proposes to adopt fines up to $2,500 in connection with minor rule fines for violations of the CAT Compliance Rules in the Rule 6.6800

[4] *See* Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR–FINRA–2020–013); Securities Exchange Act Release No. 89123 (June 23, 2020), 85 FR 39016 (June 29, 2020) (SR–NYSE–2020–51).

[5] *See* Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR–CHX–2017–03).

[6] 17 CFR 242.613.

[7] FINRA's maximum fine for minor rule violations under FINRA Rule 9216(b) is $2,500. Like the NYSE, the Exchange will apply an identical maximum fine amount for eligible violations of the Rule 6.6800 Series to achieve consistency with FINRA and also to amend its minor rule violation plan (''MRVP'') to include such fines. Like FINRA and the NYSE, the Exchange would be able to pursue a fine greater than $2,500 for violations of the Rule 6.6800 Series in a regular disciplinary proceeding or a settlement agreement under Article 12 as appropriate. As Article 12, Rule 8(a) provides, any fine imposed in excess of $2,500 or not otherwise covered by Rule 19d–1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d–1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. *See* text accompanying notes 10–11, *infra.*

[8] *See* Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020) (File No. 4–618).

Series under Article 12, Rule 8 and the Exchange's MRVP.[9]

FINRA, in connection with its proposed amendment to FINRA Rule 9217 to make FINRA's CAT Compliance Rules MRVP eligible, has represented that it will apply the minor fines for CAT Compliance Rules in the same manner that FINRA has for its similar existing audit trail-related rules.[10] Accordingly, in order to promote regulatory consistency, the Exchange plans to do the same. Specifically, application of a minor rule fine with respect to CAT Compliance Rules will be guided by the same factors that FINRA referenced in its filing. However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;
- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;
- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.[11]

Upon effectiveness of this rule change, the Exchange will publish a regulatory bulletin notifying its Participants of the rule change and the specific factors that will be considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed rule change will result in a coordinated, harmonized approach to CAT compliance rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, because 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.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through a settlement agreement if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Rather, the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the CAT Compliance Rules in the Rule 6.6800 Series where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct.

In connection with the fine level specified in the proposed rule change, adding language that minor rule fines for violations of the CAT Compliance Rules in the Rule 6.6800 Series shall not exceed $2,500 would further the goal of transparency and add clarity to the Exchange's rules. Adopting the same cap as FINRA and the NYSE for minor rule fines in connection with the CAT Compliance Rules would also promote regulatory consistency across self-regulatory organizations.

The Exchange further believes that the proposed amendments to Article 12, Rule 8 are consistent with Section 6(b)(6) of the Act,[14] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of the Rule 6.6800 Series pursuant to the Exchange's rules.

Finally, the Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members consistent with Sections 6(b)(7) and 6(d) of the Act.[15] Article 12, Rule 8 does not preclude a Participant, associated person, or registered or non-registered employee of a Participant from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with making the CAT Compliance Rules in the Rule 6.6800 Series eligible for a minor rule fine disposition, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

[9] To effectuate this change and make the Exchange's rules more like those of its affiliate the NYSE, the Exchange proposes to add the following sentence to Article 12, Rule 8(a) based on language in NYSE Rule 9217: ''For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the Exchange may impose a minor rule violation fine of up to $2,500. For more serious violations, other disciplinary action may be sought.''

In addition, Article 12, Rule 8(h)(1)(W) would provide that a fine up to $2,500 could be sought for violations of the CAT Compliance Rules in the Rule 6.6800 Series.

[10] *See* SR–FINRA–2020–013; *see also* FINRA Notice to Members 04–19 (March 2004) (providing specific factors used to inform dispositions for violations of OATS reporting rules).

[11] *See id.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(6).

[15] 15 U.S.C. 78f(b)(7) and 78f(d).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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–NYSECHX–2020–21 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–NYSECHX–2020–21. 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–NYSECHX–2020–21 and should be submitted on or before August 24, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act [18] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[19] which governs minor rule violation plans.

As stated above, the Exchange proposes to add the CAT Compliance Rules to the list of minor rule violations in Article 12, Rule 8 to be consistent with the approach FINRA has taken for minor violations of its corresponding CAT Compliance Rules.[20] The Commission has already approved FINRA's treatment of CAT Compliance Rules violations when it approved the addition of CAT Compliance Rules to FINRA's MRVP.[21] As noted in that order, and similarly herein, the Commission believes that Exchange's treatment of CAT Compliance Rules violations as part of its MRVP provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects that, as with FINRA, the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. Accordingly, the Commission believes the proposal raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[22] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds the CAT Compliance Rules to the Exchange's MRVP and harmonizes its application with FINRA's application of CAT Compliance Rules under its own MRVP. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [23] and Rule 19d–1(c)(2) thereunder,[24] that the proposed rule change (SR–NYSECHX–2020–21) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16706 Filed 7–31–20; 8:45 am]

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[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[19] 17 CFR 240.19d–1(c)(2).

[20] As discussed above, the Exchange has entered into a Rule 17d–2 Plan and an RSA with FINRA with respect to the CAT Compliance Rules. The Commission notes that, unless relieved by the Commission of its responsibility, as may be the case under the Rule 17d–2 Plan, the Exchange continues to bear the responsibility for self-regulatory conduct and liability for self-regulatory failures, not the self-regulatory organization retained to perform regulatory functions on the Exchange's behalf pursuant to an RSA. *See* Securities Exchange Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031), note 93 and accompanying text.

[21] *See supra* note 4.

[22] 15 U.S.C. 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 240.19d–1(c)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89412; File No. SR–NYSEArca-2020–46]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change to Amend NYSE Arca Rule 5.2–E(j)(6) Relating to Options-Linked Securities

July 28, 2020.

On June 10, 2020, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Rule 5.2–E(j)(6) (''Index-Linked Securities'') to accommodate Exchange listing and trading of Options-Linked Securities. The proposed rule change was published for comment in the **Federal Register** on June 22, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is August 6, 2020. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates September 20, 2020 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2020–46).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16708 Filed 7–31–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89073 (June 16, 2020), 85 FR 37488.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–5552/File No. 803–00250]

Blackstone Alternative Investment Funds; Blackstone Alternative Investment Advisors LLC

July 28, 2020.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice.

Notice of application for an exemptive order under Section 206A of the Investment Advisers Act of 1940 (''Advisers Act'').

APPLICANTS: Blackstone Alternative Investment Funds (the ''Trust'') and Blackstone Alternative Investment Advisors LLC (''BAIA'' or the ''Adviser'') (together, the ''Applicants'').

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under Section 206A of the Advisers Act for an exemption from Section 205 of the Advisers Act and rule 205–1 thereunder.

SUMMARY OF APPLICATION: Applicants request that the Commission issue an order permitting the Adviser to enter into or amend an investment sub-advisory agreement (each, a ''Sub-Advisory Agreement'' and collectively, the ''Sub-Advisory Agreements'') with a sub-adviser (each, a ''Sub-Adviser'') under which the Sub-Adviser would receive an investment sub-advisory fee from the Adviser where such fee would (i) be calculated based on the performance of the portion of a Fund's (as defined below) assets allocated to the Sub-Adviser (an ''Allocated Portion'') measured by the change in the Allocated Portion's gross asset value, rather than the change in net asset value of the Allocated Portion and (ii) apply only to the Allocated Portion and not to a Fund as a whole.

FILING DATES: The application was filed on June 24, 2019, and amended and restated on April 28, 2020 and July 21, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving Applicants with copies of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on August 24, 2020, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Advisers Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Blackstone Alternative Investment Advisors LLC, *james.hannigan@blackstone.com* and *kevin.michel@blackstone.com;* Simpson Thacher & Bartlett LLP, *ryan.brizek@stblaw.com* and *patrick.quinn@stblaw.com.*

FOR FURTHER INFORMATION CONTACT: Erin Loomis Moore, Senior Counsel, at (202) 551–6721, or Parisa Haghshenas, Branch Chief, at (202) 551–6723 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website at *http://www.sec.gov/rules/iareleases.shtml* or by calling (202) 551–8090.

Applicant's Representations

1. The Trust is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company under the Investment Company Act of 1940 (''1940 Act''). The Trust currently consists of one Fund, Blackstone Alternative Multi-Strategy Fund, which operates under a multi-manager structure and is offered and sold pursuant to a registration statement on Form N–1A. Applicants request that the relief apply to Applicants, as well as to any existing or future series of the Trust, and any other existing or future registered management investment company or series thereof that intends to rely on the requested order in the future and that is managed by the

Adviser[1] (each, a ''Fund,'' and collectively, the ''Funds'').[2]

2. BAIA is a limited liability company organized under the laws of the State of Delaware and is registered with the Commission as an investment adviser under the Advisers Act. The Adviser is an indirect, wholly-owned subsidiary of The Blackstone Group Inc. BAIA serves, and each other Adviser will serve, as the investment adviser to each Fund pursuant to an investment advisory agreement with the Trust (''Investment Management Agreement''). Pursuant to the terms of the Investment Management Agreement, the Adviser, subject to the supervision of the board of trustees of the Trust (''Board''), provides investment management services to the Fund. The Investment Management Agreement provides that the Adviser may, subject to the approval of the Board, including a majority of the Independent Board Members,[3] and the shareholders of the applicable Fund (if required), delegate portfolio management responsibilities of all or a portion of the assets of a Fund to one or more Sub-Advisers.[4] Any future Adviser will be registered with the Commission as an investment adviser under the Advisers Act. Future Advisers will comply with the terms of any order issued by the Commission in connection with the application or subsequent relief or rules, as applicable.

3. Pursuant to the authority under an Investment Management Agreement, the Adviser may enter into Sub-Advisory Agreements with various Sub-Advisers on behalf of a Fund. The Adviser will negotiate and renegotiate the terms of the Sub-Advisory Agreements with the Sub-Advisers, including the fees paid to the Sub-Advisers, and will make recommendations to the Board as needed.

4. Each Sub-Adviser is or will be responsible for the discretionary management of, or for providing non-discretionary advice with respect to, its Allocated Portion of a Fund's assets on a day-to-day basis. In doing so, the Sub-Advisers act for all practical purposes as though each were advising a separate investment company. For example, each Sub-Adviser receives position-level portfolio information for its Allocated Portion, not for the Fund as a whole, on a daily basis and is responsible for compliance monitoring only with respect to the guidelines of its Allocated Portion. In addition, each Sub-Adviser is responsible for preparing information for the Adviser and the Board only with respect to its Allocated Portion. Each Sub-Adviser will be an ''investment adviser'' to the Fund within the meaning of Section 2(a)(20) of the 1940 Act and will provide investment management services to its Allocated Portion of a Fund.[5] Each Sub-Adviser receives separate compensation for its portfolio management services directly from the Adviser.

5. Applicants represent that (i) neither the Sub-Adviser nor any of its affiliates will have sponsored or organized the Trust or will serve as a distributor or principal underwriter of the Trust; (ii) neither the Sub-Adviser nor any of its affiliates will own any shares issued by the Trust; (iii) no officer, director or employee of the Sub-Adviser, nor of its affiliates, will serve as an executive officer or trustee of the Trust; and (iv) neither the Sub-Adviser nor any of its affiliates will be an affiliated person of the Adviser or any other person who provides investment advice with respect to the Trust's advisory relationships (except to the extent that such affiliation may exist by reason of the Sub-Adviser or any of its affiliates serving as investment adviser to the Fund). Services provided by the Sub-Advisers are limited to investment selection, placement of transactions for execution and certain compliance functions directly related to such services.

6. The terms of each Sub-Advisory Agreement or amendment thereto (the ''Performance Fee Terms'') will be approved by the Board, including a majority of the Independent Board Members. The Performance Fee Terms contemplate a fee arrangement, commonly referred to as a ''fulcrum fee'' (the ''Proposed Fulcrum Fee'') designed to reward a Sub-Adviser for performance of the Allocated Portion that exceeds the total return of an index plus an additional hurdle rate and to reduce the Sub-Adviser's compensation with respect to periods during which lesser performance is achieved.[6] Since the Proposed Fulcrum Fee would be paid by the Adviser to a Sub-Adviser, there would be no increase in advisory fee rates charged to a Fund and its shareholders.

7. The Proposed Fulcrum Fee has two separate components: a base fee calculated as a percentage of the average daily net assets of the Allocated Portion (''Base Fee'') and a performance component adjustment to the Base Fee (''Performance Component''). The Performance Component would be based on a percentage of the difference between (i) the total return of the Allocated Portion during the preceding specified period calculated without regard to the expenses incurred in the operation of the Allocated Portion, including the management fees, distribution and/or service fees and certain other operating expenses, even if attributable to the Allocated Portion (''Gross Total Return''), and (ii) the total return of an index during the same specified period plus a performance hurdle. Both the percentage on which the Performance Component is based and the specified period may vary among Sub-Advisers.

8. None of the costs and expenses of the Fund that apply generally across the Fund's portfolio would be deducted from the Gross Total Return of the Allocated Portion. Gross Total Return would, however, reflect the effect (*i.e.,* reducing performance) of all applicable brokerage and transaction costs directly attributable to the Allocated Portion.

Applicants' Legal Analysis

1. Section 205(a)(1) of the Advisers Act generally prohibits an investment

[1] The term ''Adviser'' includes (i) the Adviser or its successors and (ii) any entity controlling, controlled by, or under common control with, the Adviser or its successors. For the purposes of the requested order, ''successor'' is limited to an entity resulting from a reorganization into another jurisdiction or a change in the type of business organization.

[2] All registered investment companies that currently intend to rely on the requested order are named as applicants. All Funds that currently intend to rely on the requested order are identified in the application. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application.

[3] The term ''Independent Board Members'' means those board members who are not ''interested persons'' of the Fund or the Adviser, as defined in Section 2(a)(19) of the 1940 Act. A Fund would not seek shareholder approval of the Sub-Advisory Agreement because the Applicants currently rely on a multi-manager exemptive order to enter into and materially amend Sub-Advisory Agreements without obtaining shareholder approval. *See* Blackstone Alternative Investment Funds, *et al.,* Investment Company Act Release Nos. 32481 (Feb. 16, 2017) (notice) and 32530 (Mar. 13, 2017) (order). In the future, the Adviser, a Sub-Adviser and a Fund may rely on an amended version of this multi-manager exemptive order or substantially similar relief.

[4] The term ''Sub-Adviser'' also applies to any Sub-Adviser to any wholly-owned subsidiary, as defined in the 1940 Act, of a Fund (each, a ''Subsidiary'' and collectively, the ''Subsidiaries''). The Adviser will serve as investment adviser to each Subsidiary and may retain one or more Sub-Advisers to manage or provide investment recommendation(s) with respect to the assets of a Subsidiary. Applicants also request relief with respect to any Sub-Advisers who serve as Sub-Advisers to a Subsidiary. Where appropriate, Subsidiaries are also included in the term ''Fund.''

[5] Each Sub-Adviser and any future Sub-Adviser would be registered with the Commission as an investment adviser under the Advisers Act or not subject to such registration. Each Sub-Adviser and any future Sub-Adviser will comply with the terms and conditions contained in the application.

[6] Each Sub-Adviser manages a sub-strategy of a Fund. As a result, different Sub-Advisers will manage their Allocated Portion to seek to exceed the performance of different indices, which can and will differ from a Fund's benchmark index.

adviser from entering into any investment advisory agreement that provides for compensation to the adviser on the basis of a share of capital gains or capital appreciation of a client's account.

2. Section 205(b) of the Advisers Act provides a limited exception to this prohibition, permitting an adviser to charge a registered investment company and certain other persons a fee that is based on asset value of the company or fund under management averaged over a specified period and increases and decreases ''proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the Commission by rule, regulation or order may specify.''

3. Rule 205–1 under the Advisers Act requires that the investment performance of an investment company be computed based on the change in the net (of all expenses and fees) asset value per share of the investment company.

4. Applicants request exemptive relief from Section 205 of the Advisers Act and rule 205–1 thereunder to the extent necessary to permit the Adviser to enter into and amend Sub-Advisory Agreements to provide for the payment by the Adviser to a Sub-Adviser of performance-based compensation under which the Sub-Adviser's fee would (i) be calculated based on the performance of the Allocated Portion measured by the change in the Allocated Portion's gross asset value, rather than the change in net asset value of the Allocated Portion, and (ii) apply only to the Allocated Portion and not to the Fund as a whole.

5. Applicants state that Congress, in adopting and amending Section 205 of the Advisers Act, and the SEC, in adopting rule 205–1, put into place safeguards designed to ensure that investment advisers would not take advantage of advisory clients.

6. Applicants assert that the Commission required that performance fees be calculated based on the net asset value of the investment company's shares to prevent a situation where an adviser could earn a performance fee even though investment company shareholders did not derive any benefit from the adviser's performance after the deduction of fees and expenses.

7. Applicants state that the Proposed Fulcrum Fee would be fair to each Fund and its shareholders because the fee will be paid by the Adviser and not borne by shareholders as an expense of the Fund out of the assets of the Fund. In addition, the fee formula will include a performance hurdle that the Sub-Adviser must meet before earning the Performance Component of the Proposed Fulcrum Fee. In the event the Base Fee changes, the performance hurdle also would be changed to the extent necessary to be at least equal to the Base Fee. Further, the Sub-Adviser would not earn any performance-based fee until a Fund has derived the benefit of the Allocated Portion's performance.

8. Applicants suggest that Congress' concern, in enacting the safeguards of Section 205, came about because the vast majority of investment advisers exercised a high level of control over the structuring of the advisory relationship. Applicants state that the Proposed Fulcrum Fee will be the result of arm's length negotiations between a Sub-Adviser and the Adviser and the Board will approval each Proposed Fulcrum Fee. Applicants state that the Sub-Adviser has no influence over the overall management of the Trust or the Fund beyond the investment selection process for its Allocated Portion. Management functions of the Trust and the Fund reside in the Board and the Adviser. The Proposed Fulcrum Fee will be paid by the Adviser to the Sub-Adviser and its imposition will not increase advisory fees payable by the Fund. The Proposed Fulcrum Fee requires the performance of the Allocated Portion to both match the index and exceed a performance hurdle before the Sub-Adviser is entitled to receive any performance-based component of its fee. Applicants represent that the Trust itself, acting through its Board and its officers, is directly and fully responsible for supervising the Trust's service providers (including the Sub-Advisers) and monitoring the operating expenses of each of the Funds. In addition, for those Funds, including Blackstone Alternative Multi-Strategy Fund, which are served by more than one Sub-Adviser, the Adviser is responsible for allocating the assets of the Fund among such Sub-Advisers. Finally, the Board, at the Adviser's recommendation, is responsible for any decision to hire or fire any Sub-Adviser.

9. Applicants state that the Adviser was and is on equal footing with the Sub-Adviser with respect to the negotiation of the Proposed Fulcrum Fee. Moreover, the Sub-Adviser will receive its sub-advisory fee from the Adviser and not from a Fund, meaning that the requested relief would not cause the advisory fee rates charged to a Fund to increase. Applicants argue that as a result, a Fund does not need the protections afforded by calculating the Proposed Fulcrum Fee based on net assets. Applicants submit that the Proposed Fulcrum Fee is therefore consistent with the underlying policies of Section 205 and rule 205–1 under the Advisers Act and that the exemption would be consistent with the protection of investors.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Management fees charged to a Fund will not increase as a result of calculating the investment sub-advisory fee based on Gross Total Return.

2. The adoption of the Proposed Fulcrum Fee will not cause the Adviser or a Sub-Adviser to reduce or modify in any way the nature and level of its services with respect to a Fund.

3. The investment sub-advisory fee will be negotiated between the Sub-Adviser and the Adviser.

4. The fee structure will contain a hurdle that is no lower than the Base Fee and, should the Base Fee change, the hurdle will also be changed to the extent necessary to be at least equal to the Base Fee. The fee structure will ensure that the investment sub-advisory fee continues to have the potential to increase and decrease proportionally.

5. Applicants will comply with all other provisions of Section 205 and rules 205–1 and 205–2 under the Advisers Act with respect to the Proposed Fulcrum Fee arrangement between the Adviser and a Sub-Adviser and to future arrangements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16712 Filed 7–31–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89418; File No. 4–518]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan Establishing Procedures Under Rule 605 of Regulation NMS To Add the MEMX LLC as a Participant

July 29, 2020.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] notice is hereby given that on July 6, 2020, MEMX LLC (''MEMX'' or

[1] 15 U.S.C 78k–1(a)(3).

[2] 17 CFR 242.608.

''Exchange'') filed with the Securities and Exchange Commission (''Commission'')[3] an amendment to the national market system plan establishing procedures under Rule 605 of Regulation NMS (''Plan'').[4] The amendment adds MEMX as a Participant[5] to the Plan. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Description and Purpose of the Plan Amendment

As noted above, the sole proposed amendment to the Plan is to add the Exchange as a Participant. On May 4, 2020, the Commission issued an order granting MEMX's application for registration as a national securities exchange.[6] A condition of the Commission's approval was the requirement for MEMX to join the Plan.

Under Section II(c) of the Plan, any entity registered as a national securities exchange or national securities association under the Act may become a Participant by: (i) Executing a copy of the Plan, as then in effect; (ii) providing each then-current Participant with a copy of such executed Plan; and (iii) effecting an amendment to the Plan as specified in Section III(b) of the Plan. Section III(b) of the Plan sets forth the process for a prospective new Participant to effect an amendment of the Plan. Specifically, the Plan provides that such an amendment to the Plan may be effected by the new national securities exchange or national securities association by executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(a) of the Plan and the new Participant's single-digit code in Section VI(a)(1) of the Plan) and submitting such executed Plan to the Commission. The amendment will be effective when it is approved by the Commission in accordance with Rule 608 of Regulation NMS, or otherwise becomes effective pursuant to Rule 608 of Regulation NMS.

MEMX has executed a copy of the Plan currently in effect, with the only changes being the addition of its name in Section II(a) of the Plan and adding its single-digit code in Section VI(a)(1) of the Plan, and has provided a copy of the Plan executed by MEMX to each of the other Participants. MEMX has also submitted the executed Plan to the Commission. Accordingly, all of the Plan requirements for effecting an amendment to the Plan to add MEMX as a Participant have been satisfied.

II. Effectiveness of the Proposed Plan Amendment

The foregoing Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) of the Act[7] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,[8] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment 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 4–518 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number 4–518. 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 plan amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MEMX. 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 4–518 and should be submitted on or before August 24, 2020.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16806 Filed 7–31–20; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Letter from Anders Franzon, General Counsel, MEMX LLC, to Vanessa A. Countryman, Secretary, Commission, dated July 6, 2020.

[4] 17 CFR 242.605. On April 12, 2001, the Commission approved a national market system plan for the purpose of establishing procedures for market centers to follow in making their monthly reports available to the public under Rule 11Ac1–5 under the Act (n/k/a Rule 605 of Regulation NMS). *See* Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

[5] The term ''Participant'' is defined as a party to the Plan.

[6] *See* Securities Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

[7] 17 CFR 242.608(b)(3)(iii).

[8] 17 CFR 242.608(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33958; File No. 812–15057]

Morgan Stanley Direct Lending Fund, et al.

July 28, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated funds.

Applicants: Morgan Stanley Direct Lending Fund (''MS BDC''), MS Capital Partners Adviser Inc. (''MS Adviser''),

NH Credit Partners III Holdings L.P., NH Expansion Credit Fund Holdings LP, North Haven Credit Partners II L.P., North Haven Credit Partners III L.P., North Haven Senior Loan Fund (ALMA) Designated Activity Company, North Haven Senior Loan Fund L.P., North Haven Senior Loan Fund Offshore L.P., North Haven Senior Loan Fund Unleveraged Offshore L.P., North Haven Tactical Value Fund (AIV) LP, North Haven Tactical Value Fund LP, North Haven Unleveraged Senior Loan Fund (Yen) L.P., NH Senior Loan Fund Offshore Holdings L.P., NH Senior Loan Fund Onshore Holdings LLC, and DLF CA SPV LLC (''MS BDC Sub'').

Filing Dates: The application was filed on August 9, 2019, and amended on December 20, 2019, April 3, 2020 and May 21, 2020.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on August 24, 2020, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Mr. Mustufa Salehbhai, Executive Director, *Mustufa.Salehbhai@morganstanley.com.*

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811 or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The applicants request an order of the Commission under sections 17(d) and 57(i) of the Act and rule 17d–1 thereunder (the ''Order'') to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), a Regulated Fund [1] and one or more other Regulated Funds and/or one or more Affiliated Funds [2] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub (as defined below)) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds (or its Wholly-Owned Investment Sub) in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds (or its Wholly-Owned Investment Sub) without obtaining and relying on the Order.[3]

Applicants

2. MS BDC is a non-diversified, closed-end management investment company incorporated in Delaware that will elect to be regulated as a BDC under the Act.[4] The Board [5] of MS BDC currently consist of six directors, four of whom are Independent Directors.[6]

3. MS Adviser, a corporation under the laws of the state of Delaware, is registered with the Commission as an investment adviser under the Advisers Act. MS Adviser is a wholly-owned subsidiary of Morgan Stanley, a global financial services firm that through its subsidiaries and affiliates, advises, originates, trades, manages and distributes capital for governments, institutions and individuals. Morgan Stanley is a bank holding company structured as a Delaware corporation that controls the MS Adviser.

4. MS BDC Sub is a wholly-owned subsidiary of MS BDC formed specifically for the purpose of procuring financing or otherwise holding investments.

5. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[7] Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

Applicants' Representations

A. Allocation Process

6. Applicants represent that the Adviser will establish processes for allocating initial investment

[1] ''Regulated Funds'' means MS BDC and the Future Regulated Funds. ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser (and sub-adviser, if any) is an Adviser, and (c) that intends to participate in the Co-investment Program.

''Adviser'' means the MS Adviser, together with any future investment adviser that (a) is controlled by the MS Adviser, (b) (i) is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') or (ii) is a relying adviser of an investment adviser that is registered under the Advisers Act, and that is controlled by the MS Adviser, and (c) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[2] ''Affiliated Fund'' means any entity (a) whose investment adviser (and sub-adviser(s), if any) is an Adviser, (b) that either (i) would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act or (ii) relies on rule 3a–7 under the Act, and (c) that intends to participate in the Co-Investment Program.

[3] All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with its terms and Conditions set forth in the application.

[4] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[5] ''Board'' means the board of directors (or the equivalent) of a Regulated Fund.

[6] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in section 2(a)(19) of the Act. No Independent Director of a Regulated Fund (including any non-interested member of an Independent Party) will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[7] ''Wholly-Owned Investment Sub'' means the MS BDC Sub or an entity (i) that is wholly-owned by a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 100% or more of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and in the case of an SBIC Subsidiary, maintain a license under the Small Business Investment Act of 1958 (''SBA Act'') and issue debentures guaranteed by the Small Business Administration (''SBA'')); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions; and (iv) that (a) would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, or (b) that relies on Rule 3a–7 under the Act. ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the SBA to operate under the SBA Act as a small business investment company.

opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

7. Opportunities for Potential Co-Investment Transactions may arise when investment advisory personnel of an Adviser becomes aware of investment opportunities that may be appropriate for one or more Regulated Funds and/or one or more Affiliated Funds. If the requested Order is granted, the Adviser will establish, maintain and implement policies and procedures reasonably designed to ensure that, when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Advisers considering the opportunity for their clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies [8] and any Board-Established Criteria [9] of a Regulated Fund, the policies and procedures will require that the relevant portfolio managers, as well as the teams and committees of portfolio managers, analysts and senior management (''Investment Teams'' and ''Investment Committees'') responsible for that Regulated Fund receive sufficient information to allow the Regulated Fund's Adviser to make its independent determination and recommendations under the Conditions. The Adviser to each applicable Regulated Fund, working through the applicable portfolio manager, or in conjunction with any applicable Investment Team or Investment Committee, will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will, working through the applicable portfolio manager, or in conjunction with any applicable Investment Team or Investment Committee, formulate a recommendation regarding the proposed order amount for the Regulated Fund.

8. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the Adviser, working through the applicable portfolio manager, or in conjunction with any applicable Investment Team or Investment Committee, will approve an investment amount. Prior to the External Submission (as defined below), each proposed order amount may be reviewed and adjusted, in accordance with the applicable Advisers' written allocation policies and procedures, by the Morgan Stanley Private Credit Allocation Committee, on which senior management and the Adviser's chief compliance officer participate.[10] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[11]

9. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[12] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.[13]

B. Follow-On Investments

10. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments [14] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

11. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[15] If the Regulated

[8] ''Objectives and Strategies'' means (i) with respect to any Regulated Fund, its investment objectives and strategies, as described in its most current filings with the Commission under the Securities Act of 1933 (''Securities Act'') or under the Securities Exchange Act of 1934, and the Act, and its most current report to stockholders.

[9] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify their approval of any Board-Established Criteria, though applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

[10] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of each Adviser.

[11] ''Required Majority'' means a required majority, as defined in section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

[12] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions.

''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under section 57(o) of the Act (treating any registered investment company or series thereof as a BDC for this purpose).

[13] The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with Condition 2, 6, 7, 8 or 9, as applicable.

[14] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[15] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that: (a) Were acquired prior to participating in any Co-Investment Transaction; (b) were acquired in transactions in which the only

Continued

Funds and Affiliated Funds had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

12. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment [16] or (ii) a Non-Negotiated Follow-On Investment.[17] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

13. Applicants propose that Dispositions [18] would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[19]

14. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition [20] or (ii) the securities are Tradable Securities [21] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

15. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitments of the Affiliated Funds and Regulated Funds are made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

16. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the Condition. Applicants believe that this Condition will ensure that the Independent Directors will act independently in evaluating Co-Investment Transactions,

term negotiated by or on behalf of such funds was price; and (c) were acquired either (i) in reliance on one of the JT No-Action Letters (defined below); or (ii) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

[16] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[17] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters.

''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

[18] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

[19] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[20] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[21] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly. The Independent Directors shall evaluate and approve any independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d–1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by rule 17d–1 and/or section 57(b), as modified by rule 57b–1 thereunder, as applicable, vis-à-vis each participating Regulated Fund. Because an Adviser will be the investment adviser (and sub-adviser, if any) to each Affiliated Fund and Regulated Fund, the Advisers, a Regulated Fund and the Affiliated Funds may be deemed to be a person related to each other Regulated Fund in a manner described by section 57(b) (or section 17(d) in the case of Regulated Funds that are registered under the Act). Thus, each Regulated Fund and each Affiliated Fund could be deemed to be a person related to a Regulated Fund, in a manner described by section 57(b) and related to the other Regulated Funds in a manner described by rule 17d–1; and therefore the prohibitions of rule 17d–1 and section 57(a)(4) (or Section 17(d) in the case of Regulated Funds that are registered under the Act) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds. Further, because the Wholly-Owned Investment Subs are controlled by the Regulated Funds, the Wholly-Owned Investment Subs are subject to section 57(a)(4) (or section 17(d) in the case of Wholly-Owned Investment Subs controlled by Regulated Funds that are registered under the Act) and thus also subject to the provisions of rule 17d–1.

4. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the

Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) The interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitments of the Affiliated Funds and Regulated Funds are made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [22] financial benefit to the Advisers, any other Regulated Funds, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[23] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[24]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) The Adviser to such Regulated Fund or Affiliated Fund, as applicable, will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Funds.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) (A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition; [25] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all

[22] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[23] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[24] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate.

''Close Affiliate'' means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in section 57(b) (after giving effect to rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in section 57(b) to section 2(a)(3)(D).

''Remote Affiliate'' means any person described in section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

[25] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund or Affiliated Fund, as applicable, will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i) The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by section 57 or rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements:* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds and any other Regulated Funds;

(ii) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial [26] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund, as applicable, will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i) (A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[27] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition, the Eligible Directors must complete this review of the proposed Follow-On

[26] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

[27] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund, as applicable, will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance.

(d) The Independent Directors (including the non-interested members of each Independent Party) will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under section 57(f).

12. *Director Independence.* No Independent Director (including the non-interested members of any Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[28] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16830 Filed 7–31–20; 8:45 am]

BILLING CODE 8011–01–P

[28] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33959; 812–14997]

1WS Credit Income Fund, et al.

July 28, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by section 17(d) of the Act and under rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed–end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: 1WS Credit Income Fund (''1WS'' or the ''Existing Regulated Fund''), 1WS Capital Advisors, LLC (''1WS Capital'' or the ''Existing 1WS Adviser''), the investment adviser to 1WS, on behalf of itself and its successors,[1] One William Street Capital Master Fund, Ltd., OWS Credit Opportunity Master Fund, Ltd., OWS ABS Master Fund II, LP, OWS COF I Master, L.P., OWS ABS IV, LP, OWS Global Fixed Income Fund (USD-Hedged), Ltd., OWS Credit Opportunity Fund, L.P., One William Street Capital Partners, L.P., One William Street Capital Partners II, L.P., One William Street Capital Offshore Fund, Ltd., OWS Capital Offshore Fund II, Ltd, One William Street Capital Intermediate Fund, L.P., OWS Credit Opportunity Offshore Fund, Ltd., OWS Credit Opportunity Offshore Fund II, Ltd, OWS Credit Opportunity Offshore Fund III, Ltd, OWS Credit Opportunity Intermediate Fund, LP, OWS Credit Opportunity I, LLC, OWS COF I, Ltd., OWS ABS Fund II, Ltd. and OWS ABS Fund V, Ltd.

FILING DATES: The application was filed on January 11, 2019, and amended on May 21, 2019, June 17, 2019, and May 29, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on August 24, 2020, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request

[1] The term ''successor,'' as applied to the Adviser, means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: c/o Kurt A. Locher, 1WS Capital Advisors, LLC, *legal@owslp.com.*

FOR FURTHER INFORMATION CONTACT: Asaf Barouk, Attorney Adviser, at (202) 551–4029 or David Nicolardi, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. 1WS is a Delaware statutory trust, registered as a non-diversified, closed–end management investment company that has elected to operate as an interval fund pursuant to Rule 23c-3 under the Act. 1WS' Objectives and Strategies [2] are to seek attractive risk-adjusted total returns through generating income and capital appreciation. The Board [3] of 1WS is comprised of 3 trustees, 2 of whom are Non-Interested Trustees.[4]

2. 1WS Capital is an investment adviser that is registered with the Commission under the Investment Advisers Act of 1940 (the ''Advisers Act''). 1WS Capital is controlled by its sole managing member, One William Street Capital Management, L.P. 1WS Capital serves as investment adviser to 1WS and manages 1WS' portfolio in accordance with 1WS' Objectives and Strategies.

3. An Existing Affiliated Fund is an entity whose investment adviser is One William Street Capital Management, L.P., the managing member of 1WS Adviser and that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.[5]

4. Applicants seek an order (''Order'') to permit one or more Regulated Funds [6] and/or one or more Affiliated Funds [7] to participate in the same investment opportunities through a proposed co-investment program (the ''Co-Investment Program'') where such participation would otherwise be prohibited under section 17(d) and rule 17d–1 by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Adviser negotiates terms in addition to price (''Private Placement Securities'') [8] and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers (''Follow-On Investments''). ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub (as defined below) participates together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[9]

5. Applicants state that any of the Regulated Funds may, from time to time, form a special purpose subsidiary (a ''Wholly-Owned Investment Sub'').[10] With respect to each Wholly-Owned Investment Sub, such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of rule 17d–1 of the Act. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

6. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Regulated Fund's Board would make all relevant determinations under the Conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Regulated Fund's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.[11]

7. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Adviser will consider only the Objectives and Strategies, investment policies,

[2] ''Objectives and Strategies'' means a Regulated Fund's investment objectives and strategies, as described in the Regulated Fund's most current registration statement on Form N–2 or, as applicable, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the ''1933 Act''), or under the Securities Exchange Act of 1934, as amended, and the Regulated Fund's reports to shareholders.

[3] The term ''Board'' refers to the board of directors or trustees of any Regulated Fund.

[4] The term ''Non-Interested Trustees'' refers to the trustees of any Regulated Fund who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act.

[5] ''1WS Adviser'' means the Existing 1WS Adviser, or its managing member, One William Street Capital Management, L.P., and any current or future investment adviser that (i) controls, is controlled by, or is under common control with 1WS Capital, (ii) is registered as an investment adviser under the Advisers Act, and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund. The term ''Adviser'' means any 1WS Adviser.

[6] ''Regulated Fund'' means the Existing Regulated Fund and any Future Regulated Fund. ''Future Regulated Fund'' means any closed–end management investment company (a) that is registered under the Act, (b) whose investment adviser is 1WS Adviser or its managing member, One William Street Capital Management, L.P., and (c) that intends to participate in the Co-Investment Program.

[7] ''Affiliated Funds'' means the Existing Affiliated Funds and any Future Affiliated Fund. ''Future Affiliated Fund'' means any entity (a) whose investment adviser is a 1WS Adviser, (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program.

[8] The term ''private placement transactions'' means transactions in which the offer and sale of securities by the issuer are exempt from registration under the 1933 Act, as amended.

[9] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[10] The term ''Wholly-Owned Investment Sub'' means an entity (a) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (b) whose sole business purpose is to hold one or more investments on behalf of the Regulated Fund; (c) with respect to which the Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (d) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. Any future subsidiaries of the Regulated Funds that participate in Co-Investment Transactions will be Wholly-Owned Investment Subs.

[11] The participation of a Regulated Fund in a Potential Co-Investment Transaction may only be approved by both a majority of the trustees of the Board who have no financial interest in such transaction, plan, or arrangement and a majority of such trustees of the Board who are Non-Interested Trustees (a ''Required Majority'') eligible to vote on that Co-Investment Transaction (the ''Eligible Trustees'').

investment positions, capital available for investment (''Available Capital''),[12] and other pertinent factors applicable to that Regulated Fund. The Board of each Regulated Fund, including the Non-Interested Trustees, has determined that it is in the best interests of the Regulated Fund to participate in Co-Investment Transactions.[13]

8. Other than pro rata dispositions and Follow-On Investments as provided in Conditions 7 and 8, and after making the determinations required in Conditions 1 and 2(a), the Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the Eligible Trustees, and the Required Majority will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

9. With respect to the pro rata dispositions and Follow-On Investments provided in Conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) the proposed participation of each Regulated Fund and Affiliated Fund in such disposition or Follow on Investment is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Trustees. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Trustees.

10. No Non-Interested Trustee of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

11. If the Adviser, the Principals,[14] or any person controlling, controlled by, or under common control with the Adviser or the Principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as required under Condition 14. Applicants believe that this Condition will ensure that the Non-Interested Trustees will act independently in evaluating the Co-Investment Program, because the ability of the Adviser or the Principals to influence the Non-Interested Trustees by a suggestion, explicit or implied, that the Non-Interested Trustees can be removed will be limited significantly. The Non-Interested Trustees shall evaluate and approve any such independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

2. Applicants state that in the absence of the requested relief, in some circumstances, the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions set forth in the application ensure that the proposed Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants believe that the participation of the Regulated Funds in Co-Investment Transactions done in accordance with the Conditions would be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that was not different from, or less advantageous than, the other participants.

Applicants' Conditions

Applicants agree that the Order granting the requested relief shall be subject to the following Conditions:

1. Each time a 1WS Adviser considers a Potential Co-Investment Transaction for an Affiliated Fund or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Adviser will make an independent determination of the appropriateness of the investment for such Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Trustees of each participating Regulated Fund with information concerning each participating party's Available Capital to assist the Eligible Trustees with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in Conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Trustees of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Funds' participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated

[12] The amount of each Regulated Fund's Available Capital will be determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset class mix and other investment policies and restrictions set from time to time by the Board of the applicable Regulated Fund or imposed by applicable laws, rules, regulations or interpretations.

[13] The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

[14] Certain employees and principals of 1WS Adviser (collectively, the ''Principals'').

Fund or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the shareholders of the Regulated Fund; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of other Regulated Funds or Affiliated Funds; provided that, if any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this Condition (2)(c)(iii), if:

(A) The Eligible Trustees will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person of any Affiliated Fund or any Regulated Fund receives in connection with the right of an Affiliated Fund or a Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Adviser, the Affiliated Funds or the other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 13, (B) to the extent permitted by section 17(e) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with Condition 8,[15] a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Affiliated Fund, or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 6, if Conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Adviser will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and Regulated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this Condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8. (a) If any Affiliated Fund or any Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Adviser will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in

[15] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, then the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the maximum amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. The Non-Interested Trustees of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Trustees may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions of the Order. In addition, the Non-Interested Trustees will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a business development company (as defined in section 2(a)(48) of the Act) and each of the investments permitted under these Conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Trustee of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with the Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee [16] (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the agreement between the Adviser and the Regulated Fund or Affiliated Fund.

14. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares (i) as directed by an independent third party, or (ii) in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable state law affecting the Board's composition, size or manner of election.

15. Each Regulated Fund's chief compliance officer, as defined in rule 38a-1(a)(4) under the Act, will prepare an annual report for its Board that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16714 Filed 7–31–20; 8:45 am]

BILLING CODE 8011–01–P

[16] Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89413; File No. SR–NASDAQ–2020–044]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt Listing Rule IM–5900–8 To Offer a Complimentary Global Targeting Tool to Acquisition Companies Listed Pursuant to Nasdaq IM–5101–2 that Have Publicly Announced Entering Into a Binding Agreement for a Business Combination

July 28, 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 July 15, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Listing Rule IM–5900–8 to offer a complimentary global targeting tool to an Acquisition Company that has announced a business combination.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2009 Nasdaq adopted a rule (IM–5101–2) to impose additional listing requirements on a company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time (''Acquisition Companies'').[3] Based on experience listing these companies, Nasdaq proposes to adopt Listing Rule IM–5900–8 to offer a complimentary global targeting tool to an Acquisition Company that has publicly announced a business combination.

Generally, Nasdaq will not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies. However, in the case of an Acquisition Company, Nasdaq will permit the listing if the company meets all applicable initial listing requirements, as well as the additional conditions described in IM–5101–2. These additional conditions generally require, among other things, that at least 90% of the gross proceeds from the initial public offering must be deposited in a ''deposit account,'' as that term is defined in the rule, and that the company complete within 36 months, or a shorter period identified by the company, one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account at the time of the agreement to enter into the initial combination.

Acquisition Companies do not have operating businesses and tend to trade infrequently and in a tight range until the company completes an acquisition. Therefore, these companies do not generally need shareholder communication services, market analytic tools or market advisory tools and, upon listing, these companies do not receive complimentary services from Nasdaq under IM–5900–7, even if they list on the Nasdaq Global or Global Select Markets.[4]

However, over time Nasdaq observed that once an Acquisition Company publicly announces a business combination with an operating company, the Acquisition Company needs to identify and target investors appropriate for the new business. Specifically, once the Acquisition Company identifies the operating business it plans to acquire, the Acquisition Company needs to focus on targeting investors who are interested in investing in the future business operations or the industry of the acquired business. Such investor targeting may help the Acquisition Company convey the long-term vision of the acquired business to investors and thus attract new investors and diminish potential redemptions at the time of the business combination with the operating company.[5]

To that end, Nasdaq proposes to offer Acquisition Companies listed on Nasdaq a complimentary global targeting tool,[6] following the public announcement that the company entered into a binding agreement for the business combination intended to satisfy the conditions in Listing Rule IM–5101–2(b) until 60 days following the completion of the business combination or such time that the Acquisition Company publicly announces that such agreement is terminated.[7]

Through the global targeting tool, Nasdaq investor targeting specialists will help focus the Company's investor relations efforts on appropriate investors, tailor messaging to their interests and measure the Company's impact on their holdings. The analyst team will help develop a detailed plan aligning the targeting efforts with the Company's long-term ownership strategy. Analysis includes addressable risks and opportunities by region and investor type, and recommendations for where to focus time. This service has a retail value of approximately $44,000 per year.

Nasdaq believes that the proposed complimentary services would provide an incentive to the Acquisition Companies to list on Nasdaq. Nasdaq also believes it is reasonable to balance its need to remain competitive with other listing venues, while at the same time ensuring adequate revenue to meet its regulatory responsibilities. Nasdaq notes that no other company will be required to pay higher fees as a result of the proposed amendments and represents that providing this service will have no impact on the resources available for its regulatory programs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Exchange Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the

[3] Securities Exchange Act Release No. 58228 (July 25, 2008), 73 FR 44794 (July 31, 2008) (adopting the predecessor to IM–5101–2).

[4] *See* Securities Exchange Act Release No. 79366 (November 21, 2016), 81 FR 85663 (November 28, 2016). A former Acquisition Company is eligible to receive services under IM–5900–7 when it lists on the Nasdaq Global or Global Select Market in conjunction with a business combination that satisfies the conditions in IM–5101–2(b).

[5] The Acquisition Company's shareholders have the right to redeem their shares for a pro rata share of that trust in conjunction with the business combination. *See* IM–5101–2(d) and (e).

[6] The global targeting tool would be offered through Nasdaq Corporate Solutions, LLC, an affiliate of Nasdaq.

[7] Nasdaq offers certain complimentary services under IM–5900–7, based on market capitalization, to companies listing on the Nasdaq Global and Global Select Markets in connection with an initial public offering (other than an Acquisition Company), upon emerging from bankruptcy, in connection with a spin-off or carve-out from another company, or in conjunction with a business combination that satisfies the conditions in Nasdaq IM–5101–2(b) and to companies (other than an Acquisition Company) switching their listing from the New York Stock Exchange to the Global or Global Select Markets. Nasdaq does not currently offer complimentary services to companies listing on the Nasdaq Capital Market or Acquisition Companies listing on any market tier. *See* IM–5900–7. Accordingly, in certain circumstances, for a short period following the business combination, a company may be eligible to receive services under IM–5900–7 and proposed IM–5900–8.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Nasdaq also believes that the proposed rule change is consistent with the provisions of Sections 6(b)(4),[10] 6(b)(5),[11] and 6(b)(8),[12] in that the proposal is designed, among other things, to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between issuers, and that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Nasdaq faces competition in the market for listing services,[13] and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition. In particular, Nasdaq believes that it is reasonable to enhance its competitive offering by providing all Acquisition Companies with a complimentary global targeting tool, following the public announcement of the business combination intended to satisfy the conditions in Listing Rule IM–5101–2(b) until 60 days following the completion the business combination or such time that the Acquisition Company publicly announces that such agreement is terminated.

Nasdaq believes it is reasonable, and not unfairly discriminatory, to offer the global targeting tool to Acquisition Companies following the public announcement of the business combination that is intended to satisfy the conditions in Listing Rule IM–5101–2(b) because at such time Acquisition Companies will have increased need to focus on identifying and communicating with its shareholders and prospective investors. Once the Acquisition Company identifies the operating business it plans to acquire, the Acquisition Company needs to focus on targeting investors who are interested in investing in the acquired business. Such investor targeting may help the Acquisition Company convey the long-term vision of the acquired business to the investors and thus diminish potential redemptions at the time of the business combination with the operating company. Nasdaq also believes that such diminished redemptions may help Acquisition Companies remain in compliance with other listing requirements, including the shareholder requirement for continued listing.[14]

At this time in the Acquisition Company's lifecycle, the companies are transitioning to the traditional operating company model and the complimentary global targeting tool will help ease that transition. In addition, these companies will be eligible to receive this service for the first time, and offering the complimentary global targeting tool will provide Nasdaq Corporate Solutions with the opportunity to demonstrate the value of its services and forge a relationship with the company at a time when the new operating company is choosing its service providers. For these reasons, Nasdaq believes it is not an inequitable allocation of fees nor unfairly discriminatory to offer the global targeting tool to Acquisition Companies following the public announcement of such business combination. In addition, Nasdaq believes it is not an inequitable allocation of fees nor unfairly discriminatory to offer Acquisition Companies a complimentary global targeting tool for 60 days following the completion the business combination because it would allow for a smooth transition to the traditional operating company model and avoid disruption of the service during such transaction.

The Commission has previously indicated pursuant to Section 19(b) of the Exchange Act [15] that providing and updating the values of the services within the rule is necessary,[16] and Nasdaq does not believe this indication of value has an effect on the allocation of fees nor does it permit unfair discrimination, as all Acquisition Companies will receive the same services. Further, this provision will enhance the transparency of Nasdaq's rules and the value of the services it offers Acquisition Companies, thus promoting just and equitable principles of trade. As such, the proposed rule change is consistent with the requirements of Section 6(b)(4) and (5) of the Exchange Act.

Nasdaq represents, and this proposed rule change will help ensure, that individual listed companies are not given specially negotiated packages of products or services to list, or remain listed, which the Commission has previously stated would raise unfair discrimination issues under the Exchange Act.[17]

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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, as amended. As noted above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. The proposed rule change reflects that competition, but does not impose any burden on the competition with other exchanges. Rather, Nasdaq believes the proposed changes will result in Acquisition Companies being eligible to receive the global targeting tool and therefore will enhance competition for new listings of Acquisition Companies.

Other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders. Accordingly, Nasdaq does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

Nasdaq also notes that Nasdaq Corporate Solutions competes with other service providers in providing services like the global targeting tool. To the extent that these other providers believe that Nasdaq offering a complimentary services for a limited time creates a competitive burden on their offerings, they are able to craft a similar program to attract Acquisition Companies to their services.

[10] 15 U.S.C. 78f(4).

[11] 15 U.S.C. 78f(5).

[12] 15 U.S.C. 78f(8).

[13] The Justice Department has noted the intense competitive environment for exchange listings. *See* ''NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit'' (May 16, 2011), available at *http://www.justice.gov/atr/public/press_releases/2011/271214.htm.*

[14] Listing Rule 5450(a)(2) requires at least 400 Total Holders for continued listing on the Nasdaq Global Market. Listing Rule 5550(a)(3) requires at least 300 Public Holders for continued listing on the Nasdaq Capital Market.

[15] 15 U.S.C. 78s(b).

[16] *See* Exchange Act Release No. 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (SR–NASDAQ–2014–058) (footnote 39 and accompanying text: ''We would expect Nasdaq, consistent with Section 19(b) of the Exchange Act, to periodically update the retail values of services offered should they change. This will help to provide transparency to listed companies on the value of the free services they receive and the actual costs associated with listing on Nasdaq.'')

[17] *See* Exchange Act Release No. 79366, 81 FR 85663 at 85665 (citing Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE–2011–20)).

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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–2020–044 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–2020–044. 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–2020–044, and should be submitted on or before August 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

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[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89420; File No. 4–631]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan To Address Extraordinary Market Volatility To Add MEMX LLC as a Participant

July 29, 2020.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on July 6, 2020, MEMX LLC (''MEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan to Address Extraordinary Market Volatility (''LULD Plan'' or ''Plan'') as a Participant.[3] The amendment adds MEMX as a Participant[4] to the LULD Plan. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Description and Purpose of the Amendment

As noted above, the sole proposed amendment to the LULD Plan is to add the Exchange as a Participant. On May 4, 2020, the Commission issued an order granting MEMX's application for registration as a national securities exchange.[5] A condition of the Commission's approval was the requirement for MEMX to join the Plan.

Under Section II(C) of the LULD Plan, any entity registered as a national securities exchange or national securities association under the Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III (B) of the Plan. Section III(B) of the LULD Plan sets forth the process for a prospective new Participant to effect an amendment of the Plan. Specifically, the LULD Plan provides that such an amendment to the Plan may be effected by the new national securities exchange or national securities association by executing a copy of the Plan as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan); and submitting such executed Plan to the Commission. The amendment will be effective when it is approved by the Commission in accordance with Rule 608 of Regulation NMS, or otherwise becomes effective pursuant to Rule 608 of Regulation NMS.

MEMX has become a participant in the applicable Market Data Plans,[6] executed a copy of the Plan currently in effect, with the only change being the addition of its name in Section II(A) of the Plan, and has provided a copy of the Plan executed by MEMX to each of the other Participants. MEMX has also submitted the executed Plan to the Commission. Accordingly, all of the Plan requirements for effecting an

[1] 15 U.S.C. 78k-1(a)(3).

[2] 17 CFR 242.608.

[3] *See* Letter from Anders Franzon, General Counsel, MEMX, dated July 6, 2020, to Vanessa A. Countryman, Secretary, Commission. On May 6, 2012, the Commission issued an order approving the Plan on a pilot basis (the ''Approval Order''). *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The Commission approved the LULD Plan on a permanent basis on April 11, 2019. *See* Securities Exchange Act Release No. 85623, 84 FR 16086 (April 17, 2019).

[4] Defined in Section I(K) of the Plan as follows: ''Participant'' means a Party to the Plan.

[5] *See* Securities Exchange Act Release No. 88806, 85 FR 27451 (May 8, 2020).

[6] *See* Letter from Robert Books, Chairman, Operating Committee, CTA/CQ Plans, to Vanessa A. Countryman, Secretary, Commission, dated June 29, 2020 to Vanessa A. Countryman, Secretary, SEC (relating to Thirty-Fourth Substantive Amendment to the Second Restatement of the CTA Plan and Twenty-Fifth Substantive Amendment to the Restated CQ Plan adding MEMX as a participant) and letter from Robert Books, Chairman, Operating Committee, UTP Plan, to Vanessa A. Countryman, Secretary, Commission, dated June 29, 2020 (relating to Forty-Eighth Amendment to the UTP Plan adding MEMX as a participant).

amendment to the Plan to add MEMX as a Participant have been satisfied.

II. Effectiveness of the Proposed Amendment

The foregoing Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) [7] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,[8] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment 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 4–631 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 4–631. 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 plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 20549–1090 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 4–631 and should be submitted on or before August 24, 2020.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16808 Filed 7–31–20; 8:45 am]

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[7] 17 CFR 242.608(b)(3)(iii).

[8] 17 CFR 242.608(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89409; File No. SR–ICEEU–2020–005]

Self-Regulatory Organizations; ICEEU Limited; Order Approving Proposed Rule Change Relating to Amendments to the ICEEU Clearing Rules

July 28, 2020.

I. Introduction

On June 2, 2020, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise its Clearing Rules (the ''Rules'') [3] to account for default insurance proceeds. The proposed rule change was published for comment in the **Federal Register** on June 18, 2020.[4] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICE Clear Europe proposes amendments to Parts 9 and 11 of the Rules relating to its use of default insurance that is intended to cover losses resulting from a Clearing Member default.[5] Currently, ICE Clear Europe includes proceeds from default insurance among the resources available to meet the obligations and liabilities arising from a default for the F&O contract category, but not for the CDS or FX contract categories. Such default insurance provides an additional default resource to cover losses from Clearing Member defaults, prior to the need to use guaranty fund resources or assessment contributions from non-defaulting Clearing Members.

As noted further below, the proposed rule change would add insurance proceeds to the assets available for defaults for the CDS and FX contract categories, and would alter the placement of insurance proceeds in the default waterfall for the F&O contract category. However, ICE Clear Europe is not, and would not be, required to obtain or maintain default insurance.

Specifically, the proposal would amend the default waterfalls in Rules 908(b) (for F&O-only Clearing Members or Sponsored Principals), (c) (for CDS-only Clearing Members or Sponsored Principals), (d) (for FX-only Clearing Members or Sponsored Principals) and (g) (for Clearing Members or Sponsored Principals in multiple membership categories), such that default insurance proceeds would be placed third in each of these default waterfalls, after first applying the Defaulter's resources and then ICE Clear Europe's initial contribution (often referred to as its ''skin in the game'') in the waterfall of assets used to meet the obligations and liabilities of a Defaulter and any shortfall, loss or liability to ICE Clear Europe upon an Event of Default. (In the case of a Defaulter with multiple membership categories, the proceeds of default insurance would be applied to each Default Amount on a pro rata basis, as provided in Rule 908(g)(iii).) Default insurance proceeds would thus be applied before guaranty fund contributions and assessment contributions from non-defaulting Clearing Members.[6]

Rule 1103(e) sets forth certain limitations with respect to the benefits of default insurance. The proposed rule change would amend this rule to clarify that ICE Clear Europe is not obligated to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules.

[4] Securities Exchange Act Release No. 89060 (June 12, 2020), 85 FR 36904 (June 18, 2020) (SR–ICEEU–2020–005) (''Notice'').

[5] The following description of the proposed rule change is excerpted from the Notice, 85 FR 36904.

[6] Conforming amendments would be made to the Rule 101 definitions of ''ICE Clear Europe CDS GF Contribution,'' ''ICE Clear Europe F&O GF Contribution,'' and ''ICE Clear Europe FX GF Contribution'' as well as to Rule 909(a), reflecting the placement of default insurance proceeds in the applicable waterfalls under Rule 908.

obtain or keep in place or make any claim under any default insurance policy, or to make or receive the proceeds under any claim prior to moving to the next levels of assets in the applicable waterfalls in Rule 908, and subject to the payment order specified in Rule 1102(k). The amendments would further reflect that there could be a delay in receiving insurance proceeds, such that other assets applicable under Rule 908 may be called prior to insurance proceeds being received, and that proceeds of any insurance claim may need to be applied to meet losses across more than one Event of Default if there are multiple Defaulters.

In addition, the proposed rule change would amend the Rules to set out the order in which proceeds of default insurance claims would be paid out if there are multiple Defaulters within a certain period. Specifically, insurance proceeds would not be applied to defaults for which there were no further losses after applying default resources up to and including the ICE Clear Europe initial contribution. If there are further losses, then insurance proceeds would be applied to remaining losses based on which default occurred first in time, and to losses from defaults occurring simultaneously (which incldues defaults occurring on the same day) on a pro rata basis.

Rule 1102(k) currently addresses the allocation of amounts recovered from a Defaulter to Guaranty Fund Contributions of non-defaulting Clearing Members. The proposed rule change would amend this rule to address application of these recoveries to pay amounts owed to default insurers, as well as reimbursements to other Clearing Members and ICE Clear Europe with respect to their contributions and assessments. Specifically, these recoveries would be paid in the reverse order of which assets were applied under Rule 908 (*i.e.,* to non-defaulting Clearing Members in respect of their guaranty fund contributions that had been applied, then to the default insurance provider in respect of amounts owed to it, and then to ICE Clear Europe in respect of its initial contribution). Rule 1102(k) would also be revised to clarify that application of such amounts would be subject to (i) retaining or repaying amounts applied by ICE Clear Europe (which would no longer include claims under insurance policies) or other third parties applied to meet shortfalls; (ii) if applicable, reimbursing payments to Persons that made Assessment Contributions in the reverse order specified in Rule 908; and (iii) if applicable, meeting certain repayment obligations under Rules 909(j), 914(j) or 916(n).

Rule 909(j), which addresses reimbursement of Assessment Contributions, would also be amended to reflect the application of default insurance. The amendments would expand the existing provision to provide that if, after any Assessment Contribution has been paid in relation to an Event of Default, ICE Clear Europe collects on the defaulted obligation, loss or shortfall in whole or in part from an insurer, ICE Clear Europe would refund the collected amount, less expenses, to non-defaulting Clearing Members in respect of their paid Assessment Contributions. The amendment would also add a drafting clarification that such reimbursements are subject to ICE Clear Europe retaining or repaying amounts applied to meet any shortfall and certain repayment obligations, if applicable, under Rules 914(j) (addressing payment of recoveries to persons that were subject to reduced gains distributions under Rule 914) and 916(n) (addressing payments of recoveries to persons that received reduced amounts in the case of product termination under Rule 916), which is consistent with the existing language of Rule 914(j) and 916(n).

The term ''Available Non-Defaulter Resources'' in Rule 913 would be amended to include cash proceeds from claims under default insurance policies available to be applied pursuant to Rule 908, provided that such proceeds were received at the time ICE Clear Europe performs a calculation of Available Non-Defaulter Resources.

The proposed rule change would also amend Rule 914(j) with respect to the application of recoveries in the context of reduced gains distribution. Currently, this Rule provides that if ICE Clear Europe receives an amount from a Defaulter or another Clearing Member or Sponsored Principal that would, had it been paid on time, have increased ICE Clear Europe's Available Resources on a day on which a Margin Account Adjustment was made in connection with Reduced Gains Distributions, ICE Clear Europe would distribute the amounts received first, to non-defaulting Contributors who were liable to pay an adjustment on a pro rata basis, and second, in accordance with Rule 1102(k) (as described above). Under the amendment, default insurance proceeds would be included in the type of received amounts subject to the rule.

Similarly, the proposed rule change would amend Rule 916(n), which addresses application of recoveries in the context of product termination. Currently, Rule 916, in general, permits ICE Clear Europe to terminate the open contracts in a relevant contract category (*e.g.,* F&O or CDS) under specified circumstances, including in certain cases following an Under-priced Auction or where ICE Clear Europe determines there are not sufficient Clearing Members to support continued clearing of the relevant contract category. Currently, pursuant to Rule 916(n), in the event that ICE Clear Europe terminates a contract category and receives an amount that would, had it been paid on time, have increased the amount owed to (or decreased the amount owed by) Clearing Members or Sponsored Principals upon termination of a contract category, ICE Clear Europe would distribute the amount received first to non-defaulting Clearing Members or Sponsored Principals who received less in respect of product termination than they were otherwise owed, then in accordance with Rule 914(j) (as discussed above), and then in accordance with Rule 1102(k) (as discussed above). The amendment would include default insurance proceeds in the type of received amounts subject to distribution under Rule 916(n).

III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization presenting it.[7] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[8] and Rules 17Ad–22(e)(4)[9] and 17Ad–22(e)(13)[10] thereunder.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible, and, in general, to protect investors and the public interest.[11]

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(4).

[10] 17 CFR 240.17Ad–22(e)(13).

[11] 15 U.S.C. 78q–1(b)(3)(F).

As discussed above, the proposed rule change would amend the default waterfalls for the CDS and FX categories to include the proceeds of default insurance, if any, as an additional default resource after the application of the Defaulter's own resources and ICE Clear Europe's own initial contributions and prior to the application of guaranty fund contributions or assessments from non-defaulting Clearing Members. In addition, the proposed rule change would alter the order of the resources identified in the default waterfall for the F&O category, such that proceeds from default insurance would come third, after the application the Defaulter's own resources and ICE Clear Europe's initial contribution and prior to the application of Guaranty Fund contributions or assessments from non-defaulting Clearing Members. The Commission believes that by including additional financial resources in its default management system, ICE Clear Europe would enhance the financial resources used to manage defaults. Specifically, the Commission believes that the ability to use the proceeds of default insurance in this manner would provide ICE Clear Europe with an additional potential source of default liquidity with respect to the CDS and FX product categories. In addition, the placement of the default insurance proceeds in the default waterfalls for all three categories could allow ICE Clear Europe to avoid utilizing the resources of non-defaulting Clearing Members, which, in turn could reduce the risk of loss contagion (*i.e.,* the risk of losses arising at non-defaulting Clearing Members if ICE Clear Europe has to utilize the guaranty fund, which would then be subject to replenishment). In addition, these financial resources would be more likely to remain available for subsequent defaults and also provide additional financial resources necessary to ensure ICE Clear Europe's ability to safeguard securities and funds.

For these reasons, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in ICE Clear Europe's custody and control. Therefore, the Commission finds the proposed rule change is consistent with section 17A(b)(3)(F) of the Act.[12]

B. Consistency With Rule 17Ad–22(e)(4)

Rule 17Ad–22(e)(4)[13] requires ICE Clear Europe to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at a minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure in extreme but plausible market conditions.[14]

As noted above, the proposed rule change would revise ICE Clear Europe's rules to account for the receipt of default insurance proceeds for all product categories prior to the need to use guaranty fund contributions and assessments from non-defaulting Clearing Members, such that default insurance proceeds would be placed third in the waterfall of assets after Defaulter resources and ICE Clear Europe's initial contribution used to meet the obligations and liabilities of a Defaulter. Further, in the event insurance proceeds are received after mutualized default or other resources are used, the proposed rule change would allow the proceeds to repay non-defaulting Clearing Members, including for such things as assessments or reduced gains distributions that otherwise would not have been made had the insurance proceeds been received at the time. The Commission believes that by adding insurance proceeds to its financial resources in this way, the proposal should help ICE Clear Europe to preserve mutualized default resources and the resources of individual non-defaulting Clearing Members, which in turn would give it the ability to manage its credit exposures and cover a wide range of foreseeable stress scenarios with additional financial resources.

As noted above, the proposed rule change would also allow for the use of insurance proceeds in circumstances when ICE Clear Europe terminates open contracts. Specifically, where ICE Clear Europe receives an amount that would, had it been paid on time, have increased the amount owed to (or decreased the amount owed by) Clearing Members or Sponsored Principals upon termination of a contract category, ICE Clear Europe would distribute the amount received first to non-defaulting Clearing Members or Sponsored Principals who received less in respect of product termination than they were otherwise owed. The proposal would include default insurance proceeds in the type of received amounts subject to distribution. The Commission believes that the application of additional financial resources in this way would strengthen its overall ability to deal with a variety of stress scenarios by lessening the burden on Clearing Members during contract termination.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(4)(ii).[15]

C. Consistency With Rule 17Ad–22(e)(13)

Rule 17Ad–22(e)(13) requires ICE Clear Europe to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, ensure it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations.[16]

As noted above, the proposed rule change would provide that ICE Clear Europe would not be obligated to obtain or keep in place or make any claim under any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets in the event of a default. Further, the proposed rule change would specify how ICE Clear Europe would apply the proceeds of any default insurance after other resources, such as non-defaulting Clearing Members' guaranty fund contributions or assessments, had been used to address losses arising from a default. The Commission believes that these aspects of the proposed rule change will enable ICE Clear Europe to, if necessary, use the contributions of non-defaulting Clearing Members to the guaranty fund prior to the receipt of proceeds owed under the default insurance provided that those Clearing Members are reimbursed from the insurance proceeds when received, which in turn ensures that ICE Clear Europe can take timely action to contain losses and meet liquidity demands even if there are delays in making and processing an insurance claim and that the existence and use of default insurance does not interfere with meeting such obligations.

For the reasons stated above, the Commission believes that the proposed rule change is consistent with Rule 17Ad–22(e)(13).[17]

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(4).

[14] 17 CFR 240.17Ad–22(e)(4)(ii).

[15] 17 CFR 240.17Ad–22(e)(4)(ii).

[16] 17 CFR 240.17Ad–22(e)(13).

[17] 17 CFR 240.17Ad–22(e)(13).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act [18] and Rules 17Ad–22(e)(4) and 17Ad–22(e)(13) thereunder.[19]

It is therefore ordered pursuant to Section 19(b)(2) of the Act [20] that the proposed rule change (SR–ICEEU–2020–005) be, and hereby is, approved.[21]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16705 Filed 7–31–20; 8:45 am]

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[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(e)(4) and 17 CFR 240.17Ad–22(e)(13).

[20] 15 U.S.C. 78s(b)(2).

[21] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, the Securities and Exchange Commission will hold an Open Meeting on Wednesday, August 5, 2020 at 10:00 a.m.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public via audio webcast only on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED: 1. The Commission will consider whether to propose rule and form amendments that would modernize the disclosure framework for open-end investment companies. The disclosure framework would feature concise and visually engaging shareholder reports that would highlight information that is particularly important for retail investors to assess and monitor their fund investments. The Commission also will consider whether to propose amendments to the advertising rules for registered investment companies and business development companies.

2. The Commission will consider whether to provide additional transparency regarding the appointment of candidates to the Investor Advisory Committee (IAC) by publishing procedures governing the nomination of candidates for appointment to the IAC.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman, Office of the Secretary, at (202) 551–5400.

Dated: July 29, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–16903 Filed 7–30–20; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89416; File No. SR–CTA/CQ–2020–01]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Thirty-Fourth Substantive Amendment to the Second Restatement of the CTA Plan and Twenty-Fifth Substantive Amendment to the Restated CQ Plan

July 29, 2020.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] notice is hereby given that on June 29, 2020,[3] the Participants [4] in the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and the Restated Consolidated Quotation (''CQ'') Plan (''CTA/CQ Plans'' or ''Plans'') filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the Plans. The amendments represent the Thirty-Fourth Substantive Amendment to the CTA Plan and Twenty-Fifth Substantive Amendment to the CQ Plan (''Amendments''). Under the Amendments, the Participants propose to add MEMX LLC (''MEMX'') as a Participant to the Plans.

The proposed Amendments have been filed by the Participants pursuant to Rule 608(b)(3)(ii) under Regulation NMS [5] as concerned solely with the administration of the Plans and as ''Ministerial Amendments'' under both Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan. As a result, the Amendments become effective upon filing and can be submitted by the Chair of the Plan's Operating Committee. The Commission is publishing this notice to solicit comments on the Amendments from interested persons. Set forth in Sections I and II is the statement of the purpose and summary of the Amendments, along with the information required by Rules 608(a) and 601(a) under the Act, prepared and submitted by the Participants to the Commission.

[1] 15 U.S.C 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] *See* Letter from Robert Books, Chairman, Operating Committee, CTA/CQ Plans, to Vanessa A. Countryman, Secretary, Commission, dated June 26, 2020.

[4] The Participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants'').

[5] 17 CFR 242.608(b)(2).

I. Rule 608(a)

A. Purpose of the Amendment

The above-captioned Amendments add MEMX as a Participant to the Plans.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

Because the Amendments constitute ''Ministerial Amendments'' under both Section IV(b) of the CTA Plan and Section IV(c) under the CQ Plan, the Chairman of the Plan's Operating Committee may submit the Amendments to the Commission on behalf of the Participants in the Plans. Because the Participants designate the Amendments as concerned solely with the administration of the Plans, the Amendments become effective upon filing with the Commission.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The Amendments do not impose any burden on competition because they simply add MEMX as a Participant to the Plans. MEMX has completed the required steps to be added to the Plans.

F. Written Understanding or Agreement Relating to Interpretation of, or Participation in Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

See Item I.C. above.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Regulation NMS Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks comments on the Amendments. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendments are 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–CTA/CQ–2020–01 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–CTA/CQ–2020–01. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all written statements with respect to the proposed Amendments that are filed with the Commission, and all written communications relating to the proposed Amendments 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 website viewing and printing at the principal office of the Plan. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CTA/CQ–2020–01 and should be submitted on or before August 24, 2020.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16804 Filed 7–31–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89419; File No. 4–533]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the National Market System Plan for the Selection and Reservation of Securities Symbols to Add MEMX LLC as a Party Thereto

July 29, 2020.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on July 6, 2020, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the National Market System Plan for the Selection and Reservation of Securities Symbols (''Symbology Plan'' or ''Plan'').[3] The amendment proposes to add MEMX as a party to the Symbology Plan. The Commission is publishing this notice to solicit comments on the proposed amendment from interested persons.

I. Description and Purpose of the Amendment

The current parties to the Symbology Plan are BOX Options Exchange, LLC (''BOX''), Nasdaq BX, Inc. (''BX''), Cboe BZX Exchange, Inc. (''CboeBZX''), Cboe EDGA Exchange, Inc. (''CboeEDGA''), Cboe EDGX Exchange, Inc. (''CboeEDGX''), Cboe Exchange, Inc. (''Cboe''), CHX, FINRA, Investors Exchange, LLC (''IEX''), Miami International Securities Exchange, LLC (''MIAX''), Nasdaq ISE, LLC (''ISE''), Nasdaq, New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE National, NYSE Arca, Inc. (''NYSE Arca''), Phlx, and Long-Term Stock Exchange (''LTSE'').[4]

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[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On November 6, 2008, the Commission approved the Symbology Plan that was originally proposed by the Chicago Stock Exchange, Inc. (''CHX''), The Nasdaq Stock Market, Inc. (n/k/a The Nasdaq Stock Market LLC) (''Nasdaq''), National Association of Securities Dealers, Inc. (''NASD'') (n/k/a Financial Industry Regulatory Authority, Inc. (''FINRA'')), National Stock Exchange, Inc. (''NSX'') (n/k/a NYSE National, Inc. (''NYSE National'')), and Philadelphia Stock Exchange, Inc. (n/k/a Nasdaq PHLX LLC (''Phlx'')), subject to certain changes. *See* Securities Exchange Act Release No. 58904, 73 FR 67218 (November 13, 2008) (File No. 4–533).

[4] On November 18, 2008, ISE filed with the Commission an amendment to the Plan to add ISE as a member to the Plan. *See* Securities and Exchange Act Release No. 59024 (November 26, 2008), 73 FR 74538 (December 8, 2008) (File No. 4–533). On December 22, 2008, NYSE, NYSE Arca, and NYSE Alternext (n/k/a NYSE American) (''NYSE Group Exchanges''), and Cboe filed with the Commission amendments to the Plan to add the NYSE Group Exchanges and Cboe as members to the Plan. *See* Securities Exchange Act Release No. 59162 (December 24, 2008), 74 FR 132 (January 2, 2009) (File No. 4–533). On December 24, 2008, BSE (n/k/a BX) filed with the Commission an amendment to the Plan to add BSE as a member to the Plan. *See* Securities Exchange Act Release No. 59187 (December 30, 2008), 74 FR 729 (January 7, 2009) (File No. 4–533). On September 30, 2009, BATS (n/k/a CboeBZX) filed with the Commission an amendment to the Plan to add BATS as a member to the Plan. *See* Securities Exchange Act Release No. 60856 (October 21, 2009), 74 FR 55276 (October 27, 2009) (File No. 4–533). On July 7, 2010, EDGA (n/k/a CboeEDGA) and EDGX (n/k/a CboeEDGX) filed with the Commission an amendment to the Plan to add EDGA and EDGX,

Continued

The proposed amendment to the Symbology Plan would add MEMX as a party to the Symbology Plan. A self-regulatory organization (''SRO'') may become a party to the Symbology Plan if it satisfies the requirements of Section I(c) of the Plan. Specifically, an SRO may become a party to the Symbology Plan if: (i) it maintains a market for the listing or trading of Plan Securities [5] in accordance with rules approved by the Commission; (ii) it signs a current copy of the Plan; and (iii) it pays to the other parties a proportionate share of the aggregate development costs, based upon the number of symbols reserved by the new party during the first twelve (12) months of such party's membership.[6]

MEMX has submitted a signed copy of the Symbology Plan to the Commission in accordance with the requirement set forth in the Symbology Plan regarding new parties to the plan. Additionally, MEMX has represented that it maintains a market for the listing or trading of Plan Securities. Finally, MEMX has agreed to pay all costs required by MEMX pursuant to the Symbology Plan, including its proportionate share of the aggregate development costs previously paid by the other parties to the Processor.

II. Effectiveness of the Proposed Symbology Plan Amendment

The foregoing proposed Symbology Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) [7] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of the amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (b)(1) of Rule 608,[8] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendment 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 4–533 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 4–533. 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 Plan that are filed with the Commission, and all written communications relating to the Plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the Parties' principal offices. 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 4–533, and should be submitted on or before August 24, 2020.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16807 Filed 7–31–20; 8:45 am]

BILLING CODE 8011–01–P

each as a party to the Symbology Plan. *See* Securities Exchange Act Release No. 62573 (July 26, 2010), 75 FR 45682 (August 3, 2010) (File No. 4–533). On May 7, 2012, BOX filed with the Commission an amendment to the Plan to add BOX as a member to the Plan. *See* Securities and Exchange Act Release No. 66957 (May 10, 2012), 77 FR 28904 (May 16, 2012). On November 4, 2016, IEX filed with the Commission an amendment to the Plan to add IEX as a member to the Plan. *See* Securities Exchange Act Release No. 79422 (November 29, 2016), 81 FR 87645 (December 5, 2016). On February 26, 2018, MIAX filed with the Commission an amendment to the Plan to add MIAX as a member to the Plan. *See* Securities Exchange Act Release No. 82885 (March 15, 2018), 83 FR 12430 (March 21, 2018). On October 17, 2019, LTSE filed with the Commission an amendment to the Plan to add LTSE as a member to the Plan. *See* Securities Exchange Act Release No. 87597 (November 22, 2019), 84 FR 65448 (November 27, 2019).

[5] ''Plan Securities'' are defined in the Symbology Plan as securities that: (i) Are NMS securities as currently defined in Rule 600(a)(46) under the Act; and (ii) any other equity securities quoted, traded and/or trade reported through an SRO facility.

[6] Sections I(c) and V(a) of the Plan.

[7] 17 CFR 242.608(b)(3)(iii).

[8] 17 CFR 242.608(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89408; File No. SR–NSCC–2020–015]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Fees for the Subscription-Based Portfolio Composition File Reporting Service

July 28, 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 July 21, 2020, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Addendum A (Fee Structure) of the NSCC Rules & Procedures (''Rules'') [5] with respect to fees for the subscription-based portfolio composition file reporting service as well as make other changes, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Capitalized terms not defined herein are defined in the Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency'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 Addendum A (Fee Structure) of the Rules with respect to fees for the subscription-based portfolio composition file reporting service in order to better align fees with the costs of services provided by NSCC. Based on the current subscription volume, NSCC anticipates that the proposed rule change would increase NSCC's annual revenue from the portfolio composition file reporting service by approximately $108,000. The proposed rule change would also make technical and conforming changes.

(i) Background

NSCC provides an exchange-traded fund (''ETF'') portfolio composition file reporting service whereby NSCC makes available to each subscribing Member reports which contain information on ETF portfolios that such Member requests. These reports are available as machine readable output files, as well as through a web-based interface from which Members may download and print reports. This reporting service is covered in Procedure II (Trade Comparison and Reporting Service), Section F, of the Rules.

Members are assessed fees in accordance with Addendum A (Fee Structure) of the Rules based on their activities and the services utilized. With respect to the ETF portfolio composition file reporting service, the current Fee Structure provides that each Member that subscribes to such service is charged a fee based on the number of portfolios subscribed by the Member on an average daily basis per billing month (referred to as ''units'' in the Fee Structure). Fees are calculated by applying a tiered fee structure to the average daily number of units subscribed by the Member in the billing month, subject to a maximum and a minimum monthly fee. The minimum monthly fee is designed to offset the costs to NSCC of providing this service to Members on an on-going basis while the maximum monthly fee is designed to cap subscribing Members' fees for this service to enable such Members to benefit from the economies of scale that NSCC realizes as the number of units being reported increases.

Currently, Members are charged $3.00 per unit per month for the first zero to 200 average daily units, $2.00 per unit per month for the next 300 average daily units (201st to 500th units), $1.00 per unit per month for all average daily units above 500 (501st and above), subject to a monthly minimum charge of $600 and a monthly maximum charge of $1,550. The current fees have not been changed for more than five years and are no longer aligned with NSCC's costs of providing the ETF portfolio composition file reporting service.[6] As such, the revenue from these fees does not cover the costs of such service. Accordingly, the proposed changes would adjust fees for the subscription-based portfolio composition file reporting service so that revenue for NSCC would better align with the costs of providing such service.

(ii) Proposed Fee Changes

NSCC is proposing to modify the Fee Structure to better align fees for the subscription-based portfolio composition file reporting service with NSCC's costs of providing such service. Specifically, in Section V.B. of the Fee Structure, NSCC is proposing to increase the fees for the subscription-based portfolio composition file reporting service so that Members would be charged $4.00 (instead of $3.00) per unit per month for the first zero to 200 average daily units, $3.00 (instead of $2.00) per unit per month for the next 300 average daily units (201st to 500th units), $2.00 (instead of $1.00) per unit per month for all average daily units above 500 (501st and above), subject to a monthly minimum charge of $800 (instead of $600) and a monthly maximum charge of $1,800 (instead of $1,550). NSCC has not modified these fees since 2014.[7]

NSCC is also proposing technical and conforming changes. Specifically, NSCC is proposing to delete an outdated footnote from Section V.B. of the Fee Structure. Footnote 20 in Section V.B. of the Fee Structure refers to the minimum monthly charge being $300 until December 31, 2015 and that it will increase to $600 per month thereafter and footnote 20 will be deleted then; however, due to a technical oversight, footnote 20 has not yet been deleted. As such, NSCC is proposing a technical change to delete footnote 20 from Section V.B. of the Fee Structure, and a conforming change to renumber footnote 21 as footnote 20 in Section V.C. of the Fee Structure.

(iii) Implementation Timeframe

NSCC would implement this proposal by September 1, 2020. As proposed, a legend would be added to the Fee Structure stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend also would include a date by which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed from the Fee Structure.

2. Statutory Basis

NSCC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes this proposal is consistent with Sections 17A(b)(3)(D)[8] and 17A(b)(3)(F)[9] of the Act and Rule 17Ad–22(e)(23)(ii),[10] as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(D) of the Act requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[11] NSCC believes the proposed rule changes to the Fee Structure to better align pricing with costs of services would provide for the equitable allocation of reasonable fees. The proposed changes would increase the fees assessed for the subscription-based portfolio composition file reporting service in order to better align with the costs of providing such service. NSCC believes the proposed changes to the fees are equitable because they would apply uniformly to all Members that utilize the services. NSCC believes the proposed changes are reasonable because they would be commensurate with the increased costs of resources allocated by NSCC in providing such services. Therefore, NSCC believes the proposed rule changes to the Fee Structure to better align pricing with costs of services are consistent with Section 17A(b)(3)(D) of the Act.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be

[6] NSCC made a number of enhancements to the ETF portfolio composition file reporting service during 2018 and 2019. These enhancements increased NSCC's costs of providing the ETF portfolio composition file reporting service.

[7] *See* Securities Exchange Act Release No. 72307 (June 4, 2014), 79 FR 33250 (June 10, 2014) (SR–NSCC–2014–06).

[8] 15 U.S.C. 78q–1(b)(3)(D).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 240.17Ad–22(e)(23)(ii).

[11] 15 U.S.C. 78q–1(b)(3)(D).

designed to promote the prompt and accurate clearance and settlement of securities transactions.[12] The proposed rule changes to make technical and conforming changes would help ensure that the Rules, including the Fee Structure, remain accurate and clear to Members. Having accurate and clear Rules would help Members to better understand their rights and obligations regarding NSCC's clearance and settlement services. NSCC believes that when Members better understand their rights and obligations regarding NSCC's clearance and settlement services, they can act in accordance with the Rules. NSCC believes that better enabling Members to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by NSCC. As such, NSCC believes the proposed rule changes to make technical and conforming changes are consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad–22(e)(23)(ii) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.[13] NSCC believes that the proposed rule changes to make technical and conforming changes would help ensure that the Fee Structure is transparent and clear to Members. Having a transparent and clear Fee Structure would help Members, NSCC believes, to better understand NSCC's fees and help provide Members with increased predictability and certainty regarding the fees they incur by participating in NSCC. As such, NSCC believes the proposed rule changes to make technical and conforming changes are consistent with Rule 17Ad–22(e)(23)(ii) under the Act.

(B) Clearing Agency's Statement on Burden on Competition

NSCC believes the proposed rule changes to increase the fees for the subscription-based portfolio composition file reporting service may have an impact on competition, because these changes would likely increase the fees of those Members that utilize such service when compared to their fees under the current Fee Structure. NSCC believes these proposed rule changes could burden competition by negatively affecting such Members' operating costs. While these Members may experience increases in their fees when compared to their fees under the current Fee Structure, NSCC does not believe such change in fees would in and of itself mean that the burden on competition is significant. This is because even though the amount of the fee increase may seem significant in some instances (*e.g.,* going from $1 to $2 per unit per month for all average daily units above 500), NSCC believes the increase in fees would similarly affect all Members that utilize the subscription-based portfolio composition file reporting service, and therefore the burden on competition would not be significant.

Regardless of whether the burden on competition is deemed significant, NSCC believes any burden on competition that is created by these proposed rule changes would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.[14]

The proposed rule changes to increase the fees for the subscription-based portfolio composition file reporting service would be necessary in furtherance of the purposes of the Act, because the Rules must provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[15] As described above, NSCC believes that the proposed rule changes would result in fees that are equitably allocated (by applying uniformly to all Members that use the applicable service) and would result in reasonable fees (by better aligning with the costs of the service). As such, NSCC believes these proposed rule changes would be necessary in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.[16]

NSCC believes any burden on competition that is created by the proposed rule changes to increase the fees for the subscription-based portfolio composition file reporting service would also be appropriate in furtherance of the purposes of the Act. The proposed rule changes would allow NSCC to assess fees that are better aligned with its costs of providing the service. Having the ability to assess fees that are better aligned with NSCC's costs of providing the services would help NSCC to continue providing dependable and stable clearance and settlement services to its Members. As such, NSCC believes these proposed rule changes would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.[17]

NSCC does not believe the proposed rule changes to make technical and conforming changes would impact competition.[18] These changes would apply equally to all Members and would not affect Members' rights and obligations. As such, NSCC believes these proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to this proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 thereunder.[20] 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–NSCC–2020–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2020–015. This file number should be included on the subject line if email is used. To help the

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(23)(ii).

[14] 15 U.S.C. 78q–1(b)(3)(I).

[15] 15 U.S.C. 78q–1(b)(3)(D).

[16] 15 U.S.C. 78q–1(b)(3)(I).

[17] *Id.*

[18] *Id.*

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2020–015 and should be submitted on or before August 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16704 Filed 7–31–20; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89417; File No. S7–24–89]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of the Forty-Eighth Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

July 29, 2020.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on June 29, 2020,[3] the Participants[4] in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan'' or ''Plan'') filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the UTP Plan. The amendment represents the Forty-Eighth Amendment to the Plan (''Amendment''). Under the Amendment, the Participants propose to add MEMX LLC (''MEMX'') as a Participant to the Plan and make a technical correction to the Conflicts of Interest Policy pursuant to Rule 608(b)(3)(ii) under Regulation NMS.

The proposed Amendment has been filed by the Participants pursuant to Rule 608(b)(3)(ii) under Regulation NMS[5] as concerned solely with the administration of the Plan and as a ''Ministerial Amendment'' under Section XVI of the Plan. As a result, the Amendment becomes effective upon filing and was submitted by the Chair of the Plan's Operating Committee. The Commission is publishing this notice to solicit comments on the Amendment from interested persons. Set forth in Sections I and II is the statement of the purpose and summary of the Amendment, along with the information required by Rules 608(a) and 601(a) under the Act, prepared and submitted by the Participants to the Commission.

I. Rule 608(a)

A. Purpose of the Amendment

The above-captioned Amendment adds MEMX as a Participant to the UTP Plan and makes a technical correction to the Conflicts of Interest Policy to update a cross-reference.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

Because the Amendment constitutes a ''Ministerial Amendment'' under Section XVI of the UTP Plan, the Chair of the UTP Plan's Operating Committee may submit the Amendment to the Commission on behalf of the Participants in the UTP Plan. Because the Participants designate the Amendment as concerned solely with the administration of the UTP Plan, the Amendment becomes effective upon filing with the Commission.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The Amendment does not impose any burden on competition because it simply adds MEMX as a Participant to the UTP Plan and makes a minor correction to the Conflicts of Interest Policy. MEMX has completed the required steps to be added to the UTP Plan.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

See Item I.C. above.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Regulation NMS Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

[1] 15 U.S.C 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] *See* Letter from Robert Books, Chairman, Operating Committee, UTP Plan, to Vanessa A. Countryman, Secretary, Commission, dated June 26, 2020.

[4] The Participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants'').

[5] 17 CFR 242.608(b)(2).

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks comments on the Amendment. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendment 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 S7–24–89 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 S7–24–89. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all written statements with respect to the proposed Amendment that are filed with the Commission, and all written communications relating to the proposed Amendment 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 website viewing and printing at the principal office of the Plan. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number S7–24–89 and should be submitted on or before August 24, 2020.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16805 Filed 7–31–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89415; File No. SR–NYSEARCA–2020–66]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Add the Consolidated Audit Trail Industry Member Compliance Rules To the List of Minor Rule Violations in Rule 10.9217

July 28, 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 July 21, 2020, NYSE Arca, Inc. (''NYSE Arca'' 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 and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add the Consolidated Audit Trail (''CAT'') industry member compliance rules to the list of minor rule violations in Rule 10.9217. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add NYSE Arca's CAT industry member compliance rules (the ''CAT Compliance Rules'') to the list of minor rule violations in Rule 10.9217. This proposal is based upon the Financial Industry Regulatory Authority, Inc. (''FINRA'') filing to amend FINRA Rule 9217 in order to add FINRA's corresponding CAT Compliance Rules to FINRA's list of rules that are eligible for minor rule violation plan treatment and the filing of the Exchange's affiliate the New York Stock Exchange LLC (''NYSE'') to add NYSE's corresponding CAT Compliance Rules to the list of minor rule violations in NYSE Rule 9217.[4]

Proposed Rule Change

The Exchange recently adopted the CAT Compliance Rules in the Rule 11.6800 Series in order to implement the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[5] The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,[6] and each Plan Participant accordingly has adopted the same compliance rules in the Exchange's Rule 11.6800 Series. The common compliance rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which

[4] *See* Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR–FINRA–2020–013); Securities Exchange Act Release No. 89123 (June 23, 2020), 85 FR 39016 (June 29, 2020) (SR–NYSE–2020–51).

[5] *See* Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR–NYSEArca–2017–03; SR–NYSEArca-2017–04).

[6] 17 CFR 242.613.

broadly calls for industry members to record and report timely and accurately customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

Rule 10.9217 sets forth the list of rules under which an ETP Holder, OTP Holder, OTP Firm or covered person may be subject to a fine under Rule 10.9216(b). Rule 10.9217 permits the Exchange to impose a fine of up to $5,000 on any ETP Holder, OTP Holder, OTP Firm or covered person for a minor violation of an eligible rule. The Exchange proposes to amend Rule 10.9217 to add the CAT Compliance Rules in the Rule 11.6800 Series to the list of equities and options rules in Rule 10.9217 eligible for disposition pursuant to a minor fine under Rule 10.9216(b).[7]

The Exchange is coordinating with FINRA and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants' CAT Compliance Rules. The Commission recently approved a Rule 17d-2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant (''common members'').[8] Under the Rule 17d-2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d-2 Plan, responsibility for common members of multiple other Plan Participants and not a member of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to NYSE Arca pursuant to the Rule 17d-2 Plan, if any, the Exchange and FINRA entered into a Regulatory Services Agreement (''RSA'') pursuant to which FINRA will conduct surveillance, investigation, examination, and enforcement activity in connection with the CAT Compliance Rules on the Exchange's behalf (with the exception of such matters once a complaint is filed which in such instance is no longer administered through the MRVP). We expect that the other exchanges would be entering into a similar RSA.

In order to achieve consistency with FINRA and the other Plan Participants, the Exchange proposes to adopt fines up to $2,500 in connection with minor rule fines for violations of the CAT Compliance Rules in the Rule 11.6800 Series under Rule 10.9217 and the Exchange's MRVP.

FINRA, in connection with its proposed amendment to FINRA Rule 9217 to make FINRA's CAT Compliance Rules MRVP eligible, has represented that it will apply the minor fines for CAT Compliance Rules in the same manner that FINRA has for its similar existing audit trail-related rules.[9] Accordingly, in order to promote regulatory consistency, the Exchange plans to do the same. Specifically, application of a minor rule fine with respect to CAT Compliance Rules will be guided by the same factors that FINRA referenced in its filing. However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;
- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;
- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.[10]

Upon effectiveness of this rule change, the Exchange will publish a regulatory bulletin notifying its ETP Holders, OTP Holders, and OTP Firms of the rule change and the specific factors that will be considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed rule change will result in a coordinated, harmonized approach to CAT compliance rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, because 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.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through an AWC if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Rather, the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor

[7] FINRA's maximum fine for minor rule violations under FINRA Rule 9216(b) is $2,500. Like the NYSE, the Exchange will apply an identical maximum fine amount for eligible violations of the Rule 11.6800 Series to achieve consistency with FINRA and also to amend its minor rule violation plan (''MRVP'') to include such fines. Like FINRA, the Exchange would be able to pursue a fine greater than $2,500 for violations of the Rule 11.6800 Series in a regular disciplinary proceeding or an acceptance, waiver, and consent (''AWC'') under the Rule 10.9000 Series as appropriate. Any fine imposed in excess of $2,500 or not otherwise covered by Rule 19d–1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d–1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. *See* text accompanying notes 9–10, *infra*.

[8] *See* Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020) (File No. 4–618).

[9] *See* SR–FINRA–2020–013; *see also* FINRA Notice to Members 04–19 (March 2004) (providing specific factors used to inform dispositions for violations of OATS reporting rules).

[10] *See id.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

rule fine for violations of the CAT Compliance Rules in the Rule 11.6800 Series where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct.

In connection with the fine level specified in the proposed rule change, adding language that minor rule fines for violations of the CAT Compliance Rules in the Rule 11.6800 Series shall not exceed $2,500 would further the goal of transparency and add clarity to the Exchange's rules. Adopting the same cap as FINRA and the NYSE for minor rule fines in connection with the CAT Compliance Rules would also promote regulatory consistency across self-regulatory organizations.

The Exchange further believes that the proposed amendments to Rule 10.9217 are consistent with Section 6(b)(6) of the Act,[13] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of the Rule 11.6800 Series pursuant to the Exchange's rules.

Finally, the Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[14] Rule 10.9217 does not preclude an ETP Holder, OTP Holder, OTP Firm or covered person from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with making the CAT Compliance Rules in the Rule 11.6800 Series eligible for a minor rule fine disposition, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2020–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2020–66. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2020–66 and should be submitted on or before August 24, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act[17] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[18] which governs minor rule violation plans.

As stated above, the Exchange proposes to add the CAT Compliance Rules to the list of minor rule violations in Rule 10.9217 to be consistent with the approach FINRA has taken for minor violations of its corresponding CAT Compliance Rules.[19] The Commission has already approved FINRA's treatment of CAT Compliance Rules violations when it approved the addition of CAT

[13] 15 U.S.C. 78f(b)(6).

[14] 15 U.S.C. 78f(b)(7) and 78f(d).

[15] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[18] 17 CFR 240.19d–1(c)(2).

[19] As discussed above, the Exchange has entered into a Rule 17d-2 Plan and an RSA with FINRA with respect to the CAT Compliance Rules. The Commission notes that, unless relieved by the Commission of its responsibility, as may be the case under the Rule 17d–2 Plan, the Exchange continues to bear the responsibility for self-regulatory conduct and liability for self-regulatory failures, not the self-regulatory organization retained to perform regulatory functions on the Exchange's behalf pursuant to an RSA. *See* Securities Exchange Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031), note 93 and accompanying text.

Compliance Rules to FINRA's MRVP.[20] As noted in that order, and similarly herein, the Commission believes that Exchange's treatment of CAT Compliance Rules violations as part of its MRVP provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects that, as with FINRA, the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. Accordingly, the Commission believes the proposal raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[21] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds the CAT Compliance Rules to the Exchange's MRVP and harmonizes its application with FINRA's application of CAT Compliance Rules under its own MRVP. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[22] and Rule 19d–1(c)(2) thereunder,[23] that the proposed rule change (SR- NYSEARCA–2020–66) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16710 Filed 7–31–20; 8:45 am]

BILLING CODE 8011–01–P

[20] *See supra* note 4.

[21] 15 U.S.C. 78s(b)(2).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 240.19d–1(c)(2).

[24] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Centers Advisory Board

AGENCY: Small Business Administration.

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time and agenda for a meeting of the National Small Business Development Center Advisory Board. The meeting will be open to the public; however, advance notice of attendance is required.

DATES: Wednesday, August 12, 2020 at 2:00 p.m. EDT.

ADDRESSES: Meeting will be held via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: Alanna Falcone, Office of Small Business Development Centers, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; *alanna.falcone@sba.gov;* 202–619–1612.

If anyone wishes to be a listening participant or would like to request accommodations, please contact Alanna Falcone at the information above.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

Purpose

The purpose of the meeting is to onboard the new members and discuss the following issues pertaining to the SBDC Program:

- SBA Briefing
- Member Introductions
- Annual Meetings
- Board Assignments

Nicole Nelson,

Acting Committee Management Officer.

[FR Doc. 2020–16801 Filed 7–31–20; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

504 Debt Refinancing Without Expansion—Borrower's Contribution for Projects Involving Limited or Single Purpose Buildings During Recession

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: The U.S. Small Business Administration (''SBA'') is announcing that, due to an economic recession as determined by the National Bureau of Economic Research, Borrowers in the 504 Loan Program may contribute not less than 10%, instead of not less than 15%, to Projects involving limited or special purpose buildings or structures when refinancing debt without expansion. The lower required contribution will be in effect until the first day of the calendar quarter following the end of the economic recession as determined by the National Bureau of Economic Research or its equivalent.

DATES: The lower required contribution will apply to applications submitted on or after August 3, 2020.

FOR FURTHER INFORMATION CONTACT: Linda Reilly, Chief, 504 Loan Division, (202) 205–9949, *linda.reilly@sba.gov.*

SUPPLEMENTARY INFORMATION: The 504 Loan Program is an SBA business loan program authorized under title V of the Small Business Investment Act of 1958, 15 U.S.C. 695 *et seq.* The core mission of the 504 Loan Program is to provide long-term financing to small businesses for the purchase or improvement of land, buildings, and major equipment, to promote the creation or retention of jobs and local economic development. Under the 504 Loan Program, loans are provided to small businesses by Certified Development Companies (''CDCs''), which are certified and regulated by SBA to promote economic development within their community. In general, a project in the 504 Loan Program (a ''504 Project'') is financed with: A loan obtained from a private sector lender with a senior lien for at least 50% of the project cost (the ''Third Party Loan''); a loan obtained through a CDC (the ''504 Loan'') with a junior lien covering up to 40% of the total cost (funded through a 100% SBA-guaranteed debenture sold in private pooling transactions); and a contribution from the Borrower of at least 10% equity. However, for 504 Projects that involve limited or special purpose buildings or structures, the Borrower is required to contribute at least 15% equity to the Project.

In accordance with 13 CFR 120.882(g), a Project in the 504 Loan Program may also be used to refinance debt where there is no expansion of the small business concern (''Refinancing Without Expansion Project''). Generally, if the Refinancing Without Expansion Project involves a limited or single purpose building or structure, the Borrower must contribute not less than 15% (excluding administrative costs) of the Project's costs, unless SBA determines, in its discretion, and publishes in the **Federal Register** that, due to an economic recession as determined by the National Bureau of Economic Research or its equivalent, Borrowers may contribute not less than 10% of the Project's costs during the recession. *See* 13 CFR 120.882(g)(5).

On June 8, 2020, the National Bureau of Economic Research published a report by its Business Cycle Dating Committee, *https://www.nber.org/cycles/june2020.html,* in which it determined that a peak in monthly economic activity occurred in the U.S. economy in February 2020, and that this peak marked the end of the expansion that began in June 2009 and the beginning of a recession. The report noted that the usual definition of a recession involves a decline in economic activity that lasts more than a few months but recognized that the pandemic and the public health response have resulted in a downturn with different characteristics and dynamics than prior recessions. The report concluded that ''the unprecedented magnitude of the decline in employment and production, and its broad reach across the entire economy, warrants the designation of this episode as a recession, even if it turns out to be briefer than earlier contractions.''

Based on the National Bureau of Economic Research's determination, SBA is announcing in accordance with 13 CFR 120.882(g)(5) that, beginning with applications submitted on or after publication of this Notice, Borrowers may contribute not less than 10% of the costs for Refinancing Without Expansion Projects involving limited or special purpose buildings or structures. This lower percentage for the Borrower's contribution will remain in effect until the first day of the calendar quarter following the end of the economic recession as determined by the National Bureau of Economic Research or its equivalent. SBA will publish a notice in the **Federal Register** announcing the date on which the requirement of the lower Borrower contribution ended.

Authority: 15 U.S.C. 696; 13 CFR 120.882.

Jovita Carranza,

Administrator.

[FR Doc. 2020–16792 Filed 7–31–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 11160]

Privacy Act of 1974; System of Records

AGENCY: Department of State.

ACTION: Rescindment of a System of Records Notice.

SUMMARY: The ''Identity Management System (IDMS) Records, State-72'', which is being rescinded, contains information used to ensure the safety and security of Department of State facilities, systems, or information, and its occupants and users; verify that all persons entering federal facilities, using federal information resources, or accessing classified information are authorized to do so; and track and control PIV cards issued to persons entering and exiting the facilities, using systems, or accessing classified information.

DATES: On June 15, 2018, the Department of State published a notice in the **Federal Register** (83 FR 28058) that records in State-72 were being consolidated with ''Security Records, State-36'' into a single modified State-36 because the records and system purposes are substantially similar.

ADDRESSES: Questions can be submitted by mail, email, or by calling John C. Sullivan, the Senior Agency Official for Privacy, on (202) 647–6435. If mail, please write to: U.S Department of State, Office of Global Information Systems, A/GIS, Room 1417, 2201 C St. NW, Washington, DC 20520. If email, please address the email to the Senior Agency Official for Privacy, John C. Sullivan, at *Privacy@state.gov.* Please write ''Identity Management System Records, State-72'' on the envelope or the subject line of your email.

FOR FURTHER INFORMATION CONTACT: John C. Sullivan, Senior Agency Official for Privacy, U.S. Department of State, Office of Global Information Services, A/GIS, Room 1417, 2201 C St. NW, Washington, DC 20520 or by calling (202) 647–6435.

SUPPLEMENTARY INFORMATION: The records in ''Identity Management System (IDMS) Records, State-72'' (previously published at 71 FR 62653) were consolidated with ''Security Records, State-36'' (previously published at 80 FR 77691). The new SORN reflecting the consolidated systems of records ''Security Records, State-36'' was published at 83 FR 28058 on June 15, 2018.

SYSTEM NAME AND NUMBER:

Identity Management System (IDMS) Records, State-72.

HISTORY:

''Identity Management System (IDMS) Records, State-72'' was previously published at 71 FR 62653 and ''Security Records, State-36'' was previously published at 80 FR 77691 before being modified and re-published at 83 FR 28058.

John C. Sullivan,

Senior Agency Official for Privacy,Deputy Assistant Secretary,Office of Global Information Services,Bureau of Administration,Department of State.

[FR Doc. 2020–16715 Filed 7–31–20; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 11176]

Notice of the Program for the Study of Eastern Europe and Eurasia (Title VIII) Advisory Committee Open Virtual Meeting

ACTION: Notice of an advisory committee open meeting.

SUMMARY: Pursuant to Section 10 of the Federal Advisory Committee Act (FACA), notice is hereby given to announce a public virtual meeting of the Title VIII Advisory Committee on Thursday, August 20, 2020.

DATES: The meeting will begin at approximately 1:30 p.m. Eastern Daylight Time (EDT) on Thursday, August 20, 2020 via Google Meets and adjourn at approximately 4:00 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Ms. Sidni Dechaine, Title VIII Program Officer, Department of State, Bureau of Intelligence and Research, *TitleVIII@state.gov.*

SUPPLEMENTARY INFORMATION: All meeting participants are being asked to submit a notice of intent to attend by Tuesday, August 18, 2020 via email to *TitleVIII@state.gov,* subject line ''Title VIII Advisory Committee Public Meeting 2020.'' Upon receipt of notice, attendees will receive the meeting number and password. Members of the public who will participate are encouraged to dial into the meeting 10 minutes prior to the start of the meeting.

Purpose of Meeting and Topics to be Discussed: The Advisory Committee will announce grant recipients for the 2020 funding opportunity for the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union, in accordance with the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, Public Law 98–164, as amended. The agenda will include opening statements by the Committee chair and Committee members. The Committee will provide an overview

and discussion of eligible grant proposals submitted from ''national organizations with an interest and expertise in conducting research and training concerning the countries of Eastern Europe and the Independent States of the Former Soviet Union,'' based on the guidelines set forth in the March 12, 2020 request for proposals published on *Grants.gov* and SAMS Domestic (*mygrants.service-now.com*). Following Committee deliberation, interested members of the public may make oral statements concerning the Title VIII program. This meeting will be open to the public; however, attendees must register in advance.

Zachary A. Parker,

Director,Office of Directives Management,Department of State.

[FR Doc. 2020–16827 Filed 7–31–20; 8:45 am]

BILLING CODE 4710–32–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0030]

Request for Comments Concerning the Extension of Particular Exclusions Expiring in October 2020 Granted Under the $34 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: Effective July 6, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $34 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated an exclusion process in July 2018 and granted multiple sets of exclusions. In October and December 2019, and February 2020, the U.S. Trade Representative granted exclusions that are scheduled to expire on October 2, 2020. The U.S. Trade Representative has decided to consider a possible extension for up to 12 months of particular exclusions scheduled to expire in October 2020. The Office of the U.S. Trade Representative (USTR) invites public comment on whether to extend particular exclusions.

DATES:

August 1, 2020 at 12:01 a.m. ET: 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.

August 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 at *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 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 84 FR 67463 (December 28, 2018), 84 FR 7966 (March 5, 2019), 84 FR 11152 (March 25, 2019), 84 FR 16310 (April 18, 2019), 84 FR 21389 (May 14, 2019), 84 FR 25895 (June 4, 2019), 84 FR 32821 (July 9, 2019), 84 FR 49564 (September 20, 2019), 84 FR 52567 (October 2, 2019), 84 FR 69016 (December 17, 2019), 84 FR 70616 (December 23, 2019), 85 FR 7816 (February 11, 2020), 85 FR 15849 (March 19, 2020), 85 FR 20332 (April 10, 2020), 85 FR 28692 (May 13, 2020), 85 FR 29503 (May 15, 2020), 85 FR 33775 (June 2, 2020), 85 FR 35158 (June 8, 2020), 85 FR 41267 (July 9, 2020), and 85 FR 42970 (July 15, 2020).

Effective July 6, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 818 eight-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $34 billion. *See* 83 FR 28710. The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-digit HTSUS subheading covered by the $34 billion action from the additional duties. The U.S. Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *See* 83 FR 32181 (July 11, 2018) (July 11 notice).

The July 11 notice required submission of requests for exclusion from the $34 billion action no later than October 9, 2018, and noted that the U.S. Trade Representative periodically would announce decisions. The U.S. Trade Representative has granted multiple sets of exclusions. In October and December 2019, and February 2020, the U.S. Trade Representative granted exclusions that are scheduled to expire on October 2, 2020. *See* 84 FR 52567 (October 2, 2019), 84 FR 69016 (December 17, 2019), and 85 FR 7816 (February 11, 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 scheduled to expire in October 2020. Accordingly, USTR invites public comments on whether to extend particular exclusions scheduled to expire on October 2, 2020, that were granted under the following notices of product exclusions: 84 FR 52567 (October 2, 2019); 84 FR 69016 (December 17, 2019); and 85 FR 7816 (February 11, 2020).

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 July 2018, 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 July 2018 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 July 2018 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 scheduled to expire in October 2020, 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 August 1, 2020, to August 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 August 1 opening of the public docket, a facsimile of the exclusion extension comment form parties will use 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 BCI 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 July 2018 with respect to the particular product.
- The efforts you have undertaken since July 2018 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 or data in support of or in opposition to extending the exclusion.

D. Submission Instructions

To be assured of consideration, you must submit your comment between the opening of the public docket on the portal on August 1, 2020, and the August 30, 2020 submission deadline. Parties seeking to comment on more than one exclusion 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 assigned control number 0350–0015, which expires January 31, 2023.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

BILLING CODE 3290–F0–P

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 July 2018 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 July 2018 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 July 2018 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. 2020–16824 Filed 7–31–20; 8:45 am]
BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0008]

Agency Information Collection Activities; Notice and Request for Comment; National Survey of Speeding Attitudes and Behaviors

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for public comment on a reinstatement with modification of a previously approved collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a reinstatement with modification of a previously approved collection of information. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes an Information Collection Request (ICR) for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before October 2, 2020.

ADDRESSES: You may submit comments identified by DOT Docket ID Number NHTSA–2020–0008 using any of the following methods:

- *Electronic submissions:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the Docket number for this Notice. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Kristie Johnson, Ph.D., Office of Behavioral Safety Research (NPD–310), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, W46–498, Washington, DC 20590. Dr. Johnson's phone number is 202–366–2755, and her email address is *kristie.johnson@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) how to enhance the quality, utility, and clarity of the information to be collected; and (iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comment on the following proposed collection of information:

Title: National Survey of Speeding Attitudes and Behaviors.

OMB Control Number: 2127–0613.

Form Number: NHTSA Form 1538, NHTSA Form 1539, NHTSA Form 1544, NHTSA Form 1545, NHTSA Form 1546.

Type of Information Collection Request: Reinstatement with modification of a previously approved information collection (OMB Control No. 2127–0613).

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information: NHTSA is seeking approval to conduct a National Survey of Speeding Attitudes and Behaviors by web and mail among a national probability sample of 7,013 adult drivers (and 152 adult drivers for a pilot survey), age 18 and older. Participation by respondents would be voluntary. Survey topics would include the extent to which drivers speed, driver attitudes and perceptions about speeding, reasons and motivations for speeding, and knowledge and attitudes towards countermeasure strategies to deter speeding.

In conducting the proposed research, the survey would use computer-assisted web interviewing (*i.e.,* a programmed, self-administered web survey) to minimize recording errors, as well as optical mark recognition and image scanning for the paper and pencil survey to facilitate ease of use and data accuracy. A Spanish-language survey option would be used to minimize language barriers to participation. Surveys would be conducted with respondents using an address-based sampling design that encourages respondents to complete the survey online. Although web would be the primary data collection mode, a paper questionnaire would be sent to households that do not respond to the web invitations. The proposed survey would be anonymous and the survey would not collect any personal information. This collection only requires respondents to report their answers; there are no record-keeping costs to the respondents.

Description of the Need for the Information and Proposed Use of the Information: NHTSA was established to reduce deaths, injuries, and economic losses resulting from motor vehicle

crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research for the development of traffic safety programs. Title 23, United States Code, Section 403 gives the Secretary of Transportation (NHTSA by delegation) authorization to use funds appropriated to conduct research and development activities, including demonstration projects and the collection and analysis of highway and motor vehicle safety data and related information, with respect to all aspects of highway and traffic safety systems and conditions relating to vehicle, highway, driver, passenger, motorcyclist, bicyclist, and pedestrian characteristics; accident causation and investigations; and human behavioral factors and their effect on highway and traffic safety.

Traffic crashes are complex. Often, they involve multiple contributing factors, with speeding as one of the primary factors leading to a crash. Speeding-related crashes—defined as racing, exceeding the speed limit, or driving too fast for conditions [1]—resulted in 26% of all fatal crash fatalities in 2018,[2] a percentage that has largely remained the same over the last 20 years despite national, State, and local efforts to address the speeding problem. In 2010, speeding-related crashes were estimated to result in $52 billion in economic costs and $203 billion in comprehensive costs.[3] Speeding is especially dangerous because it reduces the driver's ability to maneuver around obstacles in a timely manner, increases the distance a vehicle requires to stop, and increases the severity of injuries.[4] This stalled progress suggests that new countermeasures that differ from typical enforcement and engineering efforts may be needed to reduce speeding deaths. An interdisciplinary approach involving engineering, enforcement, and education is needed to change drivers' speeding behavior, thereby reducing speeding-related crashes, fatalities and injuries. To design interventions and countermeasure strategies that are likely to lead to behavior change, NHTSA requires up-to-date information on which drivers are speeding, their attitudes, perceptions, and motivations, as well as what countermeasures are most likely to reduce their speeding behavior. It is important to focus studies on factors underlying behaviors such as attitudes or perceptions of norms that are changeable.

NHTSA has conducted the National Survey of Speeding Attitudes and Behaviors on three previous occasions—first in 1997, again in 2002, and most recently in 2011. In the 2021 survey, NHTSA intends to examine the extent to which drivers speed, who the speeders are, when and why drivers speed, and what countermeasures are most acceptable and effective in reducing speeding. Furthermore, NHTSA plans to assess whether self-reported behaviors, attitudes, and perceptions regarding speeding and associated countermeasure strategies have changed over time since the administration of the prior three national surveys. The 2021 survey will also include new questions on emerging speed-related technologies. The findings from this proposed information collection will assist NHTSA in designing, targeting, and implementing programs intended to reduce speed on the roadways and to provide data to States, localities, and law enforcement agencies that will aid in their efforts to reduce speed-related crashes and injuries.

NHTSA will use the information to produce a technical report that presents the results of the study. The technical report will provide aggregate (summary) statistics and tables as well as the results of statistical analysis of the information, but it will not include any personally identifiable information (PII). The technical report will be shared with State highway offices, local governments, and those who develop traffic safety communications that aim to reduce speed-related crashes.

Frequency of Collection: The study will be conducted one time during the three-year period for which NHTSA is requesting approval. This study is part of a tracking and trending study to measure changes over time. The last study was administered in 2011.

Affected Public: Participants will be U.S. adults (18 years old and older) who drive a motor vehicle. Businesses are ineligible for the sample and would not be interviewed.

Estimated Number of Respondents: 7,165.

Participation in this study will be voluntary with 7,013 participants sampled from all 50 States and the District of Columbia using address data from the most recent U.S. Postal Service (USPS) computerized Delivery Sequence File (DSF) of residential addresses. An estimated 20,600 households will be contacted and have the study described to them. No more than one respondent will be selected per household.

Prior to the main survey, a pilot survey will be administered to test the survey and the mailing protocol and procedures. Participation in this study will be voluntary with 152 participants sampled from all 50 States and the District of Columbia using address data from the most recent U.S. Postal Service (USPS) computerized Delivery Sequence File (DSF) of residential addresses. An estimated 444 households will be contacted and have the study described to them. No more than one respondent will be selected per household.

Estimated Total Annual Burden Hours: NHTSA estimates the total burden of this information collection by estimating the burden to those that NHTSA contacts who do not respond (non-responders), those that NHTSA contacts and respond but are ineligible (ineligible respondents), and those that respond and are eligible for participation (eligible respondents or actual participants). The estimated time to contact 20,600 potential participants (actual participants, ineligible respondents, and non-responders) for the survey and 444 potential participants (actual participants, ineligible respondents, and non-responders) for the pilot is one minute per person per contact attempt. Contact attempts will be made in five waves with fewer potential participants contacted each subsequent wave. NHTSA estimates that 7,221 people will respond to the survey request and 156 will respond to the pilot. Of those, NHTSA estimates that nearly 3% will be ineligible because they are not drivers or are under 18 years old resulting in 208 respondents to the survey and 4 respondents to the pilot who are ineligible. The estimated time to contact and screen 208 ineligible survey participants and 4 ineligible pilot participants is three minutes per person. The estimated time to contact and complete the survey for 7,013 participants and 152 pilot participants is 21 minutes per person. Details of the burden hours for each wave in the pilot and full survey are included in Tables 1 and 2 below.

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[1] National Center for Statistics and Analysis. (2007). *Speeding: 2006 data* (Traffic Safety Facts. DOT HS 810 814). Retrieved from the NHTSA website: *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/810814*.

[2] National Center for Statistics and Analysis. (2019, December). Fatality Analysis Reporting System (FARS): 2018 Annual Report File (ARF) custom query. Retrieved from the NHTSA website: *https://cdan.dot.gov/query*.

[3] Blincoe, L.J., Miller, T.R. Zaloshnja, E., & Lawrence, B.A. (2015, May). *The economic and societal impact of motor vehicle crashes, 2010. (Revised.)* (Report No. DOT HS 812 013). Retrieved from the NHTSA website: *https://crashstats.nhtsa.dot.gov/Api/Public/View Publication/812013*.

[4] National Center for Statistics and Analysis. (2007). *Speeding: 2006 data* (Traffic Safety Facts. DOT HS 810 814).

Table 1. Estimated Total Burden for Pilot Survey.

Wave	Number of Contacts	Participant Type	Estimated Burden per Sample Unit (in minutes)	Frequency of Burden	Number of Sample Units	Burden Hours*	Total Burden*
Wave 1 (Initial Invitation – NHTSA Form 1544)	444	Contacted potential participant – Non-respondent	1	1	391	7	26
		Screened out participant – Ineligible respondent	3	1	2	1	
		Recruited participant – Eligible respondent	21	1	51	18	
Wave 2 (Reminder Postcard #1 – NHTSA Form 1546)	391	Contacted potential participant – Non-respondent	1	1	356	6	19
		Screened out participant – Ineligible respondent	3	1	0	0	
		Recruited participant – Eligible respondent	21	1	35	13	
Wave 3 (1st Survey Mailing – NHTSA Forms 1538, 1545)	356	Contacted potential participant – Non-respondent	1	1	313	6	22
		Screened out participant – Ineligible respondent	3	1	2	1	
		Recruited participant – Eligible respondent	21	1	41	15	
Wave 4 (Reminder Postcard #2 – NHTSA Form 1546)	314	Contacted potential participant – Non-respondent	1	1	298	5	11
		Screened out participant – Ineligible respondent	3	1	0	0	
		Recruited participant – Eligible respondent	21	1	16	6	
Wave 5 (2nd Survey Mailing – NHTSA Forms 1538, 1545)	298	Contacted potential participant – Non-respondent	1	1	289	5	9
		Screened out participant – Ineligible respondent	3	1	0	0	
		Recruited participant – Eligible respondent	21	1	9	4	
Total							**87**

* Rounded up to the nearest hour.

Table 2. Estimated Total Burden for Main Data Collection Survey.

Wave	Number of Contacts	Participant Type	Estimated Burden per Sample Unit (in minutes)	Frequency of Burden	Number of Sample Units	Burden Hours*	Total Burden*
Wave 1 (Initial Invitation – NHTSA Form 1544)	20,600	Contacted potential participant – Non-respondent	1	1	18,130	303	1,147
		Screened out participant – Ineligible respondent	3	1	72	4	
		Recruited participant – Eligible respondent	21	1	2,398	840	
Wave 2 (Reminder Postcard #1 – NHTSA Form 1546)	18,130	Contacted potential participant – Non-respondent	1	1	16,498	275	833
		Screened out participant – Ineligible respondent	3	1	47	3	
		Recruited participant – Eligible respondent	21	1	1,585	555	
Wave 3 (1st Survey Mailing – NHTSA Forms 1538, 1545)	16,498	Contacted potential participant – Non-respondent	1	1	14,518	242	919
		Screened out participant – Ineligible respondent	3	1	57	3	
		Recruited participant – Eligible respondent	21	1	1,923	674	
Wave 4 (Reminder Postcard #2 – NHTSA Form 1546)	14,519	Contacted potential participant – Non-respondent	1	1	13,793	230	479
		Screened out participant – Ineligible respondent	3	1	21	2	
		Recruited participant – Eligible respondent	21	1	705	247	
Wave 5 (2nd Survey Mailing – NHTSA Forms 1538, 1545)	13,793	Contacted potential participant – Non-respondent	1	1	13,379	223	365
		Screened out participant – Ineligible respondent	3	1	12	1	
		Recruited participant – Eligible respondent	21	1	402	141	
Total							**3,743**

* Rounded up to the nearest hour.

When rounded up to the nearest whole hour for each data collection effort, the total estimated annual burden is 3,830 hours for the project activities.

Estimated Total Annual Burden Cost: Participation in this study is voluntary, and there are no costs to respondents beyond the time spent completing the questionnaires.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (i) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (ii) the accuracy of the Department's estimate of the burden of the proposed information collection; (iii) ways to enhance the quality, utility and clarity of the information to be collected; and (iv) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29)

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2020–16731 Filed 7–31–20; 8:45 am]

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Part II

Department of Homeland Security

8 CFR Parts 103, 106, 204, et al.

U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements; Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 106, 204, 211, 212, 214, 216, 217, 223, 235, 236, 240, 244, 245, 245a, 248, 264, 274a, 286, 301, 319, 320, 322, 324, 334, 341, 343a, 343b, and 392

[CIS No. 2627–18; DHS Docket No. USCIS–2019–0010]

RIN 1615–AC18

U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: This final rule adjusts certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). It also removes certain fee exemptions, changes fee waiver requirements, alters premium processing time limits, and modifies intercountry adoption processing. USCIS conducted a comprehensive biennial fee review and determined that current fees do not recover the full cost of providing adjudication and naturalization services. Therefore, the Department of Homeland Security (DHS) is adjusting USCIS fees by a weighted average increase of 20 percent, adding new fees for certain immigration benefit requests, establishing multiple fees for nonimmigrant worker petitions, and limiting the number of beneficiaries for certain forms. This final rule is intended to ensure that USCIS has the resources it needs to provide adequate service to applicants and petitioners.

DATES: This final rule is effective October 2, 2020. Any application, petition, or request postmarked on or after this date must be accompanied with the fees established by this final rule.

FOR FURTHER INFORMATION CONTACT: Kika Scott, Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529–2130, telephone (202) 272–8377.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
A. Purpose of the Regulatory Action
B. Legal Authority
C. Summary of the Final Rule Provisions
D. Summary of Costs and Benefits
E. Effect on the Department of Justice's Executive Office for Immigration Review (EOIR)
F. Effect of the COVID–19 Pandemic on the USCIS Fee Review and Rulemaking
II. Background
A. History
B. Authority and Guidance
C. Basis for Fee Adjustments
D. Final Rule
III. Response to Public Comments on the Proposed Rule
A. Summary of Public Comments
B. Comments Expressing General Support for the NPRM
C. Comments Expressing General Opposition to the NPRM
1. Immigration Policy Concerns
2. Other General Opposition
3. Proposed Fees Are Unconstitutional
4. Rule Will Have Negative Effects on Applicants
5. Rule Will Have Negative Effects on the Economy and Employers
6. Comments on the DACA Renewal Fee
D. Comments on Legal Adequacy of the Rule
E. Comments on Fee Waivers
1. Limits on Eligible Immigration Categories and Forms
2. Fee Waiver Income Requirements
3. Means-Tested Benefits
4. Public Charge Rule
5. Financial Hardship
6. Public Charge Ground of Inadmissibility and Affidavit of Support Requirements
7. Discretionary Fee Waivers
8. Fee Waiver Documentation
9. Cost of Fee Waivers
10. Changes to Form I–912, Request for Fee Waiver
11. Suggestions
F. Comments on Fee Exemptions
1. EAD (Form I–765) Exemption
2. TPS
G. Comments on Specific Fees
1. Fees for Online Filing
2. Biometric Services Fee
3. Genealogy Fees, Forms G–1041, Genealogy Index Search Request, and G–1041A, Genealogy Records Request
4. Form I–90, Application To Replace Permanent Resident Card
5. Form I–131, Application for Travel Document, Refugee Travel Documents
6. Form I–131A, Application for Travel Document (Carrier Documentation)
7. Form I–192, Application for Advance Permission To Enter as a Nonimmigrant
8. Form I–193, Application for Waiver of Passport and/or Visa
9. Form I–290B, Notice of Appeal or Motion
10. Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant
11. Form I–485, Application To Register Permanent Residence or Adjust Status
12. Form I–526, Immigrant Petition by Alien Investor
13. Form I–589, Application for Asylum and Withholding of Removal Fee
14. Form I–600A/I–600 Supplement 3, Request for Action on Approved Form I–600A/I–600
15. Form I–601A, Application for Provisional Unlawful Presence Waiver
16. Form I–751, Petition To Remove Conditions on Residence
17. Form I–765, Application for Employment Authorization
18. Form I–817, Application for Family Unity Benefits
19. Form I–821D, DACA Renewal Fee
20. Form I–829, Petition by Investor To Remove Conditions on Permanent Resident Status
21. Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100 (NACARA))
22. Forms I–924, Application for Regional Center Designation Under the Immigrant Investor Program, and I–924A, Annual Certification of Regional Center
23. Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant
24. Form N–400, Application for Naturalization
25. Other Naturalization and Citizenship Forms
H. Comments on Changes to Form I–129, Petition for a Nonimmigrant Worker
I. Premium Processing
J. 9–11 Response and Biometric Entry-Exit Fee for H–1B and L–1 Nonimmigrant Workers (Pub. L. 114–113 Fees)
K. Comments on Other General Feedback
L. Cost Analysis and DHS Rationale for Fee Adjustments
1. Workload Projections
2. Completion Rates
3. USCIS Staffing
4. Cost Baseline
5. Alternative Funding Sources
M. ICE Transfer
N. Processing Times and Backlogs
O. Fee Payment and Receipt Requirements
P. Fees Shared by CBP and USCIS
Q. Paperwork Reduction Act (PRA) Comment Responses
R. Statutory and Regulatory Responses
1. General Comments on the Regulatory Impact Analysis
2. Methodology Issues
3. Other Comments on the Cost-Benefit Analysis
4. Impacts on Lower-Income Individuals and Families
5. Impacts on Immigrant Populations in Distinct Geographic Areas
6. Immigrants' Access to Legal and Supportive Services
7. Impacts on Students From Low Income Families
8. Impacts on Victimized Groups and Other Vulnerable Populations
9. Impacts to Industries That Use H–2A Workers
10. Effects on Other Federal Agencies
IV. Statutory and Regulatory Requirements
A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)
B. Regulatory Flexibility Act
1. Final Regulatory Flexibility Analysis (FRFA)
a. A Statement of Need for, and Objectives of, the Rule

b. A statement of the Significant Issues Raised by the Public Comments in Respone to the Initail 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
c. The Response of the Agency to any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Rule, and a Detailed Statement of Any Change Made to the Final Rule as a Result of the Comments
d. 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
e. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities That Will be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record
f. 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 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
C. Congressional Review Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132 (Federalism)
F. Executive Order 12988 (Civil Justice Reform)
G. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments
H. Family Assessment
I. National Environmental Policy Act (NEPA)
J. Paperwork Reduction Act
K. Signature

List of Acronyms and Abbreviations

ABC Activity-Based Costing
the Act Homeland Security Act of 2002
ADA Americans with Disabilities Act
AOP Annual Operating Plan
APA Administrative Procedure Act
ASVVP Administrative Site Visit and Verification Program
ASC Application Support Center
BLS Bureau of Labor Statistics
CAA Cuban Adjustment Act of 1966
CAT Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBP U.S. Customs and Border Protection
CEQ Council on Environmental Quality
CFO Chief Financial Officer
CFR Code of Federal Regulations
CNMI Commonwealth of the Northern Mariana Islands
CUNY City University of New York
DACA Deferred Action for Childhood Arrivals
DHS Department of Homeland Security
DOJ Department of Justice
DOL Department of Labor
DOS Department of State
EAD Employment Authorization Document
EB–5 Employment-Based Immigrant Visa, Fifth Preference
EIN Employer Identification Number
E.O. Executive Order
EOIR Executive Office for Immigration Review
FBI Federal Bureau of Investigation
FDMS Federal Docket Management System
FOIA Freedom of Information Act
FPG Federal Poverty Guidelines
FR Federal Register
FRFA Final Regulatory Flexibility Analysis
FVRA Federal Vacancies Reform Act
FY Fiscal Year
GAO Government Accountability Office
GDP Gross Domestic Product
ICE U.S. Immigration and Customs Enforcement
IEFA Immigration Examinations Fee Account
IIRIRA Illegal Immigration Reform and Immigrant Responsibility Act
INA Immigration and Nationality Act of 1952
INS Immigration and Naturalization Service
IRS Internal Revenue Service
ISAF International Security Assistance Forces
IT information technology
LCA Labor Condition Application
LGBTQ Lesbian, gay, bisexual, transgender, and questioning
IOAA Independent Offices Appropriations Act
LIFO Last In, First Out
LPR Lawful Permanent Resident
MOAs Memoranda of Agreement
MPP Migrant Protection Protocols
NACARA Nicaraguan Adjustment and Central American Relief Act
NAICS North American Industry Classification System
NARA National Archives and Records Administration
NEPA National Environmental Policy Act
NOID Notice of Intent to Deny
NPRM Notice of Proposed Rulemaking
NRC National Record Center
OIG DHS Office of the Inspector General
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
PA Privacy Act
PII Personally Identifiable Information
PRA Paperwork Reduction Act of 1995
PRC Permanent Resident Card
Privacy Act Privacy Act of 1974
Pub. L. Public Law
RFE Request for Evidence
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
SAVE Systematic Alien Verification for Entitlements
SBA Small Business Administration
SCRD Signature Confirmation Restricted Delivery
Secretary The Secretary of Homeland Security
SIJ Special Immigrant Juvenile
SNAP Supplemental Nutrition Assistance Program
SSI Supplemental Security Income
Stat. U.S. Statutes at Large
STEM Science, Technology, Engineering, and Mathematics
TPS Temporary Protected Status
TVPA Trafficking Victims Protection Act of 2000
TVPRA The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UAC Unaccompanied Alien Child
UMRA Unfunded Mandates Reform Act of 1995
U.S.C. United States Code
USCIS U.S. Citizenship and Immigration Services
VAWA Violence Against Women Act
VPC Volume Projection Committee

I. Executive Summary

A. Purpose of the Regulatory Action

This final rule adjusts certain immigration and naturalization benefit request fees charged by USCIS. It also makes changes related to setting, collecting, and administering fees. Fee schedule adjustments are necessary to recover the full operating costs associated with administering the nation's lawful immigration system and safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefit, while protecting Americans, securing the homeland, and honoring our values. This final rule also makes certain adjustments to fee waiver eligibility, filing requirements for nonimmigrant workers, premium processing service, and other administrative requirements.

B. Legal Authority

DHS's authority is in several statutory provisions. Section 102 of the Homeland Security Act of 2002 (the Act),[1] 6 U.S.C. 112, and the Immigration and Nationality Act of 1952 (INA) section 103, 8 U.S.C. 1103, charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. Further, authority for establishing fees is found in INA section 286(m), 8 U.S.C. 1356(m) (authorizing DHS to charge fees for adjudication and naturalization services at a level to ''ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants and other immigrants'').[2]

[1] Public Law 107–296, 116 Stat. 2135, 2142–44 (Nov. 25, 2002).

[2] The longstanding interpretation of DHS is that the ''including'' clause in INA section 286(m) does not constrain DHS's fee authority under the statute. The ''including'' clause offers only a non-exhaustive list of some of the costs that DHS may consider part of the full costs of providing adjudication and naturalization services. *See* INA

Continued

C. Summary of the Final Rule Provisions

DHS carefully considered the public comments received. This final rule adopts, with appropriate changes, the regulatory text proposed in the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on November 14, 2019. *See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements;* Proposed rule, 84 FR 62280. This final rule also relies on all the justifications articulated in the NPRM, except as reflected below.

This final rule makes the following changes as compared to the NPRM:

- Does not provide for the transfer of Immigration Examinations Fee Account (IEFA) funds collected by USCIS to U.S. Immigration and Customs Enforcement (ICE). 84 FR 62287; ''U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,'' Proposed Rule; Extension of Comment Period; Availability of Supplemental Information, 84 FR 67243 (Dec. 9, 2019).
- Removes the proposed fee ($275) for Form I–821D, Consideration of Deferred Action for Childhood Arrivals, filed for renewal of Deferred Action for Childhood Arrivals (DACA). 84 FR 62320, 62362; proposed and new 8 CFR 106.2(a)(38).
- Reassigns National Record Center (NRC) costs that do not directly apply to the genealogy program, thereby setting genealogy fees lower than proposed. 84 FR 62315, 62316, 62362; proposed 8 CFR 106.2(c)(1) and (2); new 8 CFR 106.2(c)(1) and (2).
- Realigns $10 million of anticipated IEFA costs for the Office of Citizenship to account for citizenship grants appropriations received via the FY 2019—2020 DHS appropriation bills. *See* Consolidated Appropriations Act, 2019, Public Law 116–6, div. A, tit. IV (Feb. 15, 2019) and Consolidated Appropriations Act, 2020, Public Law 116–93, div. D, tit. IV (Dec. 20, 2019).
- Provides a $50 reduction in the fee for Form I–485, Application to Register Permanent Residence or Adjust Status, filed in the future for principal applicants who pay the $50 fee for Form I–589 and are subsequently granted asylum. New 8 CFR 106.2(a)(17)(ii).
- Provides that petitioners for and recipients of Special Immigrant Juvenile (SIJ) classification who, at the time of filing, have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency, may submit requests for fee waivers for Form I–485 and associated forms; and explains the documentation requirement for SIJs. New 8 CFR 106.3(a)(2)(i) and (a)(3).
- Provides that an Afghan or Iraqi Interpreter, an Iraqi National employed by or on behalf of the U.S. Government, or an Afghan National employed by the U.S. Government or the International Security Assistance Forces (ISAF) may submit requests for fee waivers for Form I–485 and associated forms.[3] New 8 CFR 106.3(a)(2)(ii).
- Provides that requestors who meet the requirements of INA section 245(l)(7), 8 U.S.C. 1255(l)(7) may also request a fee waiver for the Forms N–400, N–600, and N–600K. New 8 CFR 106.3(a)(3).
- Also provides that SIJs who are placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency and Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or ISAF may submit requests for fee waivers for Forms N–400, N–600, and N–600K. New 8 CFR 106.3(a)(2)(i) and (a)(3).
- Clarifies that the Violence Against Women Act (VAWA) self-petitioner classification includes individuals who meet the requirements of INA section 101(a)(51) and anyone otherwise self-petitioning due to battery or extreme cruelty pursuant to the procedures in INA section 204(a) *See* new 8 CFR 106.3(a)(1)(i).
- Consolidates the Director's discretionary provision on fee waivers to remove redundancy. See proposed 8 CFR 106.3(b) and (c); 84 FR 62363 (containing the text that is being consolidated). New 8 CFR 106.3(b).
- Moves proposed 8 CFR 106.3(d)(1) and (d)(2) (not permitting a fee waiver for a requestor who is subject to the affidavit of support, already a sponsored immigrant, or subject to the public charge inadmissibility ground) to 8 CFR 106.3(b)(1) and (b)(2) (governing waivers provided by the USCIS Director), because an affidavit of support and the public charge inadmissibility ground are not applicable to applicants who are otherwise eligible for fee waivers in this rule). New 8 CFR 106.3(b).
- Clarifies the fee waiver request documentation requirements for VAWA, T, and U requestors who may not have access to documentation of household income. New 8 CFR 106.3(f)(5).
- Provides that the fee for forms currently available for online filing with USCIS and filed online will be $10 lower than the fee for the same paper forms. New 8 CFR 106.2(d).
- Requires a separate $30 biometric services fee for Form I–765 filed by pending asylum applicants and applicants for status as a long-term resident from the Commonwealth of the Northern Mariana Islands (CNMI). New 8 CFR 106.2(a)(32)(i).
- Separates fee exemptions for Form I–765 for renewal or replacement of an Employment Authorization Document and clarifies the provisions related to VAWA self-petitioners who are eligible for a fee exemption. New 8 CFR 106.2(a)(32).
- Incorporates a $10 fee for the registration requirement for petitioners seeking to file H–1B petitions on behalf of cap-subject aliens. *See* old 8 CFR 103.7(b)(1)(i)(NNN), 84 FR 60307 (Nov. 8, 2019); new 8 CFR 106.2(c)(11). The final regulation at 8 CFR 103.2(a)(1) also clarifies that all USCIS fees are generally non-refundable, regardless of whether they apply to a benefit request, another adjudication and naturalization service, or other requests such as H–1B Registration, DACA, Civil Surgeon Designation, and Genealogy requests.
- Updates 8 CFR 244.6(b) to clarify the Temporary Protected Status (TPS) related fee provisions in accordance with the NPRM. *See* 84 FR 62301 (stating that the rule proposed to remove the Form I–765 fee exemption for Temporary Protected Status if the individual is filing an initial TPS application and is under 14 years of age or over 65 years of age).
- DHS will maintain the DACA policy fees as in effect before September 5, 2017, at $410 for employment authorization and $85 for biometric services. New 8 CFR 106.2(a)(32)(vi).
- Makes other minor non-substantive and clarifying changes.

DHS summarizes the final fees in Table 1. The table excludes fees established and required by statute and those that DHS cannot adjust. The table only calculates the change in the current fee. If an applicant, petitioner, or requestor must file additional forms as a result of policy changes in this rule, then the individual changes to a single

section 286(m), 8 U.S.C. 1356(m); 84 FR 23930, 23932 n.1 (May 23, 2019); 81 FR 26903, 26906 n.10 (May 4, 2016).

[3] As described in section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Public Law 109–163 (Jan. 6, 2006) as amended; section 602(b) of the Afghan Allies Protection Act of 2009, Public Law 111–8, title VI (Mar. 11, 2009), as amended, 8 U.S.C. 1101 note; and section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended Public Law 110–181 (Jan. 28, 2008).

fee may not represent the total change in fees for every circumstance.

TABLE 1—NON-STATUTORY IEFA IMMIGRATION BENEFIT REQUEST FEES

Immigration benefit request	Current fee $	Final fee $	Change ($)	Percentage change
I–90 Application to Replace Permanent Resident Card (online filing)	455	405	−50	−11
I–90 Application to Replace Permanent Resident Card (paper filing)	455	415	−40	−9
I–102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	445	485	40	9
I–129 Petition for a Nonimmigrant worker	460	N/A	N/A	N/A
I–129CW, I–129E&TN, and I–129MISC	460	695	235	51
I–129H1	460	555	95	21
I–129H2A—Named Beneficiaries	460	850	390	85
I–129H2B—Named Beneficiaries	460	715	255	55
I–129L	460	805	345	75
I–129O	460	705	245	53
I–129H2A—Unnamed Beneficiaries	460	415	−45	−10
I–129H2B—Unnamed Beneficiaries	460	385	−75	−16
I–129F Petition for Alien Fiancé(e)	535	510	−25	−5
I–130 Petition for Alien Relative (online filing)	535	550	15	3
I–130 Petition for Alien Relative (paper filing)	535	560	25	5
I–131 Application for Travel Document	575	590	15	3
I–131 Refugee Travel Document for an individual age 16 or older	135	145	10	7
I–131 Refugee Travel Document for a child under the age of 16	105	115	10	10
I–131A Application for Travel Document (Carrier Documentation)	575	1,010	435	76
I–140 Immigrant Petition for Alien Worker	700	555	−145	−21
I–191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	930	790	−140	−15
I–192 Application for Advance Permission to Enter as Nonimmigrant (CBP) [4]	585	1,400	815	139
I–192 Application for Advance Permission to Enter as Nonimmigrant (USCIS)	930	1,400	470	51
I–193 Application for Waiver of Passport and/or Visa	585	2,790	2,205	377
I–212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	930	1,050	120	13
I–290B Notice of Appeal or Motion	675	700	25	4
I–360 Petition for Amerasian, Widow(er), or Special Immigrant	435	450	15	3
I–485 Application to Register Permanent Residence or Adjust Status [5]	1,140	1,130	−10	−1
	750	1,130	380	51
I–526 Immigrant Petition by Alien Investor	3,675	4,010	335	9
I–539 Application to Extend/Change Nonimmigrant Status (online filing)	370	390	20	5
I–539 Application to Extend/Change Nonimmigrant Status (paper filing)	370	400	30	8
I–589 Application for Asylum and for Withholding of Removal	0	50	50	N/A
I–600/600A Adoption Petitions and Applications	775	805	30	4
I–600A Supplement 3 Request for Action on Approved Form I–600A	N/A	400	N/A	N/A
I–601 Application for Waiver of Ground of Excludability	930	1,010	80	9
I–601A Provisional Unlawful Presence Waiver	630	960	330	52
I–612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	930	515	−415	−45
I–687 Application for Status as a Temporary Resident	1,130	1,130	0	0
I–690 Application for Waiver of Grounds of Inadmissibility	715	765	50	7
I–694 Notice of Appeal of Decision-	890	715	−175	−20
I–698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	1,670	1,615	−55	−3
I–751 Petition to Remove Conditions on Residence	595	760	165	28
I–765 Application for Employment Authorization (Non-DACA)	410	550	140	34
I–765 Application for Employment Authorization (DACA only) [6]	410	410	0	0
I–800/800A Adoption Petitions and Applications	775	805	30	4
I–800A Supplement 3 Request for Action on Approved Form I–800A	385	400	15	4
I–817 Application for Family Unity Benefits	600	590	−10	−2
I–824 Application for Action on an Approved Application or Petition	465	495	30	6
I–829 Petition by Investor to Remove Conditions	3,750	3,900	150	4
I–881 Application for Suspension of Deportation or Special Rule Cancellation of Removal [7]	285	1,810	1,525	535
	570	1,810	1,240	218
I–910 Application for Civil Surgeon Designation	785	635	−150	−19
I–924 Application For Regional Center Designation Under the Immigrant Investor Program	17,795	17,795	0	0
I–924A Annual Certification of Regional Center	3,035	4,465	1,430	47
I–929 Petition for Qualifying Family Member of a U–1 Nonimmigrant	230	1,485	1,255	546
N–300 Application to File Declaration of Intention	270	1,305	1,035	383
N–336 Request for Hearing on a Decision in Naturalization Proceedings (online filing)	700	1,725	1,025	146

TABLE 1—NON-STATUTORY IEFA IMMIGRATION BENEFIT REQUEST FEES—Continued

Immigration benefit request	Current fee $	Final fee $	Change ($)	Percentage change
N–336 Request for Hearing on a Decision in Naturalization Proceedings (paper filing)	700	1,735	1,035	148
N–400 Application for Naturalization (online filing)	640	1,160	520	81
N–400 Application for Naturalization (paper filing)[8]	640	1,170	530	83
	320	1,170	850	226
N–470 Application to Preserve Residence for Naturalization Purposes	355	1,585	1,230	346
N–565 Application for Replacement Naturalization/Citizenship Document (online filing)	555	535	−20	−4
N–565 Application for Replacement Naturalization/Citizenship Document (paper filing)	555	545	−10	−2
N–600 Application for Certificate of Citizenship (online filing)	1,170	990	−180	−15
N–600 Application for Certificate of Citizenship (paper filing)	1,170	1,000	−170	−15
N–600K Application for Citizenship and Issuance of Certificate (online filing)	1,170	935	−235	−20
N–600K Application for Citizenship and Issuance of Certificate (paper filing)	1,170	945	−225	−19
USCIS Immigrant Fee	220	190	−30	−14
Biometric Services (Non−DACA)[9]	85	30	−55	−65
Biometric Services (DACA only)[10]	85	85	0	0
G–1041 Genealogy Index Search Request (online filing)	65	160	95	146
G–1041 Genealogy Index Search Request (paper filing)	65	170	105	162
G–1041A Genealogy Records Request (online filing)	65	255	190	292
G–1041A Genealogy Records Request (paper filing)	65	265	200	308

D. Summary of Costs and Benefits

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs and benefits of available alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been designated an ''economically significant regulatory action'' under section 3(f)(1) of E.O. 12866. Accordingly, it has been reviewed by the Office of Management and Budget (OMB). E.O. 13771 directs agencies to reduce regulation and control regulatory costs. Because the estimated impacts range from costs to cost savings, this final rule is considered neither regulatory or deregulatory under E.O. 13771. Details on the estimated impacts of this final rule can be found in the rule's economic analysis, section 2.

This final rule adjusts certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). It also removes certain fee exemptions, changes fee waiver requirements,[11] alters premium processing time limits, and modifies intercountry adoption processing. This final rule removes the proposed fee that was introduced in the NPRM of this rule for Form I–821D;[12] it does not provide for the proposed transfer of any Immigration Examination Fee Account (IEFA) funds collected by USCIS to ICE;[13] it reassigns the proposed National Record Center (NRC) costs that do not directly apply to the genealogy program, thereby setting genealogy fees lower than proposed;[14] and it now allows for a $10 reduction in filing fee for applicants who file online for forms that are electronically available by USCIS rather than submit paper applications.[15]

The fee schedule that went into effect on December 23, 2016 was expected to yield approximately $3.4 billion of average annual revenue during the FY 2019/2020 biennial period. This represents a $0.9 billion, or 36 percent, increase from the FY 2016/2017 fee rule projection of $2.5 billion. *See* 81 FR 26911. The projected revenue increase is due to higher fees as a result of the FY 2016/2017 fee rule and more anticipated fee-paying receipts. The FY 2016/2017 fee rule forecasted approximately 5.9 million total workload receipts and 4.9 million fee-paying receipts, excluding biometric services. *See* 81 FR 26923–4. However, the FY 2019/2020 fee review forecasts approximately 8.5 million total workload receipts and 7.0 million fee-paying receipts, excluding biometric

[4] Because the FY 2016/2017 fee review and resulting fee change were based on USCIS's costs for processing inadmissibility waivers and not CBP's costs, the Form I–192 fee remained $585 when filed with and processed by CBP. *See* 8 CFR 103.7(b)(1)(i)(P); 81 FR 73307.

[5] Currently, there are two fees for Form I–485. *See* 8 CFR 103.7(b)(1)(i)(U). The $750 fee is applied to ''an applicant under the age of 14 years when [the application] is (i) submitted concurrently with the Form I–485 of a parent, (ii) the applicant is seeking to adjust status as a derivative of his or her parent, and (iii) the child's application is based on a relationship to the same individual who is the basis for the child's parent's adjustment of status, or under the same legal authority as the parent.'' *See* 84 FR 62305. With this rule, DHS removes the reduced child fee. *See* section III.G.11.b. Form I–485 Child Fee. Additionally, DHS adds a $1,080 fee for certain asylum applicants. *See* section III.G.11.c. Form I–485 Reduced Fee for Asylees and new 8 CFR 106.2(a)(17)(ii).

[6] DHS will maintain the DACA fees at $410 for employment authorization and $85 for biometric services. *See* section III.C.6. Comments on DACA Renewal Fee of this preamble; new 8 CFR 106.2(a)(32)(vi).

[7] Currently there are two USCISs fees for Form I–881: $285 for individuals and $570 for families. *See* 8 CFR 103.7(b)(1)(i)(QQ)(1). EOIR has a separate $165 fee. DHS does not change the EOIR fee with this rule.

[8] Currently, there are two fees for paper filing of Form N–400. *See* 8 CFR 103.7(b)(1)(i)(BBB). This final rule eliminates the reduced fee option for an applicant whose documented income is greater than 150 percent and not more than 200 percent of the Federal poverty level. *See* section III.G.24.c of this final rule or 84 FR 62317 for the proposed rule.

[9] As explained in this preamble and NPRM, this rule only requires the separate biometric services fee in certain cases. *See* section III.G.2. Biometric Services Fee of this preamble; 84 FR 62302; new 8 CFR 103.7(a)(2), 106.2(a)(32)(i), and 106.2(a)(37)(iii).

[10] *See* footnote 6.

[11] Also, in this final rule DHS Consolidates the Director's discretionary provision on fee waivers to remove redundancy. 84 FR 62363. Proposed and new 8 CFR 106.3.

[12] 84 FR 62320, 62362; proposed and new 8 CFR 106.2(a)(2)(38).

[13] 84 FR 62287, 84 FR 67243. This final rule does not transfer funds to ICE. Therefore, DHS removes $207.6 million for ICE from its cost baseline, resulting in lower fees than if DHS pursued the transfer of funds.

[14] 84 FR 62315, 62316, 62362; proposed and new 8 CFR 106.2(c)(1)–(c)(2); new 8 CFR 106.2(c)(1)–(c)(2).

[15] New 8 CFR 106.2(d).

services. This represents a 44 percent increase to workload and a 43 percent increase to fee-paying receipt assumptions.[16]

For the 10-year implementation period of the rule, DHS estimates the annualized costs of the rule to be $13,856,291, annualized at either 3- and 7-percent discount rates. DHS estimates the annualized cost savings to be $6,192,201 to $22,546,053. DHS estimates the annualized net societal costs and savings of the rule to range from costs of $7,664,090 to savings of $8,689,762. Over the 10-year implementation period of the rule, DHS estimates the annualized transfers to the government from applicants/petitioners to be $551,842,481, annualized at either 3- and 7-percent discount rates. Over the same 10-year implementation period of the rule, DHS estimates the annualized transfers of the rule between different groups of fee-paying applicants and/or petitioners to specific form populations is $832,239,426, annualized at either 3- and 7-percent discount rates.

The final revenue increase is based on USCIS costs and volume projections available at the time of the USCIS fee review. A full analysis of these regulatory provisions and their impacts can be found in the stand-alone Regulatory Impact Analysis found in the docket of this rulemaking and in the statutory and regulatory requirements section of this preamble.

E. Effect on the Department of Justice's Executive Office for Immigration Review (EOIR)

DHS notes possible ancillary effects of this final rule on the fees charged by the Executive Office for Immigration Review (EOIR). In the NPRM, DHS proposed a fee for a Form I–589 filed with DHS only. Whether the fee also will apply to a Form I–589 filed with EOIR is a matter within the jurisdiction of the Department of Justice (DOJ) rather than DHS, subject to the laws and regulations governing the fees charged in EOIR immigration proceedings. 84 FR 62318. DHS does not directly set any fees for DOJ. DHS did not collaborate with DOJ to calculate or incorporate the costs for DOJ adjudication and naturalization services into the USCIS Activity-Based Costing (ABC) model used for this final rule. After the NPRM was published, DOJ published a rule that proposed to increase the fees for those EOIR applications, appeals, and motions that are subject to an EOIR-determined fee, based on a fee review conducted by EOIR. 85 FR 11866 (Feb. 28, 2020). EOIR also stated that its proposed rule would not affect the fees that have been established by DHS with respect to DHS forms for applications that are filed or submitted in EOIR proceedings. *Id.* at 11871. DOJ did not propose any revisions to 8 CFR 1103.7(b)(4)(ii) in its rule that would change its longstanding use of DHS forms and fees. Rather, EOIR proposed to revise its regulations to make changes conforming to the DHS NPRM, namely the transfer of DHS's fee schedule from 8 CFR 103.7 to the new 8 CFR part 106. *Id.* Consequently, in immigration court proceedings, EOIR will continue to charge fees established by DHS for DHS forms, including the fees that DHS is establishing in this final rule, which include but are not limited to the fees for Form I–485, Application to Register Permanent Residence or Adjust Status; Form I–589, Application for Asylum and Withholding of Removal Fee;[17] and Form I–601, Application for Waiver of Grounds of Inadmissibility.

F. Effect of the COVID–19 Pandemic on the USCIS Fee Review and Rulemaking

DHS acknowledges the broad effects of the COVID–19 international pandemic on the United States broadly and the populations affected by this rule. USCIS has seen a dramatic decline in applications and petitions during the COVID–19 pandemic which has also resulted in an unprecedented decline in revenue. DHS has no comparable historical data that can be used to project the scope, duration, and total effect this will have on USCIS' revenue. As a result, USCIS is monitoring its revenue collections daily. In April 2020, USCIS projected that USCIS' non-premium revenue for April 2020 through September 2020 would fall approximately 59 percent below USCIS' initial FY 2020 annual operating plan revenue projection based on the dramatic reduction in fees received during the pandemic. The projections show that USCIS would receive $1.1 billion less in non-premium revenue in the second half of the fiscal year than previously forecast.[18] USCIS cannot absorb that large of a revenue loss and have enough funding to sustain operations at the same level as prior to the pandemic. Therefore, DHS has provided technical assistance identifying for Congress USCIS funding needs to help cover payroll and other fixed costs in FY 2020 ($571 million) and to have enough carryover ($650 million) available during the first quarter of FY 2021 to continue operations while new fees continue to be collected. The additional revenue provided by this rule addresses the difference between the costs of USCIS operations and USCIS revenue for the biennial period as projected at the time of the USCIS fee review. The amount of funding identified in DHS's technical assistance to Congress would restore USCIS' financial situation to its pre-rule status and would not obviate the need for DHS to adjust USCIS' fees to address the projected disparity between costs and revenue identified in this rule.

DHS makes no changes in this rule in response to the pandemic. USCIS considers all available data at the time it conducts its fee review. USCIS conducted most of the FY 2019/2020 fee review in FY 2017, before the emergence of the pandemic. At that time, USCIS did not foresee, and could not reasonably have foreseen, the effects of such a pandemic on USCIS receipt, revenue, or cost projections during the FY 2019/2020 biennial period, and we cannot project the effects at this time. The projections in this rule were based on conventional conditions, and with no way of knowing or being able to predict the long-term effects of COVID–19 at this point, DHS must assume that filing volumes will return to near previous levels within a reasonable period. Thus, DHS proceeds with this rulemaking on the basis of the FY 2019/2020 USCIS fee review and associated projections. Consistent with past practice and as required by the CFO Act, USCIS will evaluate all available data at the time it conducts future fee reviews, including data related to the COVID–19 pandemic and any potential effects on USCIS workload volumes, revenue, or costs. DHS will consider these effects in future fee rules.

II. Background

A. History

On November 14, 2019, DHS published a proposed rule in the **Federal Register** (docket USCIS–2019–

[16] *See* FY 2019/2020 Immigration Examinations Fee Account Fee Review Supporting Documentation with Addendum, which is part of the docket for this final rule. DHS revised the volumes to exclude DACA and change fee-paying assumptions for Forms N–400, N–600, and N–600K, as discussed later in this preamble.

[17] No fee would apply where an applicant submits a Form I–589 for the sole purpose of seeking withholding of removal under INA section 241(b)(3), 8 U.S.C. 1231(b)(3), or protection from removal under the regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). *See* 85 FR 11871.

[18] In April 2020, USCIS revised its internal annual operating plan revenue projections based on observed receipt patterns for each form during the pandemic. The annual operating plan revenue projections are not the same as the fee rule revenue projections, and revisions to them do not adjust the results of the USCIS fee review.

0010). *See* 84 FR 62280. In consideration of requests to extend the comment period and to provide additional time for the public to review supplemental information, on December 9, 2019, DHS published a proposed rule; extension of comment period; availability of supplemental information; and extended the comment deadline from December 16, 2019 through December 30, 2019. 84 FR 67243 (Dec. 9, 2019). Then on January 24, 2020, DHS further extended the comment period until February 10, 2020. *See* 85 FR 4243 (Jan. 24, 2020). In addition, DHS announced that it would consider comments received during the entire public comment period, including comments received since December 30, 2019. *Id.* In this final rule, DHS will refer to these three documents collectively as the proposed rule or NPRM.

B. Authority and Guidance

DHS issues this final rule consistent with INA section 286(m), 8 U.S.C. 1356(m) and the Chief Financial Officers (CFO) Act, 31 U.S.C. 901–03 (requiring each agency's CFO to review, on a biennial basis, the fees imposed by the agency for services it provides and to recommend changes to the agency's fees).

This final rule is also consistent with non-statutory guidance on fees, the budget process, and federal accounting principles. *See* OMB Circular A–25, 58 FR 38142 (July 15, 1993) (establishing federal policy guidance regarding fees assessed by federal agencies for government services); [19] Federal Accounting Standards Advisory Board Handbook, Version 17 (06/19), Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts, SFFAS 4 (generally describing cost accounting concepts and standards, and defining ''full cost'' to mean the sum of direct and indirect costs that contribute to the output, including the costs of supporting services provided by other segments and entities.); *id.* at 49–66 (identifying various classifications of costs to be included and recommending various methods of cost assignment); [20] *see also* OMB Circular A–11, Preparation, Submission, and Execution of the Budget, section 20.7(d), (g) (June 29, 2018) (providing guidance on the FY 2020 budget and instructions on budget execution, offsetting collections, and user fees).[21] DHS uses OMB Circular A–25 as general policy guidance for determining user fees for immigration benefit requests, with exceptions as outlined in section III.B. of the preamble. DHS also follows the annual guidance in OMB Circular A–11 if it requests appropriations to offset a portion of IEFA costs.[22]

Finally, this final rule accounts for, and is consistent with, congressional appropriations for specific USCIS programs. *See* Consolidated Appropriations Act, 2019, Public Law 116–6, div. A, tit. IV (Feb. 15, 2019) and Consolidated Appropriations Act, 2020, Public Law 116–93, div. D, tit. IV (Dec. 20, 2019).

C. Basis for Fee Adjustments

DHS conducted a comprehensive fee review for the FY 2019/FY 2020 biennial period. It identified a projected average annual cost and revenue differential of $1,262.3 million between the revenue anticipated under current fees and the anticipated full cost of providing immigration adjudication and naturalization services. DHS revises the estimated cost and revenue differential to $1,035.9 million in this final rule. In the final rule, DHS has removed $226.4 million of average annual estimated costs related to the immigration adjudication and naturalization services provided by ICE and the Deferred Action for Childhood Arrival (DACA) policy from the budget projection used to calculate the fees in the NPRM. DHS issues this final rule to adjust USCIS' fee schedule to recover the full cost of providing immigration adjudication and naturalization services.

TABLE 2—REVISED IEFA NON-PREMIUM COST AND REVENUE PROJECTIONS COMPARISON

IEFA Non-Premium Cost and Revenue Projections Comparison			
Comparison	FY 2019	FY 2020	FY 2019/2020 average
Non-Premium Revenue	$3,408,233,376	$3,408,233,376	$3,408,233,376
Non-Premium Budget	$4,331,978,119	$4,556,386,463	$4,444,182,291
Difference	($923,744,743)	($1,148,153,087)	($1,035,948,915)

D. Final Rule

Following careful consideration of public comments received, DHS made modifications to the NPRM's regulatory text, as described above. Rationale provided in the background section of the NPRM remains valid, except as described in this regulatory preamble. Section III of this preamble includes a detailed summary and analysis of the public comments. Comments and supporting documents may be reviewed at the Federal Docket Management System (FDMS) at *http://www.regulations.gov,* docket number USCIS–2019–0010.

III. Response to Public Comments on the Proposed Rule

A. Summary of Public Comments

DHS received a total of 43,108 public comment submissions in Docket USCIS–2019–0010 in response to the NPRM.[23] DHS reviewed all the public comments received in response to the NPRM and addresses relevant comments in this final rule, grouped by subject area. The majority of comment submissions were from individual and anonymous commenters. Other commenters included healthcare providers; research institutes and universities; law firms and individual attorneys; federal, state, local, and tribal

[19] Available at *https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf* (last viewed 03/06/2020).

[20] Available at *http://files.fasab.gov/pdffiles/handbook_sffas_4.pdf* (last viewed 03/06/2020).

[21] Available at *https://www.whitehouse.gov/wp-content/uploads/2018/06/a11_2018.pdf* (last viewed 03/06/2020).

[22] OMB Circulars A–25 and A–11 provide nonbinding internal Executive Branch direction for the development of fee schedules under the Independent Offices Appropriations Act (IOAA) and appropriations requests, respectively. *See* 5 CFR 1310.1.

[23] Of the 43,108 public comment submissions received, 12,114 were posted to *www.regulations.gov*. The other 30,994 submissions were designated ''inactive—do not post'' and included form copies, duplicates, and non-germane submissions.

elected officials; state and local government agencies; religious and community organizations; advocacy groups; unions; as well as trade and business organizations. While some commenters wrote that they supported the NPRM, the vast majority of commenters opposed all or part of it.

B. Comments Expressing General Support for the NPRM

Comment: Several commenters expressed general support for the NPRM. Most did not state precise reasons for their support. Examples of the rationale for some of the generally supportive comments include: Fees are a small price to pay for the benefits of immigration; the burden of immigration should fall on the applicants and not on U.S. taxpayers; the fees will discourage fraudulent immigration; USCIS must have funds to operate; and the rule would benefit the U.S. government. A few commenters suggested that fees should be even higher than DHS proposed. One commenter generally supported the proposal and wrote that the methodology used in the biennial fee review was accurate and fully compliant with statutory requirements set forth at INA sections 286(m) and (n), 8 U.S.C. 1356(m), (n). This commenter said the fee review was also compliant with OMB and Federal Accounting Standards Board standards for budgeting and financial management.

Response: DHS appreciates that some commenters support the NPRM. However, it has not separately summarized these comments and does not make any changes in this final rule because of them.

C. Comments Expressing General Opposition to the NPRM

Many commenters generally opposed the NPRM, including the proposed fees, magnitude of the fee adjustments, charging fees in general, and specific proposed policy changes. DHS summarized and responded to the public comments as follows:

1. Immigration Policy Concerns

Comment: Many commenters opposed fee adjustments for policy reasons generally suggesting that the fees will be harmful. The comments are summarized as follows:

- Immigration is important to the United States and the NPRM betrays or is contrary to American values.
- USCIS has an enormous and far-reaching impact and it is imperative that USCIS consider the harmful human effects of the proposed fee increases.
- The fee increase is an attack on immigrants and vulnerable populations.
- The fees would especially affect people of color; the rule implements and displays the racial animus that officials have expressed, is designed to keep non-white immigrants out of the U.S., limits people of color from becoming lawful permanent residents or U.S. citizens, and would have a negative effect on the Latin population.
- The rule is cruel, inhumane, nationalistic, fascist, racist, xenophobic, intended to limit voting rights to the wealthy, and deter green card holders from seeking citizenship.
- The fee increases will create financial hardships for low-income immigrants and the increased cost of renewing residency cards would make it more difficult for immigrants to obtain employment or provide proof of their immigration status.
- Low income immigrants will be forced to choose between providing for basic needs and pursuing immigration benefits.
- The fee increase is an attack on the immigrant and refugee communities who already face discrimination, language barriers, lack of services, poverty, marginalization, persecution, trauma, and fear.
- High fees could result in healthcare avoidance and other negative impacts on foreign-born individuals, as well as their U.S. citizen family members.
- The rule would harm LGBTQ or HIV positive noncitizens.
- The rule's adverse and disparate impact on immigrants of color renders the proposed rule arbitrary and capricious in contravention of federal anti-discrimination protections.
- The rule creates roadblocks to the integration of immigrants.
- The rule attempts to establish discriminatory policies that have been judicially enjoined and to prevent fair and equal access to the U.S. immigration system.
- The proposed fee increase would prevent many immigrants from seeking and obtaining the right to vote. A commenter questioned whether the increase was intentionally seeking to suppress potential low- and middle-income immigrant voters.
- DHS should remove financial barriers clearly intended to target the poor to encourage people to use the legal immigration process.
- Increased fees and removal of fee waiver categories in the proposed rule would result in more applicants being put into removal proceedings.
- The proposal would worsen USCIS' already bad reputation.
- USCIS is engaging in partisan machinations rather than acting as a neutral federal agency.
- The proposal would increase predatory and fraudulent immigration services scams and USCIS will need to enhance its efforts to combat these harmful practices.
- The proposal would negatively impact familial integrity and family unity and would increase the financial strain on immigrants' household resources that would be better spent on improving the family's welfare.
- The proposal, along with the previous public charge rule, demonstrates DHS' ''animus towards low-income immigrants seeking family unity'' and urged the agency to instead facilitate family unity regardless of immigrants' finances.
- The proposal would create an ''invisible wall'' that would block many hard-working noncitizens from accessing immigration benefits and would cause long-term family separation.

Response: DHS proposed adjustments to USCIS' fee schedule to ensure full cost recovery. DHS did not target any particular group or class of individuals, or propose changes with the intent to deter requests from low-income immigrants seeking family unity or deterring requests from any immigrants based on their financial or family situation or to block individuals from accessing immigrant benefits. With limited exceptions as noted in the NPRM and this final rule, DHS establishes its fees at the level estimated to represent the full cost of providing adjudication and naturalization services, including the cost of relevant overhead and similar services provided at no or reduced charge to asylum applicants or other immigrants. This rule is consistent with DHS's legal authorities. *See* INA section 286(m), 8 U.S.C. 1356(m). DHS proposed changes in fee waiver policies to ensure that those who benefit from immigration benefits pay their fair share of costs, consistent with the beneficiary-pays principle as described in the Government Accountability Office report number GAO–08–386SP.[24]

In certain instances, DHS deviates from the beneficiary-pays principle to establish fees that do not represent the estimated full cost of adjudication. For example, DHS proposed a $50 fee for Form I–589, Application for Asylum and for Withholding of Removal, when filed with USCIS. This fee deviates from the beneficiary-pays principle by holding the fee well below the estimated

[24] GAO, *Federal User Fees: A Design Guide* (May 29, 2008), available at *https://www.gao.gov/products/GAO-08-386SP.* (last accessed Feb. 24, 2020).

cost of adjudication. The $50 fee for affirmative asylum filings is not intended to recover the estimated full cost of adjudication. Instead, it is intended to limit the increase of other fees that must otherwise be raised to cover the estimated full cost of adjudicating asylum applications. Fee adjustments are not intended to advance any policy objectives related to influencing the race or nationality of immigrants, deterring immigration and naturalization, or affecting voting.

DHS adjusts the USCIS fee schedule in this final rule to provide for recovery of the estimated full cost of immigration adjudication and naturalization services. DHS notes that the fees are the same for all people who submit benefit requests regardless of their physical, cultural, or individual characteristics. The commenters state that DHS has discriminatory intent or pretext for this rulemaking, but they provide no evidence to support that statement. DHS has complied with all relevant legal and statutory authorities, including the Immigration and Nationality Act (INA) and the Administrative Procedure Act (APA). DHS rejects the claim that its justifications for adjusting the fees are pretextual or intended to obscure its true intent, or that nefarious reasons like voter suppression and racial animus are behind the fee adjustments, and DHS declines to make any changes in this final rule on these bases.

2. Other General Opposition

Comment: Many commenters expressed general opposition to the proposed increase in USCIS fees. Commenters stated:

- USCIS should find a way to increase its margins without causing detriment to the populations it serves.
- The NPRM was not justifiable and USCIS should increase its own efficiency instead of charging more and providing less service.
- The rule's objectives are pretextual, and its goal of fully recovering costs is undermined by the series of USCIS policies and practices that increase the agency's costs and inefficiencies. USCIS fails to describe alternatives to those policies and practices in the proposed rule.
- USCIS should not increase fees when it has inefficiencies such as performing three different background and biological checks on a single applicant.
- USCIS policy failings and inefficient resource allocation are creating the need for increased fees. Commenters provided examples such as the following:
  - Failure to revise policies to keep costs within current fees;
  - Failure to hire and train already budgeted staff;
  - Extensive and frivolous use of a Request for Evidence (RFE) and Notice of Intent to Deny (NOID);
  - ''Extreme vetting'';
  - Lengthy suspension of longstanding premium processing services for certain applications;
  - The current lockbox system;
  - Increased and unnecessary in-person interviews;
  - Ramped up denaturalization efforts;
  - Resources spent litigating improperly denied applications; and
  - Actions that increased appeals and motions.

Many of these commenters said the NPRM does not account for agency inefficiencies resulting from these policies or how increased revenue would mitigate them and that USCIS should end them before seeking additional fees from applicants.

After listing several policy changes leading to USCIS inefficiencies, one commenter said these policies and requiring fee increases would, in key respects, transfer the costs of the agency's own inefficiencies to the public. The commenter also wrote that the NPRM suggests that the agency could expand implementation of at least some of these ''misguided measures.'' The commenter concluded that it is therefore unsurprising that the NPRM fails to provide any meaningful evidence that the changes it proposes would relieve case processing delays or otherwise improve agency performance; rather, the proposed rule assumes that lengthy delays will persist.

Response: DHS will continue to explore efficiencies that improve USCIS services. DHS may incorporate corresponding cost savings into future biennial fee reviews and rulemakings accordingly. Nevertheless, USCIS must recover the estimated full cost of providing immigration adjudication and naturalization services, including services provided at no or reduced charge to asylum applicants and other immigrants. DHS declines to make changes in this final rule in response to these comments.

Comment: Several commenters suggested tax solutions instead of fee increases. One commenter stated that because they were an American, the U.S. government should raise the commenter's taxes instead of raising fees for citizenship applications. Another commenter suggested that the U.S. government should tax large corporations to fund public services. One commenter opposed the regulation for three reasons: The department managers should be requesting additional funding from Congress to meet legal requirements, reimbursements between USCIS and DHS ''are not to be addressed directly by the users of services required to be provided by the executive branch,'' and the executive branch is required to provide certain services regardless of cost.

Response: DHS has no opinion on whether Congress should pass any new laws to address fees for adjudication and naturalization services. However, DHS reiterates that this final rule complies with current laws. Consistent with DHS' statutory authority, user fees are the primary source of funding for USCIS. *See* INA section 286(m), 8 U.S.C. 1356(m). This final rule adjusts those user fees to provide for full cost recovery to USCIS. DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter stated that new administrative procedures instituted in the last 3 years serve as barriers to naturalization and immigration rather than as security precautions.

Response: Under the law, DHS must fund USCIS operations, including the vetting of individuals who want to enter the United States, using fees. The security screening, background checks, and interviews are all vitally necessary to ensuring that bad actors do not exploit the legal immigration system to enter the United States and undertake actions that harm citizens and conflict with our national values. USCIS must carry out those functions as part of the vetting process and these functions are funded by fees.

Comment: Some commenters said that USCIS should maintain the current fee schedule as-is and revisit the issue after further review of the efficiency and effectiveness of current policies, or possible review of the U.S. system of immigration policy by future terms of Congress.

Response: In its FY 2019/2020 fee review, USCIS estimated that there is a gap of more than $1 billion annually between the revenue collections projected under the previous fee schedule and the resources USCIS needs to meet its operational needs to address incoming workloads. Therefore, if DHS did not adjust fees in this final rule, USCIS' pending caseload would likely continue to grow and applicants and petitioners would experience longer processing times. DHS declines to adopt the commenter's suggestion in this final rule.

3. Proposed Fees Are Unconstitutional [25]

Comment: Several commenters wrote that the proposed USCIS fee rule violates one or more provisions of the United States Constitution. These comments are summarized as follows:

- By removing fee waivers for most categories of cases, USCIS is conditioning fundamental rights, such as the ability to vote, on the ability to pay, engaging in discrimination prohibited by the Constitution because it affects one race more than another, and using the ''beneficiary pays'' principle as a pretextual argument to conceal an intent to discriminate against racial minorities.
- Raising the citizenship application fee to over $1,000 is like imposing a ''poll'' tax on future voters, which is outlawed by the 24th amendment to the U.S. Constitution.
- Naturalization is an especially important immigration benefit, as it is the only one referenced in the Constitution.
- Depriving low-income immigrants of their due process rights through significant economic obstacles to immigration benefits is contrary to the Equal Protection Clause of the 14th Amendment.[26]
- The intent of the rule is unconstitutional because it is intended to directly exclude individuals based on their economic class.

Response: DHS is not adjusting the USCIS fee schedule with any undisclosed motivation or intent other than to recover the estimate full cost of adjudication and naturalization services. The new fees are not insubstantial, but DHS disagrees with the commenters' assertions that the fees in this final rule will have an effect on the economic class or number of applicants. DHS has no data that would indicate that the populations noted by the commenters will be precluded from submitting benefit requests. As stated in other parts of this final rule, DHS must study the adequacy of its fee schedule biennially. If this final rule results in a significant reduction in the number of requests submitted for immigration benefits, DHS can adjust to address that result in a future fee rule. Therefore, DHS does not agree that the new fees violate the U.S. Constitution.

[25] For constitutional claims against the $50 asylum fee see the General Comments on the Asylum Fee section of this preamble.

[26] The commenter likely meant the equal protection component of the Fifth Amendment Due Process Clause.

4. Rule Will Have Negative Effects on Applicants

Comment: Many commenters wrote that the NPRM, including the fee schedule and limited fee waivers, would have negative effects on applicants, including the following:

- Impede legal immigration;
- Block low-income immigrants from achieving citizenship and the associated benefits;
- Disproportionately impact Asian immigrants and Asian Americans;
- Encourage illegal immigration;
- Prevent immigrants from being contributing members of society;
- Cause immigrants to rely on public assistance;
- Make it difficult to become documented;
- Cost DHS more money for deportations;
- Prevent nonimmigrants and their families from accessing the American Dream;
- Make it difficult for immigrants to make a better life for themselves and their families;
- Make it more difficult for immigrant residents in South Carolina to maintain lawful status, secure work authorization, and provide support for their families;
- Make it more difficult for people to immigrate and for lawyers to obtain clients;
- Dissuade citizens and lawful permanent residents (LPRs) from bringing their family members to the U.S and family support is a relevant factor in economic mobility;
- Promote ''healthcare avoidance'' and exacerbate medical needs when immigrants finally emerge in care systems, resulting in increased costs for the health and human services sectors;
- Cause significant negative effects on Latino immigrants;
- Punish immigrants who did their utmost to obey immigration laws;
- Adversely impact populations already much less likely to apply for and obtain naturalization, such as survivors of domestic violence, sexual assault, and human trafficking. Further discouraging naturalization among these populations would harm their chances of reuniting with family through immediate relative petitions and undermine applicants' sense of security in the United States.
- The fee increases making naturalization less accessible for low-income immigrants would yield poor health outcomes among children.
- The proposal, along with other policies, serves to disrupt access to programs that address social determinants of health and contribute to individuals' and families' well-being.

Response: DHS is unable to quantify how many people will not apply because they do not have access to fee waivers and we acknowledge that some individuals will need to save, borrow, or use a credit card in order to pay fees because they may not receive a fee waiver. DHS also recognizes that if individuals borrow or use a credit card, they are likely also responsible for the filing fee, and any additional interest cost accruing on the loan or credit card. DHS does not know the price elasticity of demand for immigration benefits, nor does DHS know the level at which the fee increases become too high for applicants/petitioners to apply. However, DHS disagrees that the fees will result in the negative effects the commenters' suggested. DHS believes that immigration to the United States remains attractive to millions of individuals around the world and that its benefits continue to outweigh the costs noted by the commenters. Therefore, DHS believes the price elasticity for immigration services is inelastic and increases in price will have no impact on the demand for these services. This is true for all immigration services impacted by this rule. DHS also does not believe that the NPRM is in any way discriminatory in its application and effect. Therefore, DHS declines to make changes in this final rule in response to these comments.

5. Rule Will Have Negative Effects on the Economy and Employers

Comment: Multiple commenters stated that the NPRM would have negative direct and indirect impacts on local, state, regional and the United States' economy, as well as businesses and employers. These comments are summarized as follows:

- Immigrants provide crucial labor in agriculture, construction, healthcare, hospitality, and other industries, and they need an ample workforce from which to draw.
- Lawful permanent residents becoming citizens is important to the economy of the United States, and those positive economic impacts reach across generations.
- Immigrants can contribute more to the economy with access to legal documentation.
- Higher fees affect lower-skilled laborers who are in demand in several industries. Immigrants are key contributors to the U.S. labor force and the proposed fee change would impede immigration to the detriment of the labor force.

• The rule could cost the United States potential future taxpayers. This impact could result in a long-term economic loss.

• Immigrants are the backbone of industry and the economy, often responsible for significant job creation and innovation.

• An increase in fees will negatively affect U.S. companies that pay immigration fees on behalf of their employees.

• The proposed fee increases will result in the decrease of immigration applications, negatively affecting the government.

• The increased fees will create a financial barrier to protection from deportation and work authorization, thus making it more expensive to participate on the U.S. economy.

• Immigrants will be the primary source of future U.S. labor growth. Limiting working class immigration is contrary to the interests of the U.S. society and economy. Similarly, naturalization boosts American democracy, economy, and diversity.

• Increased fees will negatively affect the U.S. workforce because employees who may be eligible to naturalize will no longer have access to naturalization.

• The fees would be detrimental to immigrant students' success and the nation's economic prosperity.

• Improved immigration status allows low-income immigrants to rise out of poverty and contribute economically to their communities with access to better jobs and opportunities.

• The rule will damage regional and national economies by stymieing immigration and the benefits that flow from it.

• The proposed rule would have a negative ripple effect on U.S. citizens because of the economic benefits derived from immigrants.

• These changes would not only impact individual applicants who may be unable to work due to delays in their pursuit of work authorization, but also family members and employers who may have to lay off valuable employees.

• Immigrant communities in rural areas with high levels of poverty live paycheck to paycheck and the proposed fee increases would make immigration benefits less accessible to working-class and vulnerable individuals.

• Raising fees would undermine the jobs and wages of domestic workers with limited education performing low-skill jobs.

• The proposed rule would increase unemployment among immigrant workers.

• The proposed fee increases and the revocation of fee waivers would increase economic and administrative burdens on State and local government workforces.

• The destabilizing effects of barriers to naturalization would create undue financial burdens on municipalities that outweigh any stated benefits of the proposal.

• Immigrant entrepreneurs and small business owners generate ''tens of billions of dollars'' in business revenue.

• Immigrants make important contributions in research and science. Four of eight Nobel Prize Laureates from the United States in 2019 were foreign born and 34 percent of all Nobel Prize Laureates from the United States were immigrants.

• Scientific discovery is dependent on the ability to travel freely and the rule would limit the ability of scholars to study and work in the United States.

• The proposal would adversely impact the direct care and nursing home industries' abilities to hire and retain sufficient staff. These industries are increasingly reliant on immigrants to staff positions.

• The H–2A program provides the citrus industry with reliable foreign labor. The cost increase for H–2A petitions was excessive and other cost in the industry were also increasing.

• The increased fees, coupled with restrictions to fee waivers, would result in many fewer residents accessing a desired immigration status for which they are eligible simply because they cannot afford to apply.

• Impeding an individual's ability to achieve a secure immigration status because of poverty is unacceptable and unconscionable.

Response: DHS knows that immigrants make significant contributions to the U.S. economy, and this final rule is in no way intended to impede or limit legal immigration. DHS's rule in no way is intended to reduce, limit, or preclude immigration for any specific immigration benefit request, population, industry, or group. DHS agrees that immigrants are an important source of labor in the United States and contribute to the economy. DHS does not have data that would indicate that the fees in this rule would make a U.S. employer that is unable to find a worker in the United States forego filling a vacant position rather than submitting a petition for a foreign worker with USCIS. DHS saw no or limited decreases in the number of benefit requests submitted after its fee adjustments in 2007, 2010, and 2016 and has no data that would indicate that the fees for family based benefit requests, lawful permanent residence, and naturalization in this final rule would prevent applicants from being filed. DHS agrees that immigrants are crucial for agriculture, construction, healthcare, hospitality, almost all industries, immigrants are a source of future U.S. labor growth, many immigrants are successful entrepreneurs, and that welcoming new citizens helps the U.S. economy. DHS acknowledges in its analyses accompanying this rule that the higher fees must be paid by U.S. companies that hire foreign nationals, but DHS has no data that indicates that higher fees will affect the supply of lower-skilled laborers, impede immigration to the detriment of the labor force, result in aliens being unable to work, cause employers to lay off employees, undermine the jobs and wages of domestic workers with limited education performing low-skill jobs, or increase unemployment among immigrant workers. DHS knows that immigrants make important contributions in research, science, and we have no data that supports the assertion that the increased fees and restrictions on fee waivers would result in many fewer residents accessing a desired immigration status for which they are eligible simply because they cannot afford to apply.

Comment: A commenter requested that DHS more thoroughly analyze the costs of impeding access to naturalization, which include long-term reduced economic and social mobility for affected populations.

Response: DHS recognizes the contributions that naturalized citizens make to American society. However, USCIS must fund itself through fees unless DHS receives a Congressional appropriation to do so. DHS does not have any data to establish that these fees, though required, are a significant impediment to naturalization or economic and social mobility. DHS saw no or limited decreases in the number of benefit requests submitted after its fee adjustments in 2007, 2010, and 2016 (*e.g.* N–400 filing volumes grew from less than 600,000 in FY 2009 to approximately 750,000 in FY 2011; similarly, N–400 filing volumes grew from less than 800,000 in FY 2015 to nearly 1 million in FY 2017). In an effort to apply fees more equitably to the beneficiary of each benefit request, DHS must increase the fee for Form N–400, Application for Naturalization, in this final rule. As stated in the proposed rule and elsewhere in this final rule, DHS performs a biennial review of the fees collected by USCIS and may recommend changes to future fees. DHS declines to conduct further analysis on

this issue or make changes in this final rule in response to this comment.

Comment: Many commenters wrote about the benefits of naturalization, the effect of naturalization on the economy and how the current application fee and proposed fee discourages naturalization. These comments are summarized as follows:

- Immigrants contribute to the economy by paying taxes, and they should have easy access to naturalization.
- Naturalization increases support for American political institutions, workforce diversity, strengthens employee productivity and retention, and creates well-informed community members.
- Raising fees for naturalization could discourage immigrants from seeking citizenship, negatively affecting the economy.
- Naturalization is a key driver in allowing immigrants to fully integrate into our society, economically contribute to the U.S. economy.
- Everyone benefits from residents naturalizing.
- Naturalization increases net taxable income, GDP, individual earnings, employment rates, homeownership, federal, state, and city tax revenues, and higher education, etc.
- Naturalization decreases government benefit expenditures.
- Citizenship promotes social benefits, higher rates of health insurance, English proficiency, quality of employment, and buy-in to U.S. democratic principles.
- Naturalization increases engagement in civic life.
- The proposal would increase profits for private companies that benefit from financial obstacles to naturalization.
- In its proposal, DHS incorrectly stated that naturalization applicants will find some way to come up with the fee and failed to prove that the proposal would not shrink revenues due to a reduction in submitted applications.
- The proposed fee increases would place citizenship and the ''American dream'' out of reach for many immigrants.
- Costs associated with naturalization were already prohibitively high and DHS should refrain from any efforts to make naturalization and other immigration benefits even less accessible.
- Research from the Journal on Migration and Human Security that found there were approximately 9 million LPRs eligible to naturalize and the proposed naturalization fee increase would make naturalization unaffordable for low-income and working-class people.
- The Immigrant Legal Resource Center and Stanford University's Immigration Policy Lab study demonstrates current fee levels already prevent a considerable share of low-income immigrants from applying for citizenship, as well as a 40 percent increase in application rates when low-income immigrants are given vouchers to cover application fee costs.
- Compliance with immigration and naturalized citizenship laws was already an ''arduous and risky'' process and USCIS should estimate the impact on compliance for immigrants seeking to follow such laws.
- USCIS should implement a system to account for individuals who cannot afford to comply with immigration and citizenship laws due to the proposed fee increases.
- An analysis from the American Immigration Council shows that the cost of citizenship has become a systemic barrier and the proposal would raise naturalization fees even higher.
- An analysis from the Center for Migration Studies that found 39 percent of those eligible for naturalization live in households with incomes below 150 percent of Federal Poverty Guidelines (FPG) and the proposal would price out naturalization-eligible individuals from pursuing citizenship to the detriment of their families and communities.
- A hypothetical family of four would have to pay an additional $3,115 over a 3-year period to maintain their status and secure citizenship.
- The ''road to naturalization eligibility may be lengthy, unpredictable and costly,'' and the proposed fee increases and changes to fee waiver eligibility would impact immigrants who must file concurrent applications for spousal petitions, work authorizations, and adjustment of status. These changes would cost $4,680 over a 4-year period, an amount the commenter described as ''prohibitive.''
- Existing costs for immigration benefits already pose challenges for immigrant families and DHS should not increase fees by such an unprecedented amount.

Response: DHS recognizes the economic and societal value of nonimmigrants, immigration, and naturalization. DHS agrees that new citizens and naturalization are of tremendous economic and societal value and generally agrees with the points made by, and the studies cited by, commenters. DHS is not adjusting the USCIS fee schedule with an intent to impede, reduce, limit, or preclude naturalization and did not propose to adjust the USCIS fee schedule to reduce, limit, or preclude immigration in any way for any specific immigration benefit request, population, industry or group, including members of the working class. However, DHS must adjust the USCIS fee schedule to recover the full cost of providing immigration adjudication and naturalization services. While fully aware of the benefits that immigrants provide to society, DHS must fund USCIS with fees unless DHS receives a Congressional appropriation to do so.

DHS acknowledges that the fee for Form N–400, Application for Naturalization is increasing by a greater percentage than the total increase in USCIS costs and the average increase in fees generally. The fee for this form is increasing more than for most other forms because DHS has historically held the fee for Form N–400, Application for Naturalization, below the estimated cost to USCIS of adjudicating the form in recognition of the social value of citizenship. Immigration services provide varying levels of social benefit, and previously DHS accounted for some aspect of the social benefit of specific services through holding fees below their cost. However, in this final rule DHS is emphasizing the beneficiary-pays principle of user fees. This approach means that the fee for Form N–400 will now represent the estimated full cost to USCIS of adjudicating the form, plus a proportional share of overhead costs and the costs of providing similar services at reduced or no charge to asylum applicants and other immigrants. In other words, the fee for Form N–400 will now be determined in the same manner as most other USCIS fees. Because DHS has held the fee for Form N–400 below full cost in the past, adjusting to full cost requires an increase in excess of the volume-weighted average increase of 20 percent. If DHS did not increase the fee for Form N–400 this amount, other fees would need to increase further to generate the revenue necessary to recover full cost, including the costs of the N–400 not covered by its fee. DHS believes the increase in the fee for Form N–400 is fully justified. Finally, DHS does not believe the new Form N–400 fee will deter naturalization or that the new fees established in this final rule will prevent immigrants from receiving immigration benefits. DHS saw no or limited decreases in the number of benefit requests submitted after its fee adjustments in 2007, 2010, and 2016 (*e.g.* N–400 filing volumes grew from less than 600,000 in FY 2009 to approximately 750,000 in FY 2011; similarly, N–400 filing volumes grew

from less than 800,000 in FY 2015 to nearly 1 million in FY 2017). Therefore, DHS declines to make any changes in this final rule in response to this comment.

Comment: One commenter stated that the higher fees would result in fewer clients for their advocacy organization. As a result, the group might have to let go of some staff. Another commenter wrote that the proposal would harm its city's efforts to create a welcoming environment for immigrants. The commenter described programs like Citizenship Day in Boston intended to make immigration legal services more accessible and said the proposal would undermine these efforts. The proposed fee changes and elimination of fee waivers would harm agencies that carry out the DOJ's Office of Legal Access Programs mission as those agencies would lose clients as naturalization and other applications become less affordable, resulting in a reduction of funding and potential staff layoffs. The commenter also said these agencies would need to change their informational and educational materials if the proposed rule is implemented, resulting in increased design, printing, and distribution costs.

A commenter stated that while it does not provide direct social or legal services, it frequently fields questions from transgender individuals and their family members, attorneys, and other organizations about government policies and individuals' legal rights, including questions about immigration. The commenter wrote that if the proposed rule is adopted, it will need to expend considerable resources to comprehend and explain changes to the public and will see an increase in requests for information. The commenter said USCIS should also consider the impact of the proposed rule on organizations like theirs, and on organizations that provide direct services to immigrants applying for immigration benefits.

A commenter said the proposal would harm its organization's mission and ability to sustain itself financially. The commenter said 90 percent of its funding comes from the State of Washington's allocation for the Washington New Americans Program and is tied to certain contractual obligations, including that the organization complete 1,000 naturalization applications, host various workshop events, and screen around 2,000 green card holders for eligibility each year, among other conditions. The commenter said its ability to meet these numbers and its success rate would be adversely impacted if the proposed fee increases and elimination of fee waivers become finalized. One commenter wrote that the proposal would present challenges for non-profit organizations providing legal assistance to low-income immigrants because it would reduce the number of clients who connect with services for which they are eligible, and would require increased outreach by an already overworked staff.

Another commenter wrote that the proposal would interfere with state and local non-profit programs that provide services to help individuals navigate the immigration process. The commenter said that if the proposal is implemented, such programs in Washington State anticipate that the increased demand for fee reimbursement will outpace other services. The commenter wrote that many organizations providing immigration services are dependent on reasonable application fees and would be at risk of disappearing if fees increase above current levels. Another commenter said the proposal would interfere with its organizational mission and would hamper the work done by other non-profit entities serving immigrant communities. The commenter wrote that its organization is funded primarily by city and state grants, with specific funding attached to specific numbers of low-income immigrants served and that the proposal would undermine its ability to meet grant requirements. The commenter said in the previous year, it had processed hundreds of applications that it would not have been able to file under the proposed removal of fee waivers for certain application types. Many commenters wrote that the proposed fee increases would deter immigrants from using qualified legal services, an outcome that the commenters stated would complicate USCIS processing. The commenter said that if these actors are left unchecked, they will end up diverting thousands of dollars away from the agency.

Commenters said the proposed fee increases and elimination of fee waivers would disrupt organizations that provide legal assistance and other services to immigrants because of a reduction in the number of clients served, an inability to meet contractual requirements, and loss of financial support through contracts or grants. One commenter said their city partners with immigration legal service organizations to help immigrants secure needed benefits because income-based barriers to such benefits already exist. One commenter said their office assists 1,000 constituents annually who already face burdens navigating the immigration system.

Some commenters suggested that because the fee increases will discourage many immigrants from utilizing qualified legal assistance to assist with applications, USCIS will encounter challenges and inefficiencies in processing due to less complete or less accurate applications being filed. Other commenters wrote that the proposal would increase the prevalence of ''notario'' fraud and other types of consumer fraud against immigrants, who would be more likely to turn to dishonest providers of legal and other assistance due to the proposed fee increases. Another commenter agreed that the fee increases would decrease immigrants' ability to afford counsel, and referred to a 2014 study from Stanford Law School that found detained immigrants were three times more likely to win deportation cases when they were assisted by attorneys. The commenter also cited research from the New York Immigrant Family Unity Project from November 2017 that demonstrated for every 12 individuals who received counsel under the organization's ''universal representation model,'' 11 would have been deported without access to an attorney. The commenter concluded that non-profit organizations that are already under-resourced will have to step in to provide services if immigrants lack income to hire attorneys. Some commenters suggested that the proposed rule would not only impact immigrant populations, but also legal aid organizations providing services to such populations and students who benefit from programs and clinics designed to support low-income populations.

Response: DHS recognizes the value of the various groups that assist individuals navigate its regulations and forms. However, USCIS strives to develop rules and forms that are user-friendly, can be easily completed by the public, and require no legal or professional assistance. As stated before, DHS is changing USCIS fees to recover the costs of administering its adjudication and naturalization services. DHS is not changing USCIS fees with the intent to deter requests from low-income immigrants seeking family unity or deterring requests from any immigrants based on their financial or family situation. Previous fee adjustments had no discernible effect on the number of benefit requests filed. This final rule amends fee waiver requirements and divides the Form I–129 into multiple forms, but otherwise makes no major changes to any immigration benefit requests. DHS will continue to explore efficiencies that

improve USCIS services. DHS may incorporate corresponding cost savings into future biennial fee reviews and rulemakings accordingly. Therefore, DHS declines to make any changes in this final rule as a result of these comments.

Comment: One commenter cited a Bureau of Labor Statistics study (2017–2018), which indicates that the unemployment rate for foreign-born men (3.0 percent) was smaller than the unemployment rate for native-born men (4.2 percent), as a benefit to the United States.

Response: DHS appreciates the comment and agrees that foreign-born workers are dependable employees who are important to the U.S. economy.

6. Comments on the DACA Renewal Fee

Comment: Many commenters generally opposed higher DACA fees. Commenters stated:

- Current DACA fees are high and an increase to renewal fees would make it difficult for people to afford legal immigration processes.
- It would be unjust to charge students and families to pay more to maintain DACA.
- Many DACA recipients are in school, early in their careers, or have young children, and therefore cannot afford the fee increases.
- DACA fees would make it difficult for individuals to renew their work permits and they could lose the ability to work legally in the United States. The proposed fee increase would cause emotional and financial hardships for the families of DACA recipients.
- DACA fees will suppress/undermine the DACA policy while legal status is undetermined.
- The DACA renewal fee will discourage DACA recipients from seeking citizenship.
- High fees are the reason only 800,000 of the 1.3 million DACA-qualified individuals have requested DACA.
- The fee increases will reduce the number of DACA recipients who are able to renew their deferred action and complete higher education. DACA recipients often live paycheck-to-paycheck and must support family members financially. The renewal fees already present a burden and the proposed increase would exacerbate the hardship.
- DACA is a prerequisite for in-state tuition in many states, and increased fees would cause many DACA recipients to lose their DACA and give up their pursuit of higher education.
- DACA has been instrumental in helping many recipients access better educational and professional opportunities and better support their families.
- Many DACA recipients have lived in the United States since early childhood, and this rule would place them in danger of removal from the only country they consider home.
- DACA recipients have, in some cases, shown to be dedicated to serving their communities through Teach For America.
- Without the contributions of DACA recipients the United States would lose $433.3 billion in GDP and $24.6 billion in Social Security and Medicare contributions.
- DACA renewals should be funded by increased taxes rather than by placing the burden on DACA requestors, who are vulnerable.
- USCIS needs to offer justification for increasing DACA fees from an economic standpoint.

Response: In light of the concerns raised by commenters, as well as the recent Supreme Court Decision in *DHS et al* v. *Regents of the Univ. of Cal. et al,* No. 18–587 (S.Ct. June 18, 2020), DHS will not impose a fee for Form I–821D. Therefore, there is no fee for Form I–821D, Consideration of Deferred Action for Childhood Arrivals, in this final rule, and USCIS will not receive revenue from Form I–821D. DHS has removed the estimated costs and staff directly attributable to the DACA policy from its cost baseline used in its fee calculations for this final rule, consistent with past practice. *See* 81 FR 26903, 26914 (May 4, 2016) (explaining that USCIS excludes from the fee calculation model the costs and revenue associated with programs and policies that are temporary in nature such as DACA). In this final rule, DHS adjusts other fees to recover the anticipated overhead and cost reallocation that the NPRM associated with DACA fees, including Forms I–765 and I–821D.

In light of the recent Supreme Court ruling and attendant changes to DHS' operations relating to the DACA policy DHS will maintain the DACA fees as in effect before the rescission on September 5, 2017 at $410 for employment authorization and $85 for biometric services. New 8 CFR 106.2(a)(32)(vi).

D. Comments on Legal Adequacy of the Rule

Comment: Multiple commenters stated that the rule was arbitrary and capricious, contrary to law, and in violation of the Administrative Procedure Act for various reasons, summarized as follows:

- The fee increase is excessive particularly for naturalization and adjustment of status.
- Fee increases will frustrate the substantive policies promoted in the INA.
- The proposal was a pretext for decreasing legal immigration.
- The fee of $2,000 to change the status of a single family member is a thinly veiled effort to bring the recently enjoined public charge regulations and health insurance proclamation to life and circumvent the judicial injunctions on that rule.
- In emphasizing the beneficiary-pays principle, the rule abandons prior motivations to tailor fees based on users' ability to pay. The 2008 Government Accountability Office (GAO) report to Congress entitled, *Federal User Fees: A Design Guide,* undermines USCIS' sudden switch to the beneficiary-pays principle, and USCIS has elevated the beneficiary-pays principle as a pretext for restricting and deterring legal immigration against the will of Congress.
- The rule's objectives are pretextual, and its goal of fully recovering costs is undermined by the series of USCIS policies and practices that increase the agency's costs and inefficiencies. USCIS fails to describe alternatives to those policies and practices in the proposed rule.
- The proposed rule fails to determine a social good that results from equity among application fees, with no evidence, data, or rational connection between that good and the stated goal of equity.
- The agency failed to adequately describe the terms or substance of the proposed rule in accordance with APA.
- The NPRM's rationale and fee increases are arbitrary because the amount of revenue that would be generated is much bigger than the projected shortfall at USCIS and some fees would increase more than others.
- Not all fees are being changed proportionally or rationally, and some fee decreases and increases appear completely arbitrary and do not align with the agency's reasoning.
- The rule lacks a detailed description of how or why the costs of adjudication have increased so dramatically as to necessitate such a large fee increase.
- The rule cites to INA section 286(m) multiple times for the Congressional mandate that authorizes the DHS to charge fees ''at a level that will recover the full costs of adjudication,'' but fee increases should be supported with details of what those ''costs'' actually

are, and they should be itemized in a way that clearly justifies the price.

• The public has the right to know the specific details of the projected budget shortfall and how proposed fee changes would be allocated to meet the projected deficit.

• Some fee increases were larger than others.

• It is arbitrary to eliminate fee caps for some but not all categories, and the rationale provided for not limiting fee increases for some benefit requests is inadequate. If limited fee increases were continued for all previously limited requests some proposed fees could increase by as much as $1,185 with the average of those changes being an increase of $12 per immigration benefit request.

• The rule contains clear and measurable hypocrisy in that USCIS claims that prior policy must fall in the face of the agency's newfound insistence on the ''beneficiary-pays principle,'' but it violates this principle for certain form types because USCIS proposes to maintain a 5 percent limit on fee increases without specific justification for each.

• The proposed rule's invocation of the ''beneficiary-pays principle'' is not made in good faith in that USCIS is still willing to support subsidies for some users (*e.g.,* adoptive parents and religious institutions) and even a high premium on others (*e.g.,* ''regional center'' investment groups).''regional center'' investment groups).

• Contrary to DHS's rationales for the rule, increased fees will not improve USCIS' efficiency or allow the agency to provide better service to applicants.

Response: INA section 286(m), 8 U.S.C. 1356(m) authorizes DHS to recover the full cost of providing immigration adjudication and naturalization services, including the cost of services provided at reduced or no charge to asylum applicants and other immigrants through the USCIS fee schedule. This final rule complies with the INA, as DHS estimated the cost of providing immigration adjudication and naturalization services over the biennial period and adjusts USCIS' fee schedule to recover those costs. DHS has explained its rational basis for adjusting USCIS fees in the proposed rule and this final rule. The docket and administrative record document the bases for the changes and show that the fee adjustments in this final rule are not motivated by any purpose other than those expressly stated in this rulemaking. This final rule intends to recover the estimated full cost of providing immigration adjudication and naturalization services and is not a pretext to implement the Inadmissibility on Public Charge Grounds final rule, as indicated by a commenter. DHS notes that the Public Charge final rule was implemented nationwide on February 24, 2020, after the Supreme Court of the United States stayed the last remaining injunction on that final rule on February 21, 2020.

This final rule also complies with the APA. DHS issued an NPRM in the **Federal Register** on November 14, 2019, and a Supplemental Notice on December 9, 2019. DHS accepted public comments on the proposed rule through February 10, 2020. DHS fully considered the issues raised in the public comments and made some adjustments in response, as detailed in responses throughout this final rule.

DHS disagrees with commenters' assertions that the fees established in this final rule are unjustified because the fees differ in amount or are not being changed ''proportionally.'' In most instances, DHS sets the fees based on the estimated full cost of providing the relevant immigration adjudication or naturalization service. Some services cost USCIS more to provide than others, resulting in fees that differ in relation to how costly the applicable service is. Furthermore, the costs to USCIS of providing a given service may evolve over time in a manner that is different than the cost of providing another service. Thus, when DHS adjusts the USCIS fee schedule, not all fees are adjusted ''proportionally.'' For example, as DHS explains in the NPRM and elsewhere in this rule, DHS determined that it would be appropriate to limit the fee increase for several forms while not limiting the fee increase for other forms to reduce the cost burden placed upon other fee-paying applicants, petitioners, and requestors.

DHS reiterates that this final rule complies with the all current laws. Therefore, DHS declines to make changes in this final rule in response to these comments.

Comment: Numerous issues permeate the NPRM and result in such a vague rule change as to invalidate the entire proposal. The NPRM fails to disclose the actual weighted average fee increase or fee increases associated with individual form types and many unrelated changes are proposed without supporting documentation for each of these proposed changes. The commenter wrote that other open-ended language in this proposal also improperly subverts the legal requirements of this notice process by granting exclusive powers to the Attorney General to set such fees and fee waiver regulations and create such USCIS forms without future public notices. The commenter wrote that other open-ended language in this proposal also improperly subverts the legal requirements of this notice process by granting exclusive powers to the Attorney General to set such fees and fee waiver regulations and create such USCIS forms without future public notices.

Response: DHS has provided sufficient details of the bases for the fee adjustments in the NPRM, this final rule, and supporting documentation. As clearly stated earlier, the INA authorizes the use of fees for funding USCIS. However, the law does not prescribe a method for USCIS fee setting. As explained in the supporting documentation that accompanies this final rule, USCIS follows guidance provided by OMB Circular A–25 and has leveraged an ABC methodology in the last five fee reviews. USCIS' use of commercially available ABC software to create financial models has enabled it to align with the Federal Accounting Standards Advisory Board's (FASAB's) *Statement of Federal Financial Accounting Standards Number 4* on managerial cost accounting concepts, which provides guidelines for agencies to perform cost assignments in the following order of preference: (1) Directly tracing costs wherever feasible and economically practicable; (2) Assigning costs on a cause-and-effect basis; or (3) Allocating costs on a reasonable and consistent basis.[27]

USCIS is a worldwide operation of thousands of employees with myriad responsibilities and functions. The commenter's expectations of absolute precision are unattainable for setting the fees for such a large organization that provides a wide range of services and immigration benefit requests. DHS has provided rational connection to the law, its needs, policy choices, calculations, and fees established in this final rule, even if the rational basis may require following mathematical calculations and defensible estimates.

DHS declines to make changes in this final rule in response to the comment.

Comment: Some commenters said that the excessive fee increase and limiting fee waivers would indirectly make wealth a dispositive requirement for immigration benefits, effectively adopting a ''wealth test'' for citizenship and similar immigrant benefits that will deter non-citizens from seeking lawful immigration status in violation of the INA and which the legislature never

[27] FASAB, *Statement of Federal Financial Accounting Standards 4,* available at *http://files.fasab.gov/pdffiles/handbook_sffas_4.pdf* (last viewed 03/06/2020).

intended. A commenter said DHS's proposal to eliminate most fee waivers and exemptions, coupled with dramatic fee hikes for most immigrants, breaks from decades of executive practice and ignores clear Congressional intent to create a fair and accessible immigration system. The commenter said DHS has declined, despite congressional requests, to consider the effect of eliminating reduced fees on applicants for naturalization or to maintain fee waivers for such applicants.

A commenter said USCIS' policy of recovering the full cost of application processing is a choice, not a legal requirement. Specifically, the commenter said USCIS cites INA section 286(m), 8 U.S.C. 1356(m) as the basis of its policy, but this section states merely that the agency ''may be set at a level that will ensure recovery of the full costs of providing all such services.'' Therefore, the statute is permissive, not mandatory. The commenter went on to say that USCIS also cites OMB Circular A–25, but this document is only policy guidance that lacks the force of law and, by its own terms, provides for exceptions to this general policy. The commenter also said that since USCIS has used its discretion to set fees for several forms at levels that would not recover its full costs, it should go further in shifting costs away from applications that would help working immigrant families acquire, maintain, or document lawful status and citizenship. Similarly, another commenter said USCIS is not required by law to recover its costs on the backs of applicants, many of whom are low-income; the relevant section of the INA is permissive, not mandatory.

A commenter said the proposed rule ignores Congressional intent, citing a 2018 House Appropriations Committee report (H. Rep. No. 115–948) and the bipartisan, bicameral conference report accompanying the omnibus appropriations act for Fiscal Year 2019 (H. Rep. No. 116–9), both of which stated that ''USCIS is expected to continue the use of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee. USCIS is also encouraged to consider whether the current naturalization fee is a barrier to naturalization for those earning between 150 percent and 200 percent of the federal poverty guidelines (FPG), who are not currently eligible for a fee waiver.'' Although the NPRM states that ''USCIS appreciates the concerns of this recommendation and fully considered it before publishing this proposed rule,'' the commenter said USCIS provides no evidence that it either ''appreciates'' or ''fully considered'' these directives from Congress. Instead, the commenter said the agency is eliminating fee waivers and naturalization fee reductions in direct contravention of Congressional will. A couple of other commenters also cited the same Congressional directives, stating that DHS has ignored these directives without rational explanation.

Another commenter said that, by solely focusing on ''full cost recovery'' regardless of an immigrant's ability to pay and under the false pretense of equity, DHS is restricting immigration to only those who can afford it. The commenter said this is a ''backhanded attempt'' to introduce a merit-based immigration system without legislation. The commenter said Congress has already shown it does not wish to enact a merit-based immigration system and the DHS should not be able to go around the will of Congress. Similarly, another commenter said the changes serve to circumvent Congressional oversight of the immigration system by effectively eliminating statutory paths to immigration status by making them unaffordable and inaccessible to those who qualify.

Another commenter said these fees would effectively impose a means test for U.S. residence and citizenship, and that these immigration benefits is of such importance that any related policy should be determined by Congressional legislation. A commenter said a limit should be placed on USCIS' ability to raise fees without Congressional approval, concluding that such policies should only be passed by Congressional authority.

A commenter said the administration is attempting to reshape American immigration policy, ignoring Congress' plenary power and attempting to make the immigration process established by Congress inaccessible to eligible immigrants. Similarly, another commenter said USCIS is imposing financial tests cloaked under the rule-making process to reshape the demographics of the American society by excluding those who are not wealthy and asylum-seekers who are largely from Central America, Latin America, Africa, and Asia.

A commenter said the rule would significantly deter family-based immigration, contrary to Congressional intent. The commenter said that the effect of the rule will promote employment-based immigration at the expense of family-based immigration because immigrants who arrive on employment-based visas are typically well-educated, can speak English proficiently, have sufficient assets, and have solid employment prospects. The commenter said the effect of the proposed rule will be to favor wealthy or higher-skilled immigrants over families, and in turn reverse over a half century of bedrock immigration policy in the United States. The commenter concluded that Congress did not delegate DHS the authority to implement such sweeping reform of our immigration laws.

Another commenter said Congress needs a clear expenditure plan in order to monitor if the funds are being used as warranted, which is not present in the current proposal. Similarly, a commenter said the proposed fee schedule is inconsistent with statutory framework because it lacks a valid analysis as to how the proposal might achieve the policy objectives it ''allegedly would further.''

Response: DHS adjusts the fees for immigration benefit requests in this final rule to recover the estimated full cost of providing immigration adjudication and naturalization services, as provided by law. In adjusting the fees, DHS is not imposing a ''wealth test'' or otherwise attempting to erect barriers to immigration and rejects any implication that its justifications for adjusting the fees are pretexts to obscure any other motivation.

INA section 286(m), 8 U.S.C. 1356(m) authorizes DHS to recover the full cost of providing immigration adjudication and naturalization services, including the cost of services provided at no charge to asylum applicants and other immigrants through the USCIS fee schedule. This final rule complies with the INA, as DHS estimated the cost of providing immigration adjudication and naturalization services over the biennial period and adjusts USCIS' fee schedule to recover those costs.

This final rule also complies with the APA. DHS issued an NPRM in the **Federal Register** on November 14, 2019, and a Supplemental notice on December 9, 2019. DHS accepted public comments on the proposed rule through February 10, 2020. DHS fully considered the issues raised in the public comments and made some adjustments in response, as detailed elsewhere in this final rule. DHS provides responses to those comments in this final rule.

Comment: One commenter stated that the proposed rule was not ripe for comment, because DHS did not provide a final, definitive set of fees but instead provided a range of potential outcomes that were possible.

Response: DHS disagrees that the proposed rule was not ripe for comment. DHS provided multiple options for proposed fee schedules and

explained that the final outcome would be one of the proposed scenarios or another outcome within the range of the alternatives proposed. The fee schedule adopted in this final rule falls within the range of outcomes DHS provided in the NPRM. The policies implemented in this final rule are identical to, or are logical outgrowths of, those contained in the NPRM.

The intent of the comment period provided under the APA is to allow agencies to consider public feedback on proposed rules and make changes as appropriate. Because a single change made in response to public comments may affect multiple fees, it is impossible to provide a final set of fees in an NPRM unless it were to be adopted without any modification, thereby negating the value of public feedback. Therefore, the NPRM was fully ripe for public comment, and DHS declines to make any adjustments in response to this comment.

Comment: Two commenters wrote that the NPRM has no force or effect because Mr. Wolf does not have a valid legal claim to the office of DHS Secretary. The commenters detailed the required line of succession required by Executive Order 13753 after the departure of Secretary Nielsen, which according to the commenters should not have led to Mr. McAleenan. The commenters then stated that, even if President Trump lawfully departed from E.O. 13753 when Mr. McAleenan was designated, his authority was limited to 210 days under the Vacancies Act, but Mr. McAleenan purported to serve as Acting Secretary for a year and a half. The commenters stated that, because Mr. Wolf's appointment to Secretary was a result of Mr. McAleenan's unlawful amendment to the order of succession, Mr. Wolf has no valid legal claim to the office of the Secretary, and the action he has taken in promulgating the proposed rule shall have ''no force or effect.''

Similarly, other commenters said the rule violates the Appointments Clause and the Federal Vacancies Reform Act (FVRA) because it was promulgated under the unlawful authority of Kenneth Cuccinelli. The commenters detailed the requirements of the FVRA and the succession line leading to Mr. Cuccinelli's appointment. The commenters concluded that, since Mr. Cuccinelli has not succeeded to the Acting Director of USCIS position pursuant to the FVRA, his designation was void, and thus, the rule that was proposed under his purported authority should have ''no force or effect'' and its adoption would be unlawful.

Another commenter said it is improper to issue a significant rule when the authority of DHS and USCIS leadership is in question. The commenter said the significant changes proposed are egregious when the agency lacks confirmed leadership to exercise authority pursuant to the law. The commenter wrote that legal challenges to the authority of agency leadership are currently pending and a letter from the House Committee on Homeland Security to the GAO that questions the legality Chad Wolf's appointment as Acting DHS Secretary and Kenneth Cuccinelli's appointment as Senior Official Performing the Duties of the Deputy Secretary. The commenter wrote that the lack of responsible authorities makes it inappropriate for the agency to make the radical and untested policy shifts it proposes.

Response: DHS disagrees that Mr. Cuccinelli was unlawfully appointed in violation of the Appointments Clause or the Federal Vacancies Reform Act. In any event, it is unnecessary to discuss the merits of Mr. Cuccinelli's appointment, because the proposed rule only proposed changes to DHS regulations and requested comments. It did not effectuate any change that would be amount to a final action taken by Mr. Cuccinelli or any DHS official. In addition, neither the NPRM nor this final rule were signed by Mr. Cuccinelli. Thus, while DHS believes that Mr. Cuccinelli is lawfully performing the duties of the Director of USCIS and using the title Senior Official Performing the Duties of Director of USCIS, and the Senior Official Performing the Duties of the Deputy Secretary of Homeland Security, whether that is true is immaterial.

The NPRM was signed by Kevin K. McAleenan and this final rule is signed by Chad F. Wolf, both as Acting Secretary of Homeland Security. Contrary to the comment, Secretary Wolf is validly acting as Secretary of Homeland Security. Under INA section 103(a)(1), 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. Therefore, both the NPRM and this final rule were lawfully signed by the Acting Secretary of Homeland Security.

Comment: A commenter opposed the proposal because it would result in family separation and would run counter to the family-based immigration system Congress intended to create through the INA. Another commenter wrote that the proposal conflicts with the principle of family unity because it interferes with the right to choose to live with family members and disrupts the INA's goal of family unity.

Response: In adjusting the USCIS fee schedule in this final rule, DHS complies with all relevant legal authorities. DHS does not intend to erect barriers to family unity or reunification. This final rule adjusts the USCIS fee schedule to recover the estimated full cost of providing immigration adjudication and naturalization services.

DHS declines to adjust this final rule in response to these comments.

Comment: A commenter wrote that the proposed transfer of $112.3 million in IEFA ICE fees violates the Appropriations Clause of the Constitution. The commenter wrote that the use of the IEFA to fund any activities of ICE circumvented the

Appropriations Clause and other laws that prohibit the transfer of funds without statutory authorization. Another commenter wrote that enactment of the FY 2020 appropriations package in December clarified USCIS' understanding of its Congressional mandate and spending authority, but that the agency had failed to acknowledge this package in its January 2020 notice regarding the fee proposal. The commenter wrote that funding provided by Congress in that bill should have resolved open questions about the fee schedule, and that USCIS' failure to propose a fee schedule based on ''no transfer of funding'' in its January 2020 notice precludes the public from providing fully informed feedback.

Response: DHS is not moving forward with the proposed transfer of IEFA funds to ICE in this final rule. Please see the ICE Transfer Section (Section III.L) of this final rule for more information.

Comment: Multiple commenters requested that DHS extend the public comment period to 60 days to allow more time to review the proposed rule and to develop responses. Commenters stated that the length of the NPRM was greater than that of earlier fee rules, but commenters had less time to respond to this rule. Multiple commenters suggested that the timing of the comment period over multiple holidays hindered the ability of the public to respond to the proposed rule.

Response: DHS understands that the general policy of the Executive Branch is that agencies should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days, for rules that are determined to be significant by OMB's Office of Information and Regulatory Affairs (OIRA). *See* E.O. 12866, Regulatory Planning and Review, 58 FR 51735 (Oct 4, 1993), Sec. 6(a)(1). (E.O. 12866). However, circumstances may warrant a shorter comment period and the minimum required by the APA is 30-days. 5 U.S.C. 553(d). On January 24, 2020, DHS reopened the comment period for an additional 15-days and accepted public comments through February 10, 2020. *See* 85 FR 4243. Thus, the public was provided a comment period of 61 days to review the NPRM, revised information collections, supporting documents, other comments, and the entire docket contents. In addition, comments received between December 30, 2019, and January 24, 2020, were also considered. As a result, although in three separate notices, the public was afforded more time to comment than required by E.O. 12866, the APA, and the Paperwork Reduction Act (PRA).

Comment: One commenter wrote that USCIS promised to provide public review of its cost model software; however, it did not provide access when the commenter reached out to the provided contact. Later, that same commenter along with several other commenters submitted a comment that referenced a February 3, 2020, meeting during which USCIS hosted a demonstration of its ABC cost-modeling software, as promised in the original proposed rule. A commenter wrote that USCIS gave stakeholders just one week to write comments on the cost-assignment software before the end of the comment period. The commenter said USCIS should never force stakeholders to review and provide a formal response to a complex financial proposal within the space of just one week, and it should not impose such an impossible deadline upon analysis of a sophisticated tool that is the foundation of the rule. A commenter asked why the public's ability to provide informed comment on the software was unfairly limited to an in-person demonstration with no phone or online access, asserting that the process limited the ability of stakeholders to request and analyze relevant information. Another commenter also said USCIS' presentation did not allow meaningful public engagement. Another commenter wrote that none of the information received was made available to the rest of the public, which the commenter said would have generated additional important perspectives.

Response: DHS met all requirements under the APA in affording commenters who requested a meeting with DHS to review the ABC software the opportunity to provide public comments. The public was offered a chance to meet with USCIS experts and review the software and every party who requested an appointment to review the software was provided an appointment and a review. DHS did not provide additional time beyond the end of the public comment period for the meeting participants to provide feedback because doing so would have advantaged the feedback of those commenters relative to the rest of the public.

DHS declines to make changes in this final rule in response to the comment.

Comment: A commenter said DHS has not complied with the Treasury General Appropriations Act by failing to assess whether the proposed rule strengthens or erodes the stability or safety of the family, increases or decreases disposable income or poverty of families and children, and is warranted because the proposed benefits justify the financial impact on the family.

Response: As stated in the Family Assessment Section of this final rule (Section IV.H), DHS does not believe that this rulemaking will have a negative financial impact on families. DHS disagrees with commenter's assertions about the effects of the proposed fees and does not agree that the data provided by the commenter indicates that the fees established in this final rule will affect the financial stability and safety of immigrant families. As stated elsewhere in response to similar comments, based on the number of filings received after past fee increases, DHS does not anticipate that the fees would affect application levels or that it will create barriers to family reunification or stymie noncitizens seeking to adjust their status or naturalize. DHS must have sufficient revenue to operate USCIS or its service to all people who file immigration benefit requests could suffer, persons who are not eligible could improperly be approved for a status, or a person who wants to harm the United States and its residents may not be properly vetted. Thus, the benefits of the fees outweigh the costs they impose.

E. Comments on Fee Waivers

Comment: Many commenters, without providing substantive rationale or supporting data, stated that they oppose the elimination of fee waivers in the rule. Some commenters stated that fee waivers are a matter of public policy and reflect American values. The commenters further stated that the rule would increase dependence on debt to finance applications, the fees are already difficult to pay, and this change will allow only affluent individuals and families to immigrate legally. Commenters indicated that the elimination of almost all fee waivers would cause a substantial burden and prevent large numbers of people from accessing immigration relief and submitting a timely application, and even force applicants to forgo the assistance of reputable and licensed counsel in order to save money to pay the fees.

Commenters also stated that fee waivers should continue to be available for low-income individuals and their elimination would result in financial hardship for immigrant and mixed-status families, resulting in immigrants delaying or losing immigration status due to financial considerations. Commenters also discussed the benefits of fee waivers to immigrants, including helping families to improve their

stability, to financially support themselves, and to fully integrate into their communities while allowing them to allocate funds for higher education. Commenters further stated that fee waivers help families be secure, stable, and financially stronger, and help them integrate into their communities. Commenters stated that the proposed fee increases and elimination of fee waivers would prevent many individuals and families from engaging with the legal immigration system, including putting benefits such as naturalization, lawful permanent residence, and employment authorization out of reach for people who face financial hardship and low-income individuals by serving as a ''metaphorical border wall.'' Commentators indicated that fee waivers are commonly used by low-income and vulnerable immigrants, especially students and their families, and the rule would leave essential immigration benefits accessible primarily to the affluent.

A commenter disagreed with USCIS' statement in the NPRM that changes in fee waiver policy would not impact application volume because research suggests price increases for naturalization applications are a significant barrier for lower income noncitizens. Another commenter provided data from several sources and wrote that immigrants tend to have higher rates of poverty and that fee waivers are an important asset for immigrants looking to maintain legal status. Another commenter stated that fee waivers serve to permit those with an ''inability to pay'' the same opportunity as others and denying access to fee waivers divides the ''opportunity pool.'' Another commenter wrote that applicants may, instead of going into debt, have to forego other expenses such as housing, childcare, transportation, and healthcare in order to apply. A commenter wrote that the elimination of fee waivers would force families to forego necessities such as food, shelter, transportation, education, and healthcare to pay for proof of lawful status that allows them to work. A commenter wrote that USCIS eliminating the fee waiver altogether for non-humanitarian applications directly contradicts USCIS' previous statements regarding the revision to Form I–912.

Response: To align fee waiver regulations more closely with the beneficiary-pays principle, DHS proposed to limit fee waivers to immigration benefit requests for which USCIS is required by law to consider a fee waiver. *See* proposed 8 CFR 106.3. DHS acknowledges that this is a change from its previous approach to fee setting and believes that these changes will make USCIS' fee schedule more equitable for all immigration benefit requests by requiring fees to be paid mostly by those who receive and benefit from the applicable service. Additionally, DHS believes that making these changes to the fee waiver policy would ensure that fee-paying applicants do not bear the costs of fee-waived immigration benefit requests. DHS does not agree that individuals will be prevented from filing applications or receiving immigrant benefits.

DHS provided notice in its FY 2016/2017 USCIS fee rule that in the future it may revisit the USCIS fee waiver guidance with respect to what constituted inability to pay under the previous regulation, 8 CFR 103.7(c). *See U.S. Citizenship and Immigration Services Fee Schedule,* Proposed Rule, 81 FR 26903–26940, 26922 (May 4, 2016). INA section 286(m), 8 U.S.C. 1356(m) authorizes, but does not require, that DHS set fees to recover the full cost of administering USCIS adjudication and naturalization services. That statute also authorizes setting such fees at a level that will recover the costs of services provided without charge, but it does not require that DHS provide services without charge.

DHS declines to make changes in this final rule in response to these comments.

Comment: Several commenters stated that USCIS has neither explained its significant departure from its prior reasoning and practice nor satisfactorily justified limiting fee waivers for naturalization and several other application categories. A commenter stated that the proposed changes concerning fee waivers represents such a ''massive and inadequately explained shift in policy'' that it would create a crippling burden on low-income immigrants compounded with previous recent fee waiver changes.

Response: DHS understands that the NPRM and this final rule represent a change from previous guidance on fee waivers. Due to the cost of fee waivers and inconsistency of current regulations with the beneficiary-pays principle emphasized in the NPRM and this final rule, DHS is limiting fee waivers to immigration benefit requests for which USCIS is required by law to consider a request or where the USCIS Director exercises favorable discretion as provided in the regulation, as well as a few other instances. In addition, DHS is allowing fee waivers for certain associated humanitarian programs including petitioners and recipients of SIJ classification and those classified as Special Immigrants based on an approved Form I–360 as an Afghan or Iraqi Translator or Interpreter, Iraqi National employed by or on behalf of the U.S. Government, or Afghan National employed by or on behalf of the U.S. government or employed by the International Security Assistance Forces. Although these changes do limit the number of people eligible for fee waivers, as previously discussed, the changes also limit increases to fees for forms that previously had high rates of fee waiver use.

Comment: Some commenters provided information specific to a geographic area or political subdivision. One commenter added that reductions in fee waivers would in turn cause sweeping consequences to applicants, safety net programs, and state and county economies. One commenter wrote that the proposal would significantly harm New York as a whole because fee waivers allow indigent and low-income immigrants to obtain lawful status, which puts them on the path to social and economic security. The commenter cited data showing that New York's immigrants account for $51.6 billion of the State's tax revenue and stated that New York would lose much needed support if fewer immigrants are unable to legally work and live in the United States. Another commenter cited data showing that immigrant-led households in Oregon paid $1.7 billion in federal taxes and over $736.6 million in State taxes and stated that the proposed change would prohibit many of these immigrant from fully participating in their local economies. Another commenter calculated the costs a family with an income of 150 percent of the FPG level would face living in Boston, writing that fee waivers are vital to such families maintaining their immigration status or naturalizing.

Response: DHS disagrees that the fee waiver regulations in this final rule would prohibit immigrants from participating in local and state economies or affect safety net programs. This final rule does not prevent any person from submitting a benefit request to USCIS or prohibit immigrants from obtaining services or benefits from state or local programs. DHS declines to make changes in this final rule in response to this comment.

Comment: Another commenter stated that limiting fee waivers would result in a greater number of applicants delaying submitting applications due to financial hardship. The commenter wrote that applicants would therefore live without authorization for which they are

lawfully eligible for a longer time period, resulting in negative impacts to their financial and emotional security.

Response: DHS acknowledges that the changes in the fee waiver provisions may impose a burden on applicants who may have previously been eligible for a fee waiver. However, DHS does not have data indicating that individuals will delay submitting applications and petitions in response to the fee waiver policy changes. USCIS accepts credit cards to pay for a USCIS request sent to one of the USCIS Lockboxes. While DHS acknowledges that the use of a credit card may add interest expenses to the fee payment, a person can generally use a debit or credit card to pay their benefit request fee and does not have to delay their filing until they have saved the entire fee. DHS declines to make changes in this final rule in response to this comment.

Comment: A few commenters said that eliminating fee waivers is a racist attempt to prevent immigration from poorer countries. Commenters indicated that eliminating fee waivers would be discriminatory against immigrants who have limited incomes, who are willing to work for everything they get, want a better life for their children, desire to improve their communities, and the rule would put immigration benefits out of reach for people who face financial hardship.

Response: DHS changes to fee waiver availability in this rule have no basis in race or discriminatory policies. DHS is not limiting fee waivers to discriminate against any group, nationality, race, or religion, to reduce the number of immigrants, or limit applications for naturalization. Rather, the change is to alleviate the increase of fees for other applicants and petitioners who must bear the cost of fee waivers as previously discussed. DHS does not anticipate a reduction in receipt volumes because of the fee waiver policy changes. DHS declines to make changes in this final rule in response to these comments.

Comment: A few commenters stated that the curtailment of fee waivers disregards a Senate Appropriations Committees' directive that USCIS was to ''report on the policies and provide data on the use of fee waivers for four fiscal years in 90 days,'' which is not provided in the NPRM.

Response: DHS has previously provided the required reports to Congress. The Congressional reporting requirements do not include a limit on USCIS fees or limit the authority of DHS to provide discretionary fee waiver eligibility criteria or guidelines. They also do not require publication in the NPRM or the **Federal Register** as the commenter implies. Therefore, DHS does not believe this final rule disregards the directive for reporting to Congress and declines to make changes in this final rule in response to these comments.

1. Limits on Eligible Immigration Categories and Forms

Comment: Many commenters stated that USCIS should maintain fee waivers for all current categories and that the proposed fee waiver changes would make essential benefits such as citizenship, green card renewal, and employment authorization inaccessible for low-income immigrants.

Response: DHS has always implemented USCIS fee waivers based on need and since 2007, has precluded fee waivers for individuals that have financial means as a requirement for the status or benefit sought. *See Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule;* Proposed Rule, 72 FR 4887–4915, 4912 (Feb 1, 2007). As discussed in the NPRM, under the ability-to-pay principle, those who are more capable of bearing the burden of fees should pay more for the service than those with less ability to pay. *See* 84 FR 62298. IEFA fee exemptions, fee waivers, and reduced fees for low income households adhere to this principle. Applicants, petitioners, and requestors who pay a fee cover the cost of processing requests that are fee-exempt, fee-waived, or fee-reduced. For example, if only 50 percent of a benefit request workload is fee-paying, then those who pay the fee will pay approximately twice as much as they would if everyone paid the fee. By paying twice as much, they pay for their benefit request and the cost of the same benefit request for which someone else did not pay.

In prior years, USCIS fees have given significant weight to the ability-to-pay principle by providing relatively liberal fee waivers and exemptions and placing the costs of those services on those who pay. In the FY 2016/2017 fee rule, DHS noted that the estimated annual dollar value of waived fees and exemptions has increased markedly, from $191 million in the FY 2010/2011 fee review to $613 million in the FY 2016/2017 fee review. *See* 81 FR 26922 and 73307. DHS set the fees in the FY 2016/2017 fee rule based on those estimates of the level of fee waivers and exemptions by increasing other fees accordingly. To the extent that waivers and exemptions exceed the estimates used to calculate fees, USCIS forgoes the revenue. While DHS acknowledges that the fee adjustments established in this final rule are not insubstantial to an applicant of limited means, DHS does not believe that they make immigration benefits inaccessible to low income applicants. Thus, DHS will not shift the costs from all low-income applicants to other fee-paying applicants and petitioners in this final rule.

DHS declines to make changes in this final rule in response to these comments.

a. Categories or Group of Aliens

Comment: A commenter stated that while USCIS may claim it is not required to waive any fees for vulnerable applicants such as the disabled and elderly, federal laws, such as the Americans with Disabilities Act (ADA) and Rehabilitation Act, do require that fees and benefits are kept within reach of protected and vulnerable populations.

Response: DHS disagrees with the commenter's assertion. Section 504 of the Rehabilitation Act, applicable to USCIS, provides that qualified individuals with a disability shall not be excluded from the participation in, denied the benefits of, or be subjected to discrimination under any program or activity conducted by a federal executive agency. USCIS immigration benefit request fees are generally applicable and do not violate that provision. Congress did not specifically provide for an immigration benefit request fee exemption or waiver for individuals with disabilities. DHS generally does not assess fees to applicants for any accommodations requested by the applicants for physical access to USCIS facilities when required for interviews, biometrics submission, or other purposes. Therefore, the USCIS fee schedule established in this final rule does not violate the Rehabilitation Act. The ADA does not generally apply to USCIS programs, but to the extent that it provides guidance on the expectations for a Federal agency's accommodations for a qualified individual with a disability, the fees that DHS is establishing in this final rule also fully comply with the ADA.

DHS declines to make changes in this final rule in response to these comments.

Comment: Commenters stated that the proposed limits on fee waivers would threaten disabled immigrants and deny them access to citizenship. The commenter wrote that disabled lawful permanent residents rely on Supplemental Security Income (SSI), but that LPRs must naturalize within 7 years to sustain this benefit. The commenter stated that removing the naturalization fee waiver would drive

these disabled LPRs to homelessness and desperation, with negative societal consequences and no benefit. A commenter added that LPRs with disabilities lose SSI benefits 7 years after their entry, and, thus, that the proposed rule could deny members of this population access to basic necessities. A commenter wrote that citizens are eligible for SSI, but such benefits are only available to some non-citizens for up to seven years. The commenter wrote that the increase in naturalization fees would ''create an insurmountable barrier'' for disabled non-citizens to naturalize, and thus creates a ''finite timeline'' during which a non-citizen can receive important needed benefits like SSI.

Response: DHS disagrees that removing the application for naturalization fee waiver would drive disabled applicants into homelessness, despair, or deny them access to citizenship. Normally, if an applicant entered the United States on or after August 22, 1996, he or she is not eligible for SSI for the first 5 years as a lawfully admitted permanent resident, unless he or she is a qualified alien, as provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).[28] Some categories of aliens who are eligible, including asylees and refugee, may be limited to a maximum of 7 years of SSI. Generally, an alien may apply for naturalization after 5 years as an LPR. This final rule does not prohibit eligible aliens from obtaining SSI benefits or naturalizing. DHS declines to make changes in this final rule in response to these comments.

Comment: Commenters stated that fee waivers should be available for both affirmative and defensive asylum seekers. One commenter stated that DHS failed to justify its decision to forgo fee waivers for asylum applications, since the agency did not analyze data from other fee waiver processes to determine whether the fee waivers would offset the cost recovery of the asylum fee. Another commenter said that if fee waivers will offset the revenue from the asylum fee, then the entire fee should be abandoned.

One commenter said that the asylum fee should be established at $366 while allowing Form I–589 applications to be submitted with a fee waiver application, stating that many asylees are able to pay the full fee. The fee waiver application process would better allow USCIS to detect fraud while serving as a sworn statement of financial status, circumventing the need for universal verification which consumes agency resources.

The fee waiver for asylum applications would, according to this commenter, enable indigent applicants to be granted asylum, upholding the U.S.'s non-refoulement obligations. The commenter also stated that defensive applications should be subject to the same fees as affirmative applications, so long as a fee waiver remains available.

One commenter wrote that the elimination of fee waivers would require immigrants with few economic resources to finance the cost of their own oppression referencing that applicants who have a legal basis for asylum claims will be forced to pay the fees associated with that claim with no discretion or real procedural mechanism for accessing a fee waiver. The commenter indicated that immigrants living in this country often arrived as economic refugees and do not have economic resources, especially given the difficulties in obtaining employment without status. The commenter stated that forcing some of the most marginalized communities to pay, for instance, a $1,170 filing fee (more than 3 weeks wages for a low-income earner) makes a mockery of the country's values.

Response: DHS acknowledges the commenters' concerns related to fees and fee waivers for asylum seekers and asylees. As stated in the NPRM and in this final rule, DHS is not providing fee waivers for the $50 asylum application fee. DHS's decision to establish a mandatory $50 fee is justified. The $50 fee would generate an estimated $8.15 million of annual revenue. If DHS permits fee waiver requests, it legitimately assumes that the cost of administering the fee waiver request review process may exceed the revenue, thereby negating any cost recovery achieved from establishment of the fee. *See* 84 FR 62319. Although the INA authorizes DHS to set fees ''at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants,'' INA section 286(m), 8 U.S.C. 1356(m), DHS establishes a $50 fee for Form I–589, which is well below the estimated full cost of adjudicating the application.

The statutory authorization for fees allows, but does not require, imposition of a fee equal to the full cost of the services provided. The INA provides that DHS may impose fees for the consideration of asylum and employment authorization applications that are not to exceed the estimated costs of adjudicating the applications. *See* INA section 208(d)(3), 8 U.S.C. 1158(d)(3).[29] INA section 208(d)(3) also states, ''[n]othing in this paragraph shall be construed to require [DHS] to charge fees for adjudication services provided to asylum applicants, or to limit the authority of [DHS] to set adjudication and naturalization fees in accordance with section 286(m).'' Thus, DHS is permitted to charge asylum applicants the same fee for employment authorization that it charges all others for employment authorization. The fee for Form I–765 is calculated in accordance with INA section 286(m), 8 U.S.C. 1356(m). DHS considered the effect of a non-waivable fee for the Form I–589 on affirmative asylum seekers and believes that the fee does not create a barrier to asylum for indigent applicants. The imposition of any fees for defensive asylum applications filed with EOIR is a matter that falls within the jurisdiction of the Department of Justice, rather than DHS, subject to the laws and regulations governing fees charged in immigration court proceedings before EOIR. Under those regulations, EOIR charges the fee established by DHS for a DHS form and determines the availability of a fee waiver for a DHS form based on whether DHS allows such a waiver. *See* 8 CFR 1103.7(b)(4)(ii), (c).

Further, the fees align with U.S. international treaty obligations and domestic implementing law. As indicated in the NPRM, DHS believes that the asylum fee may arguably be constrained in amount, but is not prohibited, by the 1951 U.N. Convention Relating to the Status of Refugees (''1951 Refugee Convention'') and the 1967 U.N. Protocol Relating to the Status of Refugees (''1967 Refugee Protocol'').[30] *See* 84 FR 62318–19; 1951 Refugee Convention, 19 U.S.T. 6259,

[28] See Title IV of Public Law 104–193, 110 Stat. 2105, 2260–77 (Aug 22, 1996). For information on who is a qualified alien see eligible for SSI, see Under What Circumstances May A Non-Citizen Be Eligible For SSI? available at *https://www.ssa.gov/ssi/spotlights/spot-non-citizens.htm* (last visited June 5, 2020).

[29] This section states, ''The Attorney General may impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 209(b). Such fees shall not exceed the Attorney General's costs in adjudicating the applications. The Attorney General may provide for the assessment and payment of such fees over a period of time or by installments.''

[30] 1951 Convention relating to the Status of Refugees, *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137; 1967 Protocol relating to the Status of Refugees, *open for signature* Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. Although the United States is not a signatory to the 1951 Refugee Convention, it adheres to Articles 2 through 34 by operation of the 1967 Refugee Protocol, to which the United States acceded on Nov. 1, 1968.

189 U.N.T.S. 137; 1967 Refugee Protocol, 19 U.S.T. 6223, 606 U.N.T.S. 267. The 1951 Refugee Convention and the 1967 Refugee Protocol, as incorporated by reference, address the imposition of fees on individuals seeking protection, and limit ''fiscal charges'' to not higher than those charged to their nationals in similar situations. *See* Article 29(1) of the 1951 Refugee Convention, and 1967 Refugee Protocol, as incorporated by reference. Domestic implementing law, which is consistent with international treaty obligations, authorizes the Attorney General to ''impose fees for the consideration of an application for asylum, for employment authorization under this section [208], and for adjustment of status under section 209(b).'' INA section 208(a)(3), 8 U.S.C. 1158(a)(3). Thus, as provided in the NPRM and in this final rule, no fee waivers are available to asylum seekers in connection with filing Form I–589 or for Form I–765 with USCIS. Notably, unaccompanied alien children in removal proceedings who file an application for asylum with USCIS are exempt from the Form I–589 fee. New 8 CFR 106.2(a)(20).

As proposed in the NPRM and stated in this final rule, DHS exempts applicants filing as refugees under INA section 209(a), 8 U.S.C. 1159(a), from the filing fee for adjustment of status applications (Form I–485). *See* 8 CFR 106.2(a)(17)(iii). Asylees are not exempt from the Form I–485 filing fee, and neither asylees nor refugees are exempt from naturalization fees (Form N–400). The fee waiver regulations are consistent with the INA and international treaty obligations, which allow for the imposition of fees, and do not require that DHS offer these applicants fee waivers. *See* INA section 208(a)(3), 8 U.S.C. 1158(a)(3).

DHS considered extending the fee waiver rules that apply to SIJ, SIVs, T, U and VAWA applicants to asylum seekers, asylees, and refugees. However, in reviewing the data on the number of applicants for various forms, DHS concluded that the populations of asylum applicants, refugees, and asylees are substantial enough that a fee waiver would have caused a greater increase to the I–765 and N–400 fees, for example, thereby increasing the burden upon other applicants. As explained in the NPRM, initial applicants with pending asylum applications, aliens who have not yet established eligibility for asylum, account for approximately 13 percent of the total Form I–765 workload volume forecast. *See* 84 FR 62320. Continuing to exempt this population of aliens which is only eligible to obtain an EAD due to an asylum application pending for a certain amount of time from the Form I–765 fee or permitting fee waivers would have further increased the proposed fee, meaning that fee-paying EAD applicants would pay a higher amount to fund the cost of EADs for asylum applicants. Therefore, DHS limited fee waiver availability to only those categories of humanitarian programs that had limited populations to avoid increasing other fees. The limitation of fee waiver availability conforms with the beneficiary pays principle, and unlike the asylum seeker, asylee, and refugee population, such limited fee waiver availability does not pass on a significant burden to other applicants.

Notwithstanding these considerations and changes, DHS retains the authority in the final rule for the Director of USCIS to waive any fee if he or she determines that such action is an emergent circumstance, or if a major natural disaster has been declared in accordance with 44 CFR part 206, subpart B. *See* 8 CFR 106.3(b). As provided in the NPRM, USCIS will continue to notify the general public of eligibility for fee waivers for specific forms under this provision through policy or website updates. *See* 84 FR 62300. Individuals who may qualify for such a fee waiver will still need to meet the requirements to request a fee waiver as provided in 8 CFR 106.3(b).

In this final rule, DHS consolidates the provisions regarding the USCIS Director's discretion to provide fee waivers in the proposed 8 CFR 106.3(b) and 8 CFR 106.3(c), as proposed 8 CFR 106.3(b) was redundant.

Comment: Multiple commenters wrote that the proposal eliminating the fee waivers would severely affect vulnerable immigrants and survivor-based immigration. Several commenters stated that the elimination of fee waivers will harm the most vulnerable populations, such as domestic violence or human trafficking survivors, and those in times of crisis. One commenter stated fee waivers should be available to individuals seeking humanitarian relief and lacking the ability to pay. Several commenters stated that the elimination of most fee waivers discriminates against immigrants who are low income, elderly, and have disabilities and undermines humanitarian protection for victims of gender-based violence and other crimes. Multiple commenters wrote that eliminating the availability of fee waivers would only create an insurmountable economic barrier to low-income, vulnerable immigrants and lawful permanent residents, such as survivors of domestic violence, sexual assault, human trafficking, gender-based abuses, and other crimes, as well as their children. A few commenters wrote that access to fee waivers helps survivors and their children rebuild their lives; break free from the cycle of abuse; heal; and protect themselves, their children, and the community. Commenters stated that USCIS should instead focus on ensuring that low-income and other vulnerable immigrants have access to immigration relief for which they are eligible.

One commenter said that access to fee waivers is essential for survivors because it allows them to replace confiscated immigration documents such as permanent resident cards or employment authorization cards. The commenter stated that without fee waivers, survivors would be unable to pay these filing fees and would have to choose between going without these documents or putting their lives in danger to retrieve documents from potentially dangerous situations.

Multiple commenters wrote that while fee waivers for certain survivor-related applications will remain, the proposed rule ignores the fact that survivors may pursue other routes to secure immigration status other than those specifically designed for crime survivors. The commenters stated that, by removing waivers for these other routes, the proposed rule would harm survivors. One commenter indicated for a survivor of family violence, the ability to apply for a fee waiver was crucial to be able to obtain an EAD and gain some financial stability and independence from her abusive spouse. The commenter indicated that, as an example, a fee waiver allows a client to be able to maintain employment eligibility at her minimum wage job. Without the ability to apply for a fee waiver for all related applications the client would have faced additional barriers that would have prohibited her from obtaining financial independence from the abuser and lawful status. One commenter stated that the proposal ignores the fact that survivors of human trafficking may pursue other routes to secure immigration status and in these instances, survivors will no longer have access to fee waivers. Some commenters drew upon their experiences counseling those seeking immigration benefits to underscore their opposition to further restricting access to legal immigration via unaffordable filing fees or the elimination of fee waivers. A commenter said the elimination of fee waivers would place ''the majority'' of its clients in a precarious position because they do not have funds to pay fees out of pocket and will have to

choose between borrowing money and pursuing immigration benefits that would improve their lives. The commenter wrote that many of its clients were ''cut off'' from financial institutions and described the dangers of borrowing from ''predatory lending mechanisms'' or from family members who may use the debt owed as ''currency for their abusive behavior'' in some circumstances. The commenter also said the increased fees for work authorization would leave many immigrants vulnerable to victimization, citing a report from Public Radio International.

Many commenters also wrote that the proposed changes for necessary ancillary forms, including I–765, I–601, I–192, and I–929, would impose significant fee increases that survivors often cannot afford. Another commenter stated that the elimination of fee waivers, combined with the increased fees for N–400, would put those escaping violence in the position of having to choose between expending resources to become a U.S. citizen or covering basic necessities for their families.

A commenter said individuals with U nonimmigrant status or other humanitarian-based immigration benefits should not be ''priced out'' of remaining with their families. Another commenter said more than 94 percent of domestic violence survivors suffer financial abuse, and many receive some form of means-tested benefits that may preclude them from applying for fee waivers in the naturalization process. The commenter said fee waivers were critical for ensuring such vulnerable individuals have the opportunity to pursue citizenship.

Response: DHS is not intending to further harm survivors of domestic violence, human trafficking, or other crimes. In fact, DHS continues to exempt VAWA self-petitioners, individuals who are victims of a severe form of human trafficking and who assist law enforcement in the investigation or prosecution of those acts of trafficking or qualify for an exception (who may qualify for T nonimmigrant status), and individuals who are victims of certain crimes and have been, are being, or are likely to be helpful to the investigation or prosecution of those crimes (who may qualify for U nonimmigrant status) from paying a fee for the main benefit forms: Form I–360 for VAWA, and Forms I–914 and I–918 for T and U nonimmigrants including family members, respectively. *See* 8 CFR 106.2(a)(16)(ii), (a)(45) and (a)(46). DHS believes that maintaining access to fee waivers for these vulnerable populations mitigates any concerns that the increase in certain fees would limit access for protected categories of individuals. In addition, in response to commenters' concerns regarding the ability for the VAWA, T nonimmigrant, U nonimmigrant and Special Immigrant (Afghan and Iraqi translators) populations to pay for the cost of naturalization applications, DHS decided to expand the ability of these populations to apply for a fee waiver for Form N–400, Application for Naturalization, Form N–600, Application for Certificate of Citizenship, and Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322. *See* 8 CFR 106.3(a)(3).

Comment: One commenter referred to a study from the National Resource Center on Domestic Violence that found means-tested benefits support financial security and independence and are ''critically important'' for survivors of domestic violence, sexual assault, and human trafficking. The commenter said recipients of means-tested benefits are, by definition, of limited financial means and need these benefits to meet their basic needs. The commenter said restricting the availability of fee waivers would harm survivors of domestic violence and other forms of gender-based violence, and cited research demonstrating the widespread incidence and devastating economic impacts of such violence.

Response: DHS does not intend to further harm domestic violence or human trafficking survivors. In fact, the rule continues to exempt those applying for VAWA, T, and U benefits from certain fees and allows them to request fee waivers for other forms as provided by statute. DHS believes that maintaining access to fee waivers for these populations mitigates any concerns that the increase in certain fees would limit access for protected categories of individuals. *See* 8 CFR 106.3(a).

Comment: A commenter stated that Congress mandated that DHS permit applicants to apply for a waiver of any fees associated with VAWA benefits, T nonimmigrant filings, U nonimmigrant filings, or an application for VAWA cancellation of removal or suspension of deportation. In doing so, Congress recognized that ensuring equal access to immigration protections was crucial for crime survivors to achieve safety and security. Many commenters also wrote that the proposed rule undermines Congressional intent to make humanitarian relief accessible to victims. Another commenter stated that the proposed rule clearly violates Congressional intent, as reiterated in a December 2019 House Appropriations Committee report, by imposing fees on individuals who have received humanitarian protection and subsequently seek adjustment of status and other immigration benefits which they cannot afford. The commenters said low-income survivors will not apply for benefits due to the barriers they will encounter in demonstrating their eligibility for fee waivers and that the proposed rule ''undermines'' bi-partisan Congressional intent with respect to VAWA-based relief. Commenters stated that the language runs counter to existing law as Congress did not place any conditions on the availability of fee waivers for survivors when it codified the use of fee waivers for filing a VAWA self-petition, a T nonimmigrant status application or U nonimmigrant status petition, or an application for VAWA cancellation or suspension of deportation. Other commenters wrote that USCIS should automatically waive fees for all forms associated with applications for T nonimmigrant status, U nonimmigrant status, and VAWA self-petitioners to make humanitarian immigration relief accessible to victims.

Response: DHS exempts VAWA self-petitioners, applicants for T nonimmigrant status, and petitioners for U nonimmigrant status from paying a fee for the main benefit forms: Form I–360 for VAWA, and Forms I–914 and I–918 for T and U nonimmigrants including family members, respectively. Thus, DHS is making relief accessible to the populations noted by the commenters.

Further, this final rule complies with the law's requirements [31] to permit these applicants to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status. *See* new 8 CFR 106.3(a)(1). DHS agrees that Congress did not place any conditions on the availability of fee waivers for a VAWA self-petition, a T nonimmigrant status application, or U nonimmigrant status petition, or an application for VAWA cancellation or suspension of deportation, but DHS disagrees that any legislation requires or implies or that Congress intended that USCIS provide free adjudications for all of their associated benefit requests. Congress has codified several fee exemptions or fee limits. *See, e.g.,* INA section 328(b)(4), 8 U.S.C. 1439(b)(4) (fee exemption for Military Naturalization Based on Peacetime Service); INA section 244(c)(1)(B), 8

[31] *See* INA section 245(l)(7), 8 U.S.C. 1255(l)(7).

U.S.C. 1254a(c)(1)(B) (the registration fee for TPS is limited to $50, although additional fees may be collected for biometrics and associated services, *See* 8 U.S.C. 1254b. Congress has also appropriated funds for adjudication and certain naturalization services. *See, e.g.,* Consolidated Appropriations Act, 2019, Public Law 116–6, div. A, tit. IV (Feb. 15, 2019) and Consolidated Appropriations Act, 2020, Public Law 116–93, div. D, tit. IV (Dec. 20, 2020). Congress has not provided for a fee exemption, fee cap, or appropriated funds for VAWA self-petitioners, T nonimmigrant status applicants, and U nonimmigrant status petitioners. To the contrary, the statute directs DHS to allow applications for fee waivers, rather than to waive all such fees, evidencing Congress's intent for DHS to evaluate the individual merits of such requests. DHS appreciates the concerns about affordability, but, while many victim requesters are in poor financial condition, being a victim does not equate to being poor, and DHS may require that the victim requester document eligibility for a fee waiver. Therefore, DHS makes no changes in the final rule as a result of these comments.

Comment: Commenters stated that while applications and petitions for survivor-based relief do not have fees, applicants must frequently file ancillary forms whose fees are increasing under the proposed rule or may seek status through other immigration categories. The commenter stated that by eradicating fee waivers for other types of applications and petitions, the proposed rule ignores the facts that survivors of domestic violence, sexual assault, human trafficking, and other gender-based abuses may pursue other routes to secure immigration status which lack such explicit protections. They also noted that fee waivers will no longer be available for any naturalization applications and many other forms in non-survivor based cases, like legal permanent residence applications; work permit applications; and Form I–751, Petition to Remove Conditions on Residence; among others. Another commenter said the final rule would need to more explicitly address the protections and exemptions for humanitarian visa categories because the proposed rule contained contradictory and confusing language and many potential applicants would not necessarily be aware of special protections to which they are entitled.

Other commenters requested that USCIS withdraw the proposed rule, because it would create barriers to accessing immigration benefits for victims, and immigration benefits are essential for survivors to escape abuse and become self-sufficient after they have been victimized. Commenters stated that the rule ignores survivors of domestic violence, who have a spotty employment history or lack of savings, or both, and survivors of human trafficking, who may spend many months waiting for compensation from litigation or before they are able to recuperate their lost wages.

Other commenters detailed how economic abuse affects survivors' finances, including precluding victims from working, destroying their work uniforms and equipment, preventing them from getting to work or an interview, and other tactics that impact a victim's financial independence and impede their ability to pay filing fees. One commenter specifically noted that VAWA self-petitioners often have limited financial means, are often homeless after escaping their abusers, and suffer from physical and mental health issues. The commenter stated that the little money they do have is needed to help them maintain independence from their abusers and provide for their families. One commenter wrote that USCIS should focus on ensuring vulnerable immigrants have access to immigration relief for which they are eligible. The commenters stated that fee waivers for survivor-based immigration protections have helped survivors improve their lives by allowing them to obtain employment authorization and legal status without having to request funds from their abusers or forgo food or housing in order to pay fees. In the context of VAWA, T, and U applicants, another commenter stated that the fee increases did not take into account areas of the country, such as the San Francisco Bay Area, where living expenses and housing costs are high. They said such a fee increase also does not consider the mandatory expense of the obligatory medical exam (Form I–693, Report of Medical Examination and Vaccination Record) that in their experience ranges anywhere from $300 to $700 and for which there is no fee waiver.

Response: DHS acknowledges the concerns commenters have raised and does not intend to unduly burden any alien, particularly those who have been victimized. To avoid confusion and clarify the applicability of the rule, DHS reiterates that the rule continues to exempt the VAWA, T, and U populations from fees for the main benefit forms and allows them to submit fee waiver requests for any associated forms up to and including the application for adjustment of status, as provided by statute. For example, there are no fees for the following forms: VAWA-based Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant; Form I–914, Application for T Nonimmigrant Status; and Form I–918, Petition for U Nonimmigrant Status. In addition, VAWA, T, and U filers may submit a request for a fee waiver for associated forms, including Forms I–765, I–131, I–212, and I–601, among other forms.

Additionally, in response to commenters' concerns regarding the ability for the victim population to pay for the cost of naturalization applications, DHS will permit this population to request a fee waiver for Form N–400, Application for Naturalization; Form N–600, Application for Certificate of Citizenship; and Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322. The table below provides the full list of forms these applicants and petitioners may apply for that are either exempt from fees or eligible for fee waivers. DHS repeats these applicants, generally, do not have to pay the fees for the initial main benefit forms that provide the immigration status or benefit.

TABLE 3—CATEGORIES AND FORMS WITHOUT FEES OR ELIGIBLE FOR FEE WAIVERS

Category	Main immigration benefit requests [32]	Associated forms
Violence Against Women Act (VAWA) self-petitioners and derivatives as defined in INA section 101(a)(51) or individuals otherwise self-petitioning for immigrant classification or seeking adjustment of status due to abuse by a qualifying relative [33].	Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant (no fee for VAWA-based filings). Form I–485, Application to Register Permanent Residence or Adjust Status. Form I–751, Petition to Remove Conditions on Residence. Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100 (NACARA)).	Form I–131, Application for Travel Document.[34] Form I–212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal. Form I–290B, Notice of Appeal or Motion. Form I–601, Application for Waiver of Grounds of Inadmissibility. Form I–765, Application for Employment Authorization (no initial fee for principals).[35] Form N–400, Application for Naturalization. Form N–600, Application for Certificate of Citizenship. Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322.
Victims of Severe Form of Trafficking (T nonimmigrant) [36].	Form I–914, Application for T Nonimmigrant Status (no fee). Form I–914 Supplement A, Application for Family Member of T–1, Recipient (no fee). Form I–914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (no fee). Form I–485, Application to Register Permanent Residence or Adjust Status.	Form I–131, Application for Travel Document. Form I–192, Application for Advance Permission to Enter as a Nonimmigrant. Form I–193, Application for Waiver of Passport and/or Visa. Form I–290B, Notice of Appeal or Motion. Form I–539, Application to Extend/Change Nonimmigrant Status. Form I–601, Application for Waiver of Grounds of Inadmissibility. Form I–765, Application for Employment Authorization (no initial fee for principals). Form N–400, Application for Naturalization. Form N–600, Application for Certificate of Citizenship. Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322.
Victims of Criminal Activity (U nonimmigrant) [37].	Form I–918, Petition for U Nonimmigrant Status (no fee). Form I–918, Supplement A, Petition for Qualifying Family Member of U–1 Recipient (no fee). Form I–918 Supplement B, U Nonimmigrant Status Certification (no fee). Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant. Form I–485, Application to Register Permanent Residence or Adjust Status.	Form I–131, Application for Travel Document. Form I–192, Application for Advance Permission to Enter as a Nonimmigrant. Form I–193, Application for Waiver of Passport and/or Visa. Form I–290B, Notice of Appeal or Motion. Form I–539, Application to Extend/Change Nonimmigrant Status. Form I–765, Application for Employment Authorization (no initial fee for principals). Form N–400, Application for Naturalization. Form N–600, Application for Certificate of Citizenship. Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322.
Employment authorization for battered spouses of A, G, E–3, or H nonimmigrants [38].	Form I–765V, Application for Employment Authorization for Abused Nonimmigrant Spouse (no initial fee).	None.
Battered spouses or children of a lawful permanent resident or U.S. citizen and derivatives under INA section 240A(b)(2) [39].	None with USCIS	Form I–601, Waiver of Grounds of Inadmissibility. Form N–400, Application for Naturalization. Form N–600, Application for Certificate of Citizenship. Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322.
Temporary Protected Status [40] ...	Form I–821, Application for Temporary Protected Status. Biometric Services Fee.	Form I–131, Application for Travel Document. Form I–601, Application for Waiver of Grounds of Inadmissibility. Form I–765, Application for Employment Authorization.
Special Immigrant Juveniles (SIJ) who have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency at the time of filing.	Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant (no fee). Form I–485, Application to Register Permanent Residence or Adjust Status.	Form I–131, Application for Travel Document.[41] Form I–212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal. Form I–290B, Notice of Appeal or Motion. Form I–601, Application for Waiver of Grounds of Inadmissibility. Form I–765, Application for Employment Authorization. Form N–400, Application for Naturalization. Form N–600, Application for Certificate of Citizenship. Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322.

TABLE 3—CATEGORIES AND FORMS WITHOUT FEES OR ELIGIBLE FOR FEE WAIVERS—Continued

Category	Main immigration benefit requests [32]	Associated forms
Special Immigrant as an Afghan or Iraqi Translator or Interpreter, Iraqi National employed by or on behalf of the U.S. Government, or Afghan National employed by or on behalf of the U.S. government or employed by the International Security Assistance Forces.	Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant (no fee). Form I–485, Application to Register Permanent Residence or Adjust Status (no fee).	Form I–131, Application for Travel Document (no fee). Form I–290B, Notice of Appeal or Motion (no fee). Form I–765, Application for Employment Authorization (no fee). Form I–212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal. Form I–601, Application for Waiver of Grounds of Inadmissibility. Form N–400, Application for Naturalization. Form N–600, Application for Certificate of Citizenship. Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322.

Although DHS is increasing fees for various forms to account for the cost of adjudication, the victim populations identified here will be eligible to apply for a fee waiver for most forms if their income is at or below 125 percent of the FPG. As stated previously, the law does not require, and DHS declines to adopt, the recommendation to automatically waive fees for all forms associated with VAWA, T, and U filings or to withdraw the rule in its entirety. USCIS is funded through fees, and taxpayer dollars are not used to fund USCIS adjudication and naturalization services. The cost associated with applications and petitions that have been fee waived is paid from fees collected from other benefit requests. DHS believes that maintaining access to fee waivers for these vulnerable populations mitigates any concerns that the increase in the fees will limit access for protected categories of individuals.

As the commenters point out, the law provides specific immigration benefits for those who have been victimized and provides protections and flexibilities for these populations to address their particular concerns. This final rule complies with those provisions.

Comment: Another commenter provided statistics describing the economic condition of the population served by non-profit legal service providers in its State and wrote that the proposal would increase the strain on these important organizations. The commenter noted that nearly 90 percent of the 25 legal service providers surveyed in its state represented applicants for humanitarian immigration benefits, such as VAWA petitions, trafficking victims on T nonimmigrant applications, or asylum applicants. The commenter stated the proposal would create a chilling effect on all clients served by these organizations, regardless of the benefits for which they qualify, and could ultimately jeopardize these organizations' budgets due to a reduction in the number of cases served.

Response: As stated previously, DHS appreciates the services that charitable, community based, non-governmental, and non-profit organizations provide to the immigrant community. DHS declines, however, to exempt from fees all forms associated with VAWA, T, and U filings. Organizations providing services to the VAWA, T, and U population will continue to be able to request fee waivers for forms associated with these filings in addition to a fee exemption for the main benefit request (*i.e.,* Form I–360, Form I–914, and Form I–918 have no fee for these populations).

Comment: One commenter stated that the proposed Form I–912 instructions ''create additional burdens that are ultra vires to the statute permitting fee waivers for survivor-based cases, notably with the phrase 'due to your victimization.' '' The commenter stated that survivors should not have to demonstrate a nexus between their victimization and their lack of income or proof of income. The commenter also stated that this non-statutory requirement is burdensome on survivors, as they may face obstacles obtaining or providing proof of income for reasons that may or may not be related to their victimization and will prevent many survivors from accessing critical benefits. Several commenters said low-income survivors will not apply for benefits due to the barriers they will encounter in demonstrating their eligibility for fee waivers and that the proposed rule undermines bipartisan Congressional intent with respect to VAWA-based relief. Many commenters stated that the additional limits on fee waiver eligibility criteria combined with the stringent documentation requirements for fee waivers (*e.g.,* Form I–912 instructions that survivors need to ''demonstrate a nexus between their victimization and lack of income or proof of income) will prevent many survivors from qualifying or applying for fee waivers. A commenter stated that, whether intentional or not, the proposed rule will act as a barrier to status for the crime survivors we serve and, coupled with the stringent documentation requirements for fee waivers, will prevent many survivors from qualifying

[32] Some immigration benefit requests may not have a fee for the specific category.

[33] *See* INA sections 101(a)(51) and 204(a), 8 U.S.C. 1101(a)(51) and 1154(a); INA section 245(l)(7), 8 U.S.C. 1255(l)(7); Public Law 110–457, 122 Stat. 5044 (Dec. 23, 2008); 22 U.S.C. 7101 *et seq.* This category includes applicants for waivers of the joint filing requirement for Form I–751 based on battery and extreme cruelty; victims of battery or extreme cruelty as a spouse or child under the Cuban Adjustment Act Public Law 99–603, 100 Stat. 3359 (November 6, 1986) (as amended), 8 U.S.C. 1255a; applicants adjusting based on dependent status under the Haitian Refugee Immigrant Fairness Act, Public Law 105–277, 112 Stat. 2681 (October 21, 1998), 8 U.S.C. 1255, for battered spouses and children; and applicants for Suspension of Deportation or Special Rule Cancellation of Removal (Form I–881) under the Nicaraguan Adjustment and Central American Relief Act, Public Law 105–100, 111 Stat. 2163 (Nov. 19, 1997), for battered spouses and children.

[34] Currently, fees for Form I–131 are exempt if filed in conjunction with a pending or concurrently filed Form I–485 with fee that was filed on or after July 30, 2007. *See* 8 CFR 103.7(b)(1)(i)(M)(4). However, DHS implements changes to this policy in this final rule as explained in this preamble. New 8 CFR 106.2(a)(7)(iv).

[35] Form I–360 allows a principal self-petitioner to request an EAD incident to case approval without submitting a separate Form I–765. Form I–765 is required for employment authorization requests by derivative beneficiaries.

[36] *See* INA section 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T) (T nonimmigrant status for victims of a severe form of trafficking in persons).

[37] *See* INA section 101(a)(15)(U), 8 U.S.C. 1101(a)(15)(U) (U nonimmigrant status for victims of certain criminal activity).

[38] *See* INA section 106, 8 U.S.C. 1105a.

[39] *See* INA section 240A(b)(2), 8 U.S.C. 1229b(b)(2), and INA section 245(l)(7), 8 U.S.C. 1255(l)(7).

[40] *See* INA section 244, 8 U.S.C. 1254a.

[41] Currently, fees for Form I–131 are exempt if filed in conjunction with a pending or concurrently filed Form I–485 with fee that was filed on or after July 30, 2007. *See* 8 CFR 103.7(b)(1)(i)(M)(4). However, DHS proposes changes to the policy in this final rule as explained later in this preamble. New 8 CFR 106.2(a)(7)(iv).

for fee waivers.'' A commenter said the proposed Form I–912 instructions create additional burdens for crime survivors from qualifying for fee waivers, and USCIS should continue to accept applicant-generated fee waiver requests. One commenter said USCIS had received many comments on a previous attempt to modify the fee waiver form from stakeholders concerned about the negative impact those changes would have on immigrant survivors of violence and wrote that the current proposal would make these problems worse. The commenter said survivors of violence would be adversely impacted by the heightened documentation requirements, specifically the provision that survivors would have to demonstrate that their inability to comply with documentation requirements was due to their victimization. The commenter said the proposal failed to reference any exceptions to the vague ''victimization'' standard despite USCIS' prior recognition that the requirement to provide documentation from the Internal Revenue Service (IRS) would disadvantage immigrant survivors.

Response: To obtain a fee waiver, an applicant must demonstrate that he or she is at or below 125 percent of the FPG, meet the other criteria as provided in the rule, and provide the information and evidence available in order to establish eligibility. The applicant need only provide sufficient information to establish why the documentation is not available and not that it is unavailable directly or indirectly as a result of the victimization. The form provides space for explanations and attachments are accepted, but a separate declaration is unnecessary. Although not required by statute, USCIS has provided flexibilities in the instructions for the VAWA, T, and U populations permitting them to submit information regarding their inability to obtain documentation on their income with their fee waiver request. DHS will presume that the inability of this group of applicants to submit certain evidence is the result of the victimization and abuse and not require proof of a nexus between victimization and the inability to pay, but the request must demonstrate inability to pay to the extent necessary for USCIS to grant a discretionary fee waiver. All applicants for a fee waiver are subject to the evidence requirements as provided in the revised form instructions, which include more flexible rules with respect to the groups these comments mention. If individuals are unable to obtain documents without contacting the abuser, they can explain why they are unable to obtain such documentation and submit other evidence to demonstrate their eligibility. Obtaining information from the IRS in transcripts, a W–2, or proof of non-filing, if applicable, is sufficient documentation to establish the necessary income or lack of income.

Comment: A few commenters discussed the processing times for survivor-based forms of immigration protections, citing increased adjudication time for filings such as petitions for U nonimmigrant status and Violence Against Women Act (VAWA) self-petitions. Commenters said slow processing times can lead to increased homelessness, violence, or a return to abusive relationships for victims and that USCIS has failed to address how these fees will improve processing times. One commenter cited several sources and wrote that new fees would not result in improved processing but instead would contribute to, and escalate, violence.

Response: DHS understands the commenter's concerns regarding processing times. Processing times are impacted by several factors, and any changes based on the rule would limitedly impact these populations. The rule continues to exempt the VAWA, T, and U populations from certain fees and allows them to submit fee waiver requests for any forms up to adjustment of status. *See* new 8 CFR 106.2(a)(16), (a)(32)(ii), (a)(45) and (a)(46); 8 CFR 106.3(a)(3). In the final rule DHS is permitting a request for a fee waiver on the application for naturalization or certificate of citizenship for these categories. *See* new 8 CFR 106.3(a)(3). DHS disagrees that this final rule would result in increased processing times or contribute to escalating violence on these populations, particularly as the additional resources made available from increased fees may enable USCIS to limit growth in pending caseloads. As DHS states elsewhere in this rule, DHS is adjusting fees in this final rule because they are insufficient to generate the revenue necessary to fund USCIS at levels adequate to meet its processing time goals. The new fees will allow USCIS to hire more people to adjudicate cases and possibly prevent the growth of backlogs.

Comment: A commenter stated that the proposed rule is not detailed enough about whether refugees are exempt from fees including the Form I–765 fees and whether asylees and SIJ petitioners and recipients will be eligible for fee waivers. The commenter also stated that DHS fails to understand that individuals are forced to file fee waivers when DHS places fees for benefits out of the reach of most low to moderate income applicants and that the inability to access identity documents exacerbates homelessness and unemployment, concluding that elimination of fee waivers is arbitrary and capricious.

Response: DHS acknowledges the concerns of the commenter related to the availability of fee waivers for refugees and asylees, and other vulnerable applicants and petitioners. DHS will continue to provide a fee exemption for the initial Form I–765 for individuals who were granted asylum (asylees) or who were admitted as refugees. *See* 84 FR 62301. DHS is also continuing to provide a fee exemption to refugees for Form I–485. *See* 84 FR 62360; new 8 CFR 106.2(a)(17)(iii). In addition, the fee that DHS charges for refugee travel documents will continue as a lesser fee, linked to the fee for a U.S. passport book, rather than the estimated full cost of adjudication. *See* 84 FR 62306.

At the USCIS Director's discretion, USCIS may waive or exempt the fee for any form, including those filed by asylees and refugees. *See* 8 CFR 106.3(b), (e). That provision is similar to, but somewhat more limited than, the authority that was in 8 CFR 103.7(d) for the Director of USCIS to provide for the waiver or exemption of any fee if doing so was in the public interest. The new provision provides that the Director determines that such action is an emergent circumstance or if a major natural disaster has been declared in accordance with 44 CFR part 206, subpart B. *See* 8 CFR 106.3(b), (e). As was stated in the NPRM, USCIS will notify the public of the availability of fee waivers for specific forms under this provision through external policy guidance, website updates, and communication materials. *See* 84 FR 62300. Individuals who qualify for such a fee waiver would still need to meet the requirements to request a fee waiver as provided in the new 8 CFR 106.3(b) and (d). In this final rule, DHS consolidated the provisions regarding the USCIS Director's discretion in 8 CFR 106.3(b) and 8 CFR 106.3(c), as the proposed provision in the NPRM, 8 CFR 106.3(b), was redundant.

In response to commenters' concerns, DHS will also allow petitioners for and recipients of SIJ classification who, at the time of filing, have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency, to submit requests for fee waivers for Form I–485 and associated forms, as well as Forms N–400, N–600, and N–600K. *See* 8 CFR 106.3(a)(2)(i). DHS does not believe that the final rule eliminates fee waivers for

these applicants or blocks access to identity documents.

Comment: Several commenters stated that the elimination of fee waivers will harm the most vulnerable populations, such as domestic violence or human trafficking survivors, and those in times of crisis. One commenter stated fee waivers should be available to individuals seeking humanitarian relief and lacking the ability to pay. One commenter suggested that it would make better fiscal sense and would result in better outcomes for USCIS if the agency automatically waives fees for all forms associated with applicants for T nonimmigrant status, petitioners for U nonimmigrant status, and VAWA self-petitioners because fee waivers would facilitate non-profits' efforts to help these applicants file these forms quickly. A commenter wrote that delays in application submission due to limitations on fee waivers would result in delayed justice for individuals because immigration practitioners will be forced to spend more time on each case.

Response: DHS acknowledges the commenters' concerns and clarifies that this final rule continues to exempt the VAWA, T and U populations from certain fees and allows them to request fee waivers on other forms as previously discussed. *See* 8 CFR 106.2(a)(16)(ii), (a)(45) and (a)(46), 8 CFR 106.3. Furthermore, in response to concerns expressed by the public, DHS provides in this final rule that those populations may also request a fee waiver for Forms N–400, N–600, and N–600K. *See* 8 CFR 106.3(a)(3). DHS believes that by continuing to provide the opportunity to request fee waivers, the final rule will not unduly burden these populations or delay the submission of their applications and petitions.

Comment: A commenter opposed the new form's request for applicants to self-identify as survivors. The commenter stated that most types of humanitarian relief covered by Form I–912 ''are subject to certain protections and sanctions'' relating to privacy and confidentiality and requested that USCIS clarify that the disclosure of personal information in these sections complies with protections codified at 8 U.S.C. 1367.

Response: DHS takes seriously its responsibility to properly protect sensitive information in its possession.[42] DHS follows the Privacy Act requirements, which apply to information that is maintained in a ''system of records'' from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifier particular assigned to the individual. Information from forms is collected and maintained consistent with the Privacy Act of 1974 [43] (Privacy Act) and the System of Records Notice (SORN), which identifies the purpose for which Personally Identifiable Information (PII) is collected, from whom and what type of PII is collected, how the PII is shared externally (routine uses), and how to access and correct any PII maintained by DHS.[44] With regard to 8 U.S.C. 1367 protections, DHS remains committed to our obligations under the statute and applies the required protections to all information pertaining to individuals with a pending or approved VAWA, T, or U petition or application, which includes information provided on Form I–912.

Comment: Several commenters stated that SIJ petitioners and recipients, a vulnerable group, are missing from USCIS' list of groups retaining access to fee waivers. A commenter stated that this proposal will hinder the ability of juveniles who receive SIJ classification to fully integrate into the United States, due to excessive costs, and that it will result in other unintended consequences, particularly for unaccompanied minors. Such consequences include difficulty finding sponsors and a lower level of legal representation. Commenters further noted that the proposed fee increases would burden SIJ petitioners and recipients who have no means to pay for the fees when applying for adjustment of status. The commenter stated that SIJ petitioners and recipients are children who have suffered abuse, neglect, or abandonment by at least one of their parents. The commenter stated that SIJs benefit immensely from obtaining work authorization, as working lets the SIJs take control over their lives, provide for themselves, and begin to build a brighter future. The commenter stated that adjustment offers them the chance to permanently put down roots in the United States, putting the trauma in their pasts behind them. One commenter stated that in passing the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA),[45] Congress made amendments to the SIJ statute to provide ''permanent protection for certain at-risk children.'' The commenter further stated that not providing fee waivers to SIJs would preclude at-risk children from accessing fee waivers and thus clearly violate Congressional intent to permanently protect these at-risk children. Another commenter said that the hardship would be particularly acute for those SIJ petitioners in foster care, who have limited or no access to the funds necessary to seek adjustment of status with USCIS.

Response: The TVPRA [46] requires DHS to permit certain applicants to apply for fee waivers for ''any fees associated with filing an application for relief through final adjudication of the adjustment of status.'' INA section 245(l)(7), 8 U.S.C. 1255(l)(7), provides that ''The Secretary of Homeland Security shall permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under sections 1101(a)(15)(T), 1101(a)(15)(U), 1105a, 1229b(b)(2), and 1254a(a)(3) of this title (as in effect on March 31, 1997).'' These provisions do not include SIJ petitioners or recipients. Therefore, DHS is not mandated to allow SIJs to apply for fee waivers. Nevertheless, after considering the commenters' concerns, DHS agrees that SIJ petitioners who are wards of the state are particularly vulnerable. Therefore, DHS will allow petitioners for and recipients of SIJ classification who, at the time of filing, have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency, to request that the fees for Form I–485 and associated forms be waived. *See* 8 CFR 106.3(a)(2)(i).

In addition, DHS is including Forms N–400, N–600, and N–600K as forms eligible for a fee waiver for multiple categories of applicants. *See* 8 CFR 106.3(a)(3). Table 3 above provides a list of forms eligible for fee waivers based on SIJ classification.

Comment: A commenter stated that limits on categories eligible for fee waivers and elimination of a need-based benefit as a way to qualify for a fee

[42] *See* generally Notice of Modified Privacy Act System of Records, 82 FR 43556, 43564 (Sept. 18, 2017) (''DHS/USCIS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. USCIS has imposed strict controls to minimize the risk of compromising the information that is being stored.'').

[43] *See* 5 U.S.C. 552.

[44] *See* generally Notice of Modified Privacy Act System of Records, 82 FR 43556, 43564 (Sept. 18, 2017) (''DHS/USCIS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. USCIS has imposed strict controls to minimize the risk of compromising the information that is being stored.'').

[45] *See* The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110–457, 112 Stat. 5044 (Dec. 23, 2008).

[46] *See* title II, subtitle A, sec. 201(d)(3), Public Law 110–457, 122 Stat. 5044 (2008); INA section 245(l)(7), 8 U.S.C. 1255(l)(7).

waiver will have an especially heavy impact on the homeless, who often have difficulty providing required documents and must file applications for replacement of lost or stolen immigration documents.

Response: This final rule does not prohibit aliens who are homeless from applying for or receiving a fee waiver if he or she is a member of one of the designated categories.

Comment: Multiple commenters opposed lowering the income limit for fee waivers to 125 percent of the FPG as it would disqualify many immigrants, including survivors of crime who are statutorily protected, from receiving fee waivers for immigration benefits. Many commenters stated that the proposed rule fails to acknowledge that immigrants, especially survivors of crimes, often do not have access to financial documents or proof of their income for various reasons, including informal jobs (*e.g.,* babysitting or yard work) that pay cash; the fact that limited earnings do not require taxes to be filed; and that abusers often have control of all financial documents, destroy records, or prevent victims from attaining financial independence. One commenter wrote that since many individuals would not fall within the proposed, narrower financial eligibility criteria, victims of labor trafficking may turn to jobs with exploitative employers or back to traffickers in order to pay the fees for adjustment of status or other ancillary forms.

Response: DHS acknowledges that some applicants may no longer qualify for fee waivers if their income was higher than 125 percent of the FPG but lower than 150 percent of the FPG. However, many applicants may otherwise have income below 125 percent and, therefore, still qualify. Consistent with the statute, this final rule specifically permits aliens described in the TVPRA, including those seeking benefits under VAWA, as well as T and U nonimmigrants,[47] to request fee waivers for ''any fees associated with filing an application for relief through final adjudication of the adjustment of status.'' [48] The TVPRA provision requires DHS to allow these applicants to request fee waivers; however, the TVPRA does not require fee exemptions or set the FPG level for waivers. DHS declines to make changes in this final rule in response to this comment.

b. Fee Waivers for Specific Forms

Comment: Commenters opposed eliminating the fee waiver for naturalization, as well as lawful permanent residence, employment authorization, and other applications. Numerous commenters opposed the proposed elimination of fee waivers for Form I–90, Form I–765, Form I–485, forms for applicants exempt from the public charge inadmissibility ground, Form I–751, and naturalization and citizenship-related forms.

Response: DHS is not eliminating all fee waivers for Forms I–485 and I–765 and is allowing fee waiver requests for certain humanitarian programs for naturalization and citizenship related forms as applicable. *See* 8 CFR 106.3(a). *See* Table 3: Categories and Forms Without Fees or Eligible for Fee Waivers. DHS will continue to accept fee waiver requests from applicants who meet the requirements of INA section 245(l)(7), 8 U.S.C. 1255(l)(7). *Id.* As explained in the NPRM, the INA requires DHS to permit fee waiver requests from certain immigrant categories and for certain forms; limiting fee waiver requests reduces the fee increases for all immigration benefits and places the fee costs on the benefit recipient instead of an unrelated party.

DHS notes, however, that the law requires DHS to ''permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under sections 101(a)(15)(T), 101(a)(15)(U), 106, 240A(b)(2), and 244(a)(3) (as in effect on March 31, 1997).'' DHS appreciates that aliens will often file multiple requests simultaneously or shortly after each other, including requests for asylum, SIJ classification, T nonimmigrant status, U nonimmigrant status, humanitarian parole, or deferred action. However, that a request may be filed simultaneously with a status included in section 245(l)(7), 1255(l)(7), or while it is pending, does not make such a request an ''application for relief'' ''associated with filing'' for the purposes of fee waiver eligibility under that provision of law. USCIS will generally reject a fee waiver request and the associated benefit request that asserts that it is ''associated'' and eligible for a fee waiver simply because it is simultaneous or filed while another benefit request is pending.

DHS will not make changes to its fee waiver regulations in this final rule in response to these comments.

Comment: A few commenters said the Form I–90 should remain fee waivable, as the form is necessary to renew permanent resident cards. The commenters stated that without the fee waiver, applicants would be unable to renew their status and escape poverty. A commenter wrote that eliminating a fee waiver option for an I–90 would be ''egregious.'' The commenter stated that immigrants with expired legal status or employment authorization often get caught in a vicious cycle of being unable to prove they have permission to work, preventing them from earning funds to cover filing fees and thus perpetuating their inability to procure work authorization.

Several commenters stated that removing fee waivers for forms such as the I–90 and the N–565 would prevent or significantly delay applicants from being able to apply for and maintain employment. The commenters stated that the change could likewise prevent applicants from having proof of their eligibility for certain public benefits, as many applicants, especially survivors of crime and homeless immigrants, have primary documents that have been stolen, lost, or destroyed, often by abusers.

Response: DHS disagrees that eliminating the fee waivers for the I–90 would be ''egregious,'' or that it will prevent or significantly delay applicants from being able to apply for and maintain employment. Applicants would still be eligible to obtain proof of status, and public benefit granting agencies have access to the Systematic Alien Verification for Entitlements (SAVE) program which validates an alien's immigration status. DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter wrote that children should not be subject to fees for Form I–485 or for EAD applications while their asylum or adjustment of status application is pending because doing so would impose multiple hardships. The commenter stated that EADs serve as a de facto identification document and are frequently a precursor to obtaining access to state and federal services, as well as access to a social security number, which is a common prerequisite for enrolling in school, obtaining health insurance, or receiving preventative care.

A commenter wrote that senior citizens have extremely limited financial situations but are often able to renew their Permanent Resident cards or apply for citizenship with a fee waiver. The commenter stated that eliminating this fee waiver, while also raising the form fees, would put these applications out of reach.

[47] *See* title II, subtitle A, sec. 201(d)(3), Public Law 110–457, 122 Stat. 5044 (2008); INA section 245(l)(7), 8 U.S.C. 1255(l)(7).

[48] *See id.*

Response: DHS disagrees that this final rule prevents asylees, children, or seniors from obtaining documentation of status. Immigrants are provided a stamp in their passports that they can use as documentation of lawful permanent resident status upon adjustment of status or their entry into the United States as a lawful permanent resident. Further, an alien's LPR card, which provides documentation of LPR status, and therefore employment eligibility, is generally valid for 10 years. For those without approved status, applicants may use their receipt notices to identify they have applied for the applicable immigration status. Schools, insurance companies, and doctors' offices should not require a permanent resident card or an employment authorization document from a child and DHS cannot adjust the fees for obtaining such documents based on such unofficial uses and unnecessary requirements. Further, DHS disagrees that this final rule imposes greater burdens on these aliens accessing public benefits or services. Public benefit granting agencies verify the immigration status of aliens through the SAVE program. DHS declines to make changes in this final rule on the basis of these comments.

Comment: A commenter wrote that it is unjust to allow fee waivers for Form I–751 for VAWA self-petitioners but not for individuals who are submitting a waiver for joint spousal filing of Form I–751 due to battery or cruelty by the U.S. citizen spouse. A commenter said the petition to remove conditions on residence should remain accessible, especially for survivors of domestic violence. Similarly, a few commenters stated that, if USCIS were to eliminate fee waivers for Form I–751, some victims of violence could be subject to deportation or to the threats of their abusers.

Response: DHS recognizes the concerns of commenters and clarifies that this final rule continues to allow an individual to request a fee waiver when he or she is filing a waiver of the Form I–751 joint filing requirement because they were subject to battery or extreme cruelty. *See* 8 CFR 106.3(a). The term ''VAWA self-petitioner'' as defined in INA section 101(a)(51)(C), 8 U.S.C. 1101(a)(51)(C), includes individuals filing a waiver of the joint filing requirement based on battery or extreme cruelty. Thus, USCIS will continue to accept requests for fee waivers for Form I–751 when filed with a waiver of the joint filing requirement based on battery or extreme cruelty, as provided by statute.

Comment: A few commenters stated that eliminating fee waivers for work authorization applications would cause further harm to asylum seekers. At least one commenter stated that elimination of fee waivers for asylum seekers would have a disproportionately negative impact on the people who most need asylum. Another commenter wrote that individuals with pending asylum cases before USCIS are required to renew their employment authorization every year, and without fee waivers, employment authorization filing fees would cut significantly into their paychecks and make it more difficult for them to provide for their families. Another commenter said USCIS should neither eliminate the waiver of the initial filing fee for Form I–765, Application for Employment Authorization, nor increase the filing fee. The commenter further stated this would make it harder for asylum seekers to apply for an EAD.

Response: DHS acknowledges the concerns of the commenters related to asylum seekers applying for EADs. Charging a fee for adjudication services is in line with INA section 208(d)(3), which provides that ''[n]othing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 1356(m) of this title.'' Noncitizens are generally required to pay adjudication fees, and asylum seekers, in particular, are subject to several statutory and regulatory requirements that carefully regulate the circumstances under which they may qualify for employment authorization, including a mandatory waiting period before they may even apply for employment authorization. USCIS is continuing to provide a fee exemption for the initial Form I–765 filing for individuals who were granted asylum (asylees) or who were admitted as refugees. Therefore, there is no fee waiver request necessary for asylees filing an initial Form I–765. Asylees and refugees will generally continue to be required to pay the fee for renewal EADs. Finally, as a point of clarification, DHS notes that, at the time of publication of this rule, the validity period for an EAD for asylum seekers is two years (not one year, as asserted by the commenter) which should be sufficient time for asylum seekers to factor the required renewal EAD fee into their budget. Therefore, for the reasons above, DHS declines to make changes in this final rule in response to these comments.

Comment: A few commenters opposed the elimination of fee waivers, including for Form I–765, which would unfairly limit the access to immigration benefits for students who cannot afford their request for employment authorization.

Response: USCIS must incur the costs of adjudicating a Form I–765 submitted by a student, and DHS does not believe it should shift that cost to other fee payers. Moreover, certain nonimmigrant students are required to establish the financial means to support themselves for the duration of their stay. *See* 8 CFR 214.2(f)(1)(i)(B); *see also* 8 CFR 214.2(m)(1)(i)(B). That requirement also applies to students who are eligible to request employment authorization for pre- and post-completion training programs. Therefore, DHS believes that this final rule would not cause undue burdens to student visa holders. DHS declines to make changes in this final rule in response to these comments.

c. Form N–400 Fee Waivers

Comment: Numerous commenters said that USCIS should maintain existing fee waivers for naturalization applications, especially given the proposed increase of naturalization fees. Citing a 2017 Report to Congress, several commenters stated that naturalization is one of the most frequently requested application types for fee waivers and that over 500 of their clients a year would probably forgo the opportunity to become citizens of the United States if the proposed rule were adopted. Commenters wrote that removal of fee waivers will price many individuals out of naturalization and would discourage individuals from applying for fee waivers and citizenship. Citing various studies, a few commenters detailed how fee waivers increased naturalization rates. Citing to the USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress, USCIS (Sept. 17, 2017), a commenter stated because of the benefits of naturalization, the naturalization application is one of the form types most frequently associated with fee waiver requests. Several commenters emphasized the importance of fee waivers to naturalization, citing the number of applicants who qualify for fee waivers through City University of New York's CUNY Citizenship Now! program. One commenter stated that CUNY Citizenship Now!, which runs one of the most prominent citizenship and naturalization clinics in New York, reports that 54.8 percent of naturalization applicants they assist qualify for fee waivers, while the same is true for 75.6 percent of Form N–600

applicants and 65.8 percent for Form I–90 applicants.

An individual commented that the proposed naturalization fee increase would prevent residents from seeking citizenship, citing data on financial and administrative barriers as bars to naturalization. Commenters also cited a 2018 Stanford Immigration Policy Lab study from Hainmueller et al. in stating that the application fees discourage naturalization. Other commenters cited the same study and stated that offering ''fee vouchers'' increased naturalization application rates by about 41 percent or from 37 percent to 78 percent. Several commenters wrote that immigrants want to naturalize, citing the Migration Policy Institute figures on rising annual rates of naturalization. Commenters also cited a Yasenov et al. study demonstrating that the introduction of Form I–912 waivers had the greatest impact on naturalization applicants with low levels of income and education. A commenter cited a surge of naturalization applications before a fee increase in 2008 as evidence of the role of fees in naturalization decisions.

A few commenters stated that, since naturalization is one of the form types for which fee waivers are most frequently submitted, the change would have a profound negative impact on vulnerable immigrants, including asylum seekers, who must naturalize to obtain legal rights. A commenter stated that 2.1 million immigrants are eligible for naturalization in the State of California, of whom 1 million individuals would be severely impacted by a rise in the cost of an application fee and 768,024 live in Los Angeles County. Other commenters also provided figures on the numbers of immigrants eligible for naturalization in Minnesota, and Washington. Other commenters provided similar figures for programs in California, Michigan, Boston, Houston, and New York. A commenter cited a *Fortune* article stating that, in 2017, almost 40 percent of naturalization applications received a fee waiver.

Commenters wrote that 9 million permanent residents are eligible for citizenship across the United States, citing an Office of Immigration Statistics publication, a study by Warren and Kerwin, and a Pew Research paper. A few commenters wrote that, of these, 3 million are under 150 percent of the FPG, 1 million are between 150 and 200 percent of FPG, and 1.7 million are between 200 and 300 percent FPG. Another commenter cited a 2014 University of Southern California study in concluding that over half of naturalization applicants would lose access to waivers as a result of the proposed rule.

Some commenters wrote that without fee waivers, applicants for naturalization would take longer to apply or not apply and this would also hinder state and local governments' efforts to facilitate naturalization. Some commenters stated that fee waivers have been essential to increasing naturalization and that they pay for themselves many times over. A commenter requested that DHS more thoroughly analyze the costs of impeding access to naturalization, which include long-term reduced economic and social mobility for impacted populations.

Response: DHS agrees that the naturalization application is one of the forms affected by the limitation of the fee waivers. Fees for other applicants and petitioners must increase to recover the cost of adjudicating fee-waived applications and petitions. In this final rule, DHS limits the availability of fee waivers for Form N–400 to mitigate the additional cost burden that other fee-paying applicants must bear. This is consistent with the beneficiary-pays principle emphasized throughout the NPRM and this final rule. If USCIS continued to accept fee waiver requests for Form N–400 under the previous eligibility criteria, the fee would be higher than established in this final rule. The reduction in the availability of fee waivers for Form N–400 is not intended to discourage, deter, or otherwise limit access to naturalization for any group, category, or class of individual. In response to public comments received on the NPRM, DHS is expanding the immigration benefit requests for which it will accept fee waiver requests from statutorily protected populations to include Forms N–400, N–600, and N–600K, and to certain SIJs and Afghan and Iraqi interpreters as described elsewhere in this final rule. DHS believes that expanding fee waiver eligibility mitigates concerns that the fee increase for Form N–400 unduly burdens or otherwise prevents naturalization for these populations.

DHS acknowledges that the fee for Form N–400 increases in this final rule by more than most other forms. The large fee increase for Form N–400 is because DHS previously held the fee for Form N–400 below the full estimated cost of adjudication. In this final rule, DHS emphasizes the beneficiary-pays principle and declines to hold the fee for Form N–400 artificially low. DHS believes that increasing the Form N–400 fee to the estimated full cost of its adjudication will alleviate the increased burden of higher fees placed upon other immigration benefits.

Comment: Some commenters stated that eliminating fee waivers for naturalization and other form types most frequently associated with fee waiver requests undermines Congressional intent. Commenters stated that Congress has called on USCIS to keep the pathway to citizenship affordable and accessible, and opposed the proposed elimination of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee.

Response: USCIS appreciates the concerns of this recommendation and fully considered it before publication. Nevertheless, DHS determined that the current trends and level of fee waivers are not sustainable. Work that USCIS provides for free or below cost affects other fee-paying applicants by making their fees higher, so DHS can recover USCIS' full cost. DHS is trying to make the USCIS fee schedule more consistent with the beneficiary-pays principle. As shown in the supporting documentation that accompanies this final rule, the number and dollar value of approved fee waiver requests has remained high during periods of economic improvement. That indicates that, as the economy declines the number of fee waiver requests could increase to a level that could threaten the ability of USCIS to deliver programs without disruption. DHS declines to make changes in this final rule in response to these comments.

Comment: A few commenters stated that the NPRM violates Congressional intent since USCIS has not supplied any data, research, or other actual factual evidence to show whether the current naturalization fees would be ''a barrier to naturalization for those earning between 150 percent and 200 percent FPG,'' let alone the effect of the proposal to significantly increase the naturalization fees and eliminate fee waivers.

Response: DHS is unaware of any statute that requires DHS to document that the fees it establishes to recover USCIS' costs will not be a barrier to naturalization. DHS has complied with the economic analysis requirements of Executive Orders. There is no legal requirement to comply with language in a Congressional briefing that does not become law, aside from cooperation with the Congressional oversight function. DHS has carefully considered Congress' view of these issues, as well as the statutory and fiscal limitations under which USCIS operates and declines to make changes in this final rule in response to these comments.

Comment: Several commenters noted that without fee waivers many naturalized citizens who required waivers to become citizens would not have been able to afford to apply for naturalization and that a high percentage of applicants currently use or apply for waivers.

Response: DHS recognizes the commenters' concerns. However, as stated elsewhere throughout this final rule, USCIS must recover its costs through user fees. DHS does not believe that current high levels of fee waiver usage are sustainable. Further, DHS believes that it would be equitable for fee-paying applicants to continue to bear the high costs of fee waiver usage through the fees that they pay. DHS declines to make changes in this final rule in response to these comments.

2. Fee Waiver Income Requirements

Comment: Many commenters opposed restricting the income requirements from 150 percent of FPG to 125 percent because such a restriction would be unjustified, especially since no estimates were provided as to how many people it would impact. Many commenters stated that lowering the standard to 125 percent will negatively affect many in cities and states across the country who are unable to pay fees and still have a very low income. Household income does not take into account the dramatically different costs of living throughout the country, complex living arrangements (such as mixed-status households or households supporting family members in another country), or the variety of circumstances that may render individuals unable to pay fees. One commenter stated that the income requirement would negatively impact many individuals because even those above the 125 percent FPG are unable to provide for their daily essentials due to the high cost of living in Los Angeles County. A commenter went on to state that the income standard should be tied to an inability to pay particular fees at the time of application since fee waiver consideration is focused on an individual's financial circumstances at that particular point.

Response: As provided in the NPRM, because of the costs of fee waivers, and because the current fee waiver regulations are inconsistent with the beneficiary-pays principle, DHS proposed to limit fee waivers to immigration benefit requests for which USCIS is required by law to consider a fee waiver or where the USCIS Director decides a fee waiver should be available. *See* 8 CFR 106.3.

As the commenters point out, and as explained in the NPRM, USCIS issued policy guidance in 2011 to streamline fee waiver adjudications and make them more consistent across offices and form types nationwide. *See* Policy Memorandum, PM–602–0011.1, *Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule;* Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11–26 (Mar. 13, 2011) (''2011 Fee Waiver Policy''). The 2011 Fee Waiver Policy provided that USCIS would generally waive fees for applicants who are receiving a means-tested benefit, have a household income at or below 150 percent of the FPG, or were experiencing financial hardship. The 2011 Fee Waiver Policy interpreted 8 CFR 103.7(c) regarding what would be considered inability to pay and the evidence required. The 2011 Fee Waiver Policy established the 150 percent of the FPG income level that the commenters recommended retaining, but that policy was not binding on USCIS officers and the three criteria were not codified as a regulation. DHS proposed in the NPRM to codify an income level based on the FPG that would be a binding requirement for future fee waivers.

DHS recognizes that the FPG are not responsive to differences in the cost of living around the nation. However, DHS establishes the fee waiver eligibility criterion of household income of less than 125 percent of FPG in this final rule because it is consistent with the income necessary to provide an affidavit of support necessary to sponsor an immigrant. *See* 8 CFR 106.3(c). Furthermore, DHS does not generally provide special consideration for residents of a particular geographic area.

DHS believes that these changes will make the fee increase more equitable for all immigration benefit requests by requiring fees for services to be paid by those who benefit. In addition, DHS believes that making these changes to the fee waiver policy will ensure that fee-paying applicants do not bear the increasing costs of application fees being waived. In response to public comments received on the NPRM, DHS is expanding the immigration benefit requests for which it will accept fee waiver requests from statutorily protected populations to include Forms N–400, N–600, and N–600K. Although DHS acknowledges that the rule reduces the number of applicants eligible for fee waivers, DHS does not agree that aliens will be prevented from filing application or receiving immigrant benefits.

Comment: A few commenters wrote that ''equity is not a federal policy goal'' and USCIS fails to recognize that encouraging exemptions and waivers for individuals in vulnerable circumstances or who are unable to pay fees would actually advance equity. The commenter stated that 125 percent of the FPG is not an appropriate marker to whether an individual can afford to pay a large fee on top of normal living expenses and so the fee waiver qualification threshold should remain at 150 percent of poverty level, ''to serve as an apt indicator of whether a potential applicant for naturalization or other benefits can afford to support him- or herself and, in addition, to pay significant application fees of hundreds or thousands of dollars.'' Another commenter stated that DHS rationalized that 125 percent is an appropriate marker for FPG because it is the minimum required to qualify as a sponsor for an intending immigrant. The commenter stated that these situations are not comparable because sponsoring an immigrant may not cost very much, and sponsored immigrants are generally authorized to work and do not actually rely upon sponsors for subsistence. The commenter stated that in contrast, when determining eligibility for a fee waiver, USCIS must consider whether an individual can afford to pay a large fee on top of their normal living expenses, and it is therefore appropriate that FPG remain at 150 percent.

Several commenters provided figures of the numbers of clients they serve who are below the 150 percent FPG line and qualify for waivers. A commenter specifically calculated the costs that a family at the 150 percent FPG limit would face living in Boston, writing that fee waivers are vital to such families maintaining their immigration status or naturalizing.

One commenter cited a study of 21 cities which showed that 33 percent of those eligible to naturalize had incomes up to 150 percent of FPG. The study also found that 16 percent of LPRs eligible to naturalize of Mexican origin have incomes between 150 and 200 percent FPG, compared to 8 percent of European-origin immigrants eligible to naturalize. The commenter used this data to support their comment that the income requirements would reduce or eliminate access to citizenship for all but the wealthy and privileged.

Response: The 150 percent of the FPG threshold currently used for fee waiver eligibility is higher than the threshold used in the public charge inadmissibility and affidavit of support contexts. DHS has decided that limiting fee waivers to households with incomes at or below 125 percent of the FPG is appropriate because it would be consistent with other determinants of

low income or financial wherewithal used in USCIS adjudications, such as the affidavit of support requirements under INA sections 212(a)(4) and 213A, 8 U.S.C. 1182(a)(4) and 1183a. *See* 8 CFR 106.3(c). DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter stated that USCIS should respect the rights of veterans to petition for a fee waiver for spouses and children regardless of income.

Response: DHS appreciates the sacrifices of members of the Armed Forces and veterans. USCIS charges no Form N–400 fee to an applicant who meets the requirements of INA sections 328 or 329 with respect to military service as provided by the law. *See* 8 CFR 106.2(b)(3(c). In addition, there is no Form N–600 fee for any application filed by a member or veteran of any branch of the U.S. Armed Forces. *See* 8 CFR 106.2(b)(63(c). DHS proposed adjustments to USCIS' fee schedule to ensure full cost recovery. DHS did not target any particular group, or class of individuals or propose changes with the intent to deter requests from any immigrants based on their financial or family situation or to block individuals from access immigrant benefits. With limited exceptions as noted in the NPRM and this final rule, DHS establishes its fees at the level estimated to represent the full cost of providing adjudication and naturalization services, including the cost of relevant overhead and similar services provided at no or reduced charge to asylum applicants or other immigrants. This rule is consistent with DHS's legal authorities. See INA section 286(m), 8 U.S.C. 1356(m). DHS proposed changes in fee waiver policies to ensure that those who benefit from immigration benefits pay their fair share of costs, consistent with the beneficiary-pays principle as described in the Government Accountability Office report number GAO–08–386SP. In addition, there is no law that requires a fee waiver or exemption for spouses or children of members of the Armed Forces or veterans. DHS declines to make changes in this final rule in response to these comments.

3. Means-Tested Benefits

Comment: A commenter recommended that USCIS use proof of receipt of a means-tested public benefit as evidence to demonstrate inability to pay the prescribed fee under the new rule.

Response: The commenter is requesting that USCIS continue to follow guidance that USCIS issued under its previous fee waiver regulations. Before 2010, USCIS allowed fee waiver applicants to submit requests in a variety of ways and undertook a holistic analysis of the applicant's finances to determine inability to pay. 75 FR 58974. In 2010, DHS decided that the USCIS fee waiver process would benefit from standardization. *Id.* By the 2010 rule DHS amended 8 CFR 103.7(c) to provide, on a discretionary basis, fee waivers for certain services, subject to two conditions: (1) The applicant is ''unable to pay'' the fee; and (2) a ''waiver based on inability to pay is consistent with the status or benefit . . . .'' 8 CFR 103.7(c)(1). DHS also required that waiver requests be in writing and state the reasons for and provide evidence in support of the claim of inability to pay. *Id.* at 103.7(c)(2). After the 2010 rule, DHS developed a new form to facilitate the fee waiver process: Request for Fee Waiver, Form I–912.[49] *See* Agency Information Collection Activities: Form I–912; New Information Collection; Comment Request, 75 FR 40846 (July 14, 2010). USCIS also published the 2011 Fee Waiver Policy providing further guidance as to adjudication of fee waiver requests. The 2011 guidance provided that as proof of inability to pay under 8 CFR 103.7(c), USCIS would accept: (1) Evidence of receipt of a means-tested benefit; (2) evidence of household income at or below 150 percent of the FPG; or (3) evidence of financial hardship.

In the NPRM, DHS proposed multiple changes to the then-existing fee waiver regulations, explained our need to and reasoning for doing so, and in accordance with the Paperwork Reduction Act, posted the proposed revised Form I–912, Request for Fee Waiver, and its instructions in this final rule's docket for the public to review and comment on its information collection requirements. *See* 84 FR 62296–62301, and 62356. The proposed regulations for fee waivers provided that DHS would provide, on a discretionary basis, fee waivers for certain services, subject to the following conditions: (1) A waiver of fees would be limited to aliens with annual household incomes at or below 125 percent of the FPG; (2) a waiver of fees would not be provided to a requestor who is seeking an immigration benefit for which he or she: Is subject to the affidavit of support requirements under INA section 213A, 8 U.S.C. 1183a, and is already a sponsored immigrant as defined in 8 CFR 213a.1, or is subject to the public charge inadmissibility ground under INA section 212(a)(4), 8 U.S.C. 1182(a)(4); and (3) a request for a fee waiver must be submitted on the form prescribed by USCIS in accordance with the form instructions. Proposed 8 CFR 106.3(d); 84 FR 62363.

DHS is adopting the general fee waiver eligibility guidelines as proposed with a clarification. New 8 CFR 106.3. Proposed 8 CFR 106.3(d)(1) and (d)(2) (not permitting a fee waiver for a requestor who is subject to the affidavit of support, already a sponsored immigrant, or subject to the public charge inadmissibility ground) are not applicable to applicants who are statutorily eligible for fee waivers or those additional immigration benefit requests (SIV and certain SIJ applicants) that we are making eligible for a fee waiver in this final rule. Therefore, DHS removed those limitations from the general fee waiver provision and included it in 8 CFR 106.3(b) governing waivers provided by the USCIS Director. New 8 CFR 106.3.

By removing the more ambiguous term ''inability to pay'' in favor of more clearly defined, straightforward requirements, DHS is imposing on the fee waiver request process greater consistency and equity. Receipt of any means-tested benefit would no longer automatically satisfy the new regulation's requirements for demonstrating inability to pay. USCIS has also considered if means-tested benefits that are awarded using 125 percent of the FPG would be acceptable evidence of the 125 percent of the FPG household income requirement in addition to the other criteria in new 8 CFR 106.3(d). However, implementing that criterion would require USCIS to determine the income requirements that all jurisdictions across the United States use to determine eligibility for each means-tested benefit. In addition, USCIS would be required to continually monitor those requirements for any changes by individual jurisdictions and programs. Therefore, DHS has determined that such a policy would be unnecessarily burdensome for USCIS to administer and decided not to revise the Form I–912 instructions to permit any usage of a means-tested benefit as evidence for a fee waiver.

Comment: One commenter noted that using the Paperwork Reduction Act to introduce a revised fee waiver form, with new requirements, in October 2019 in lieu of using a NPRM and then eliminating fee waivers in this rule, was a waste of the public's time to review both documents. A few commenters stated that eligibility based on receipt of a means-tested benefit was due to be

[49] The form is now called Form I–912, Request for Fee Waiver.

eliminated by the revised fee waiver form challenged in *City of Seattle* v. *DHS,* 3:19–cv–7151–MMC (N.D. Cal., filed Oct. 31, 2019) but the court in that case preliminarily enjoined the revised fee waiver form on a nationwide basis, thereby affecting USCIS' plans to constrict eligibility standards for fee waivers. Other commenters stated that USCIS has already eliminated the means-tested benefit criterion for fee waivers, which drastically limited access to immigration benefits, and that the proposed rule narrows the criteria for fee waivers even further and eliminates the financial hardship criterion entirely which means 400,666 individuals annually would be detrimentally affected. Another commenter stated that changes in Form I–912 and fee waiver requirements in the NPRM are an attempt to get around the injunction of the 2019 fee waiver rules because it eliminates fee waivers for most applicants. The commenter stated that the proposal seeks to restrict legal immigration and naturalization for poor and non-white people. Another commenter recommended that while the Form I–912 revision is enjoined by the U.S. District Court for the Northern District of California, USCIS should request public comment on a new proposed Form I–912 that maintains options to demonstrate qualification through receipt of means-tested benefits, financial hardship, or income of up to 150 percent of the FPG. The commenter wrote that USCIS is required by the injunction to restart the information collection request clearance process anew for a revised Form I–912 that conforms to the Court's decision. The commenter wrote that the Form I–912 proposed with the USCIS's November 14, 2019 NPRM does not meet the Court's specifications, and USCIS may not move forward with implementation of this revised Form I–912 based on the present notice-and-comment process.''

Response: These comments refer to the effort by USCIS to revise the USCIS policy guidance on fee waivers. On September 28, 2018, USCIS published a 60-day notice in the **Federal Register** requesting comments on the then-proposed revised Form I–912 and instructions and posted the documents for review in docket USCIS–2010–0008 at *www.regulations.gov. See* 83 FR 49120 (Sept. 28, 2018). The revisions to Form I–912, Request for Fee Waiver, revised the evidence USCIS would consider in evaluating inability to pay, required federal income tax transcripts to demonstrate income, and required use of the Form I–912 for fee waiver requests. USCIS complied with the Paperwork Reduction Act and the Office of Information and Regulatory Affairs, OMB (OIRA) approved the form changes on October 24, 2019.[50] On October 25, 2019, USCIS published the revised Form I–912 and instructions, along with corresponding revisions to the USCIS Policy Manual and a Policy Alert. The revised Form and Manual took effect on December 2, 2019.

DHS did not consider this rulemaking's impact when undertaking the Form I–912 revisions that took effect on December 2, 2019, because DHS was proposing comprehensive reforms to fee waivers which were not certain to occur and the rulemaking was separate and independent of the form and policy change that took effect on December 2, 2019. USCIS was forgoing hundreds of millions of dollars each year to fee waivers, and it decided not to wait for the comprehensive DHS fee rulemaking while it continued to forgo increasing amounts of revenue as more fees were waived. 84 FR 26138 (June 5, 2019). Nonetheless, on December 11, 2019, the U.S. District Court for the Northern District of California held that the Form I–912 revisions that took effect on December 2, 2019 required notice and comment rulemaking to effectuate, and the revised Form I–912, the Policy Manual revisions, and an October 25, 2019 Policy Alert announcing the revisions were preliminarily enjoined nationwide. *See* Order Granting Pls.' Mot. for Nationwide Prelim. Inj., *City of Seattle* v. *DHS,* 3:19–cv–7151–MMC (N.D. Cal., Dec. 11, 2019). By stipulation of the parties and as agreed to by the court, that injunction will remain in place pending publication of this final rule. The injunction in *City of Seattle* does not impose any requirements on subsequent revisions of the Form I–912 nor otherwise affect USCIS's ability to move forward with implementation of the Form I–912 revised in accordance with the notice-and-comment process completed by this rulemaking. In fact, the injunction in *City of Seattle* contemplates that the 2019 fee waiver policy changes were lawful but for compliance with the procedures required by the Administrative Procedure Act that are met by publication of this final rule.

Comment: Commenters stated that proving household income through USCIS' process is needlessly burdensome, intended to discourage applications, and that the fee waiver application process and 125 percent FPG limit is duplicative with means-testing requirements for other government programs where individuals have already passed a thorough income eligibility screening by government agencies. Several commenters specifically requested maintaining the means-tested benefits criterion as it is the least burdensome and most accessible application criterion for vulnerable immigrant populations.

Response: DHS understands that removing the means-tested benefit criterion will require people to obtain different documentation than they previously would have to establish eligibility for a fee waiver. DHS agrees that the burden will increase but has determined that the documentation required to establish income is the best approach to establish eligibility. DHS does not believe that the burden that will be imposed by the new requirements is excessive for a requestor to receive the free adjudication of his or her immigration benefit request. USCIS is 96 percent funded by fees and must charge fees to cover its costs. Although the means-tested benefits criterion will no longer be an option under the revised fee waiver regulations, eligible applicants may request fee waivers under the criterion of having income at or below 125 percent of the FPG. Thus, staff and volunteers at nonprofit community organizations should already be familiar with the remaining criterion for fee waiver eligibility. DHS has considered the burden on applicants and those that provide them aid and determined that the benefits of the policy change exceed the potential additional burden. DHS disagrees that its fee waiver income requirements are duplicative with state means-tested benefit requirements because, as stated earlier, many public benefits have different income thresholds for eligibility in different states. Therefore, DHS has determined that relying on a consistent income threshold and not using a means-tested benefits for eligibility will best provide consistency in applying the requirements.

4. Public Charge Rule

Comment: Comments stated that DHS claims that USCIS uses 125 percent of the FPG as the standard for public charge and affidavit of support purposes and cites 8 CFR 212.22(b)(4)(i)(A), but DHS's proposed public charge rule is currently enjoined. The commenters state that because of court orders, USCIS has not been using 125 percent of the federal poverty guidelines as the standard for public charge purposes to date, and this rule is an improper attempt to codify the enjoined public charge rule.

[50] The approved package is available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201910-1615-006#* (last visited Feb. 17, 2020).

Response: On February 24, 2020, DHS implemented the Inadmissibility on Public Charge Grounds Final Rule nationwide after the Supreme Court of the United States stayed the last remaining injunction.[51] In addition, the 125 percent of the FPG threshold is not only used in public charge inadmissibility determinations, but also is the standard by which the sufficiency of an affidavit of support is based, as established by Congress under INA section 213A, 8 U.S.C. 1183a. As provided in the NPRM, USCIS generally uses 125 percent of the FPG as the minimum income threshold to be considered a positive factor in the totality of the circumstances in public charge inadmissibility determinations as the threshold. Congress also identified 125 percent of FPG as a threshold for establishing the sufficiency of the affidavit of support under INA section 213A, 8 U.S.C. 1183a. The threshold for fee waiver eligibility under previous regulations of 150 percent of the FPG was higher than the threshold used in the public charge inadmissibility and affidavit of support context. DHS believes limiting fee waivers to households with incomes at or below 125 percent of the FPG, as set forth in this final rule, and aligning the fee waiver rule with the public charge inadmissibility rule and the affidavit of support requirements set forth in INA sections 212(a)(4) and 213A, 8 U.S.C. 1182(a)(4) and 1183a, will best provide consistency in applying the income requirements in immigration benefit administration.

5. Financial Hardship

Comment: One commenter wrote that the proposed elimination of fee waiver eligibility based on extraordinary hardship (sic financial hardship) was not explained and is alarming and unjustified. USCIS does not acknowledge or explain its apparent decision to cease accepting evidence or granting fee waivers related to temporary illness and injury, recessions, bankruptcy, or any other of the myriad situations that may render qualified people unable to pay fees but that cannot be characterized as natural disasters. The commenter wrote that this change would prevent deserving individuals from accessing immigration and naturalization benefits and violate the principles of due process that govern rulemaking and other federal administrative action.

Response: DHS believes that a provision for financial hardship is unnecessary as past fee waivers requested using the financial hardship criterion were minimal, accounting for only 1.2 percent of all requests. A detailed distribution of the approved Fee Waiver Requests can be found in the RIA. *See* Section D, Tables 5–8. While DHS acknowledges that the fee adjustments established in this final rule are not insubstantial to an applicant of limited means, DHS does not believe that they make immigration benefits inaccessible to low income applicants who have financial hardships. DHS is therefore not making changes based on this comment.

6. Public Charge Ground of Inadmissibility and Affidavit of Support Requirements

Comment: Several commenters disagreed with USCIS' claim that it would be appropriate to restrict household income criteria to 125 percent FPG to be consistent with the public charge inadmissibility final rule and the statutory and regulatory requirement applicable to affidavit of support, writing that they are separate and unrelated legal concepts. Multiple commenters opposed the proposal to make fee waivers unavailable to applicants who are subject to the public charge ground of inadmissibility, those who are subject to the affidavit of support requirement under INA section 213A, 8 U.S.C. 1183a, and those who are already sponsored immigrants. The commenters stated that the proposal would disproportionately harm low- and moderate-income families, including many immigrant survivors and their children. Many commenters stated that most family-sponsored immigrants must supply an affidavit of support regardless of income. They stated that, because the affidavit of support contract terminates only after specific criteria are met (*e.g.,* sponsored immigrant becomes a U.S. citizen, dies, or departs the United States), barring these immigrants from receiving fee waivers would result in an additional barrier for low-income immigrants regardless of their actual need and would have a disproportionate effect on low-income Asian immigrants and U.S. citizens of Asian descent, especially as most Asian immigrants become permanent residents through family sponsorship and require affidavits of support. A commenter wrote that the proposal will further punish people who have the misfortune of poor health, are struggling to survive, and have chronic, severe pain. The commenter wrote that such individuals are too sick to work full-time and require an affidavit of support from family members or friends. A few commenters expressed worry that barring fee waivers for individuals subject to the public charge ground of inadmissibility would add more strain on an already overburdened legal service providers to low-income immigrants, resulting in a general decrease in capacity of pro bono services. A few commenters stated that there is no burden on USCIS to continue processing fee waiver applications for immigrants subject to affidavit of support nor any basis to disqualify those subject to affidavits of support from receiving fee waivers.

Response: DHS agrees that, in general, family sponsored immigrants are subject to the public charge ground of inadmissibility and are required to submit a sufficient affidavit of support under INA section 213A, 8 U.S.C. 1883a, and therefore may not be eligible to request a fee waiver under this final rule. The NPRM generally limited fee waiver eligibility to those statutorily eligible for fee waivers, which are limited to VAWA, T, U and TPS applicants. Family and employment related benefit requests were not generally included as being eligible for fee waivers in the NPRM. As discussed in the NPRM, under IIRIRA, certain immigrant categories are required to submit an enforceable affidavit of support executed by a sponsor.[52] Although sponsors are not required to assist an alien with fees associated with immigration benefits, sponsors generally must demonstrate that they are able to maintain the sponsored alien at an annual income of not less than 125 percent of the FPG.[53] INA section 213A, 8 U.S.C. 1183a, formalized requirements of a legally enforceable affidavit of support, specified who is eligible to be a sponsor, which aliens require an Affidavit of Support Under Section 213A of the INA, the scope of a sponsor's obligations, and how the affidavit may be enforced.[54] These provisions were intended to ''encourage immigrants to be self-reliant in accordance with national immigration policy.'' [55] DHS believes it is inconsistent with the affidavit of

[51] *See Wolf* v. *Cook County,* 140 S.Ct. 681 (2020).

[52] *See* INA sections 212(a)(4) and INA 213A, 8 U.S.C. 1182(a)(4), and 1183a. See also Div. C, Title V of Public Law 104–208, 110 Stat. 3009, 3009–670 (September 30, 1996).

[53] *See* INA section 213A. A sponsor who is on active duty (other than active duty for training) in the U.S. armed forces and who is petitioning for a spouse or child only has to demonstrate the means to maintain an annual income equal to at least 100 percent of the FPG.

[54] See INA section 213A, 8 U.S.C. 1183a. See Section 551 of the IIRIRA, Public Law 104–208, 110 Stat. 3009 (1996).

[55] See H.R. Rep. 104–828, at 241 (Sept. 24, 1996) (Conf. Rep.).

support requirements to allow this population to request fee waivers.[56]

Further, the current fee waiver regulation allows people who are applying for immigration benefits for which a public charge inadmissibility determination is not made—advance permission to enter as a nonimmigrant, a waiver for passport and/or visa, adjustment of status, or a waiver of the grounds of inadmissibility—to file a fee waiver request. *See* 8 CFR 103.7(c)(4) (stating that certain fees may be waived ''only for an alien for which a determination of their likelihood of becoming a public charge under section 212(a)(4) of the Act is not required at the time of an application for admission or adjustment of status'').

The rule provides that an alien who is subject to the affidavit of support requirements under INA section 213A, 8 U.S.C. 1183a, or is already a sponsored immigrant as defined in 8 CFR 213a.1 unless the applicant is seeking a waiver of the joint filing requirement to remove conditions on his or her residence based on abuse; or subject to the public charge inadmissibility ground under INA section 212(a)(4), 8 U.S.C. 1182(a)(4) is not eligible for a fee waiver. See New 8 CFR 106.3(b). DHS declines to make any changes in this final rule in response to these comments.

Comment: One commenter stated that the proposal would place an unnecessarily cumbersome requirement on those who are already receiving some form of assistance and require additional assistance in order to improve their immigration status. Another commenter stated that many survivors of crime and domestic violence would be negatively impacted because many survivors receive CalWORKS, a California public benefits program.

A commenter stated that the proposal is unfair and discriminatory because it could severely affect the naturalization process based on receiving public benefits, even if this occurred years before an application for citizenship. The commenter also stated that temporary assistance in a time of hardship should not be an opportunity for any country to deny its people the path to citizenship.

Response: This final rule does not prevent individuals from requesting or receiving any public benefits, as defined in, PRWORA, 8 CFR 212.21(b), or other provision, for which they are eligible. Further, this final rule does not consider the receipt of public benefits as part of the eligibility requirements. Instead, DHS would look to the immigrant or nonimmigrant category the alien holds or is seeking and their income in order to determine whether he or she qualifies to submit a fee waiver request.

DHS notes that VAWA self-petitioners as defined under INA section 101(a)(51) and anyone otherwise self-petitioning due to battery or extreme cruelty pursuant to the procedures in section 204(a), 8 U.S.C. 1101(a)(51) and 1154(a), T nonimmigrants, U nonimmigrants, battered spouses of A, G, E–3, or H nonimmigrants, battered spouses or children of a lawful permanent resident or U.S. citizen as provided under INA section 240A(b)(2), and TPS applicants are generally not subject to the public charge inadmissibility provision or the affidavit of support requirements. Therefore, under this final rule, these applicants are not precluded from requesting a fee waiver. *See* 8 CFR 106.3. Furthermore, certain Special Immigrant Juveniles and Afghan and Iraqi translators are also not precluded from requesting a fee waiver under this final rule, as they are not subject to the public charge inadmissibility determination or the affidavit of support requirement.[57] *Id.* DHS has updated the provision to clarify these aliens are not subject to these eligibility requirements. See new 8 CFR 106.3(c).

Comment: Multiple commenters said that, because abusive spouses may be the sponsor holding the affidavits of support, it was critical to keep fee waivers available to those subject to the affidavit of support under INA section 213A, 8 U.S.C. 1183a. The commenter wrote that doing so would help ensure that immigrant survivors are not compelled to return to their abusers to seek immigration benefits.

Response: An applicant under the VAWA provisions is generally not subject to the affidavit of support requirements.[58] In addition, fee waiver requests do not require information regarding the income of an abusive spouse. DHS believes that its continued provision of fee waivers for VAWA, T, and U categories mitigates any concerns that changes to fee waiver eligibility will unduly burden or otherwise harm the victims of abusive spouses. *See* Table 3: Categories and Forms Without Fees or Eligible for Fee Waivers. DHS declines to make changes in this final rule in response to these comments.

7. Discretionary Fee Waivers

Comment: Several commenters opposed narrowing discretionary authority that would prevent many family-based immigrants from receiving fee waivers and would disadvantage recipients of certain humanitarian benefits, such as Special Immigrant Juveniles (SIJs) and Cuban Adjustment Act applicants.

Some commenters said the proposed limitations on the Director's discretion to grant fee waivers are arbitrary and unsupported by any evidence. The commenters stated that no explanation, data, or examples were provided indicating why the concern over the Director having too much discretion requires changing well-established precedent. Another commenter stated that the rule does not provide a basis for the guidelines of how the Attorney General shall determine which designated group of victims of calamities will be granted access to fee waivers.

Response: In this final rule, DHS retains the authority in the regulations for the Director of USCIS to waive any fee if the Director determines that such action is an emergent circumstance, or if a major natural disaster has been declared in accordance with 44 CFR part 206, subpart B. DHS notes that the Director's discretionary provision has never been and is not intended for whole categories of aliens to request fee waivers directly to the Director. *See* 75 FR 58974 (encouraging those who believe that they have a sufficiently sympathetic case or group of cases in any type of benefit request to submit a request to their USCIS local office for a waiver under 8 CFR 103.7(d)). The discretionary provision is meant to provide for discrete and limited fee waivers when there are emergent circumstances. *See* 75 FR 33464. DHS has further consolidated the Director's discretionary provisions as it is not limited by category but is also not intended to allow for individual applications from broad categories of individuals. In addition the provisions regarding eligibility were consolidated to clarified who may not qualify based on the alien being subject to the affidavit of support requirements under section 213A of the Act or already a sponsored immigrant as defined in 8 CFR 213a.1 (unless the applicant is seeking a waiver of the joint filing requirement to remove conditions on his or her residence based on abuse), or being subject to the public charge inadmissibility ground under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4).

[56] See Div. C, Title V of Public Law 104–208, 110 Stat. 3009, 3009–670 (September 30, 1996).

[57] *See* INA sections 212(a)(4) and 213A,8 U.S.C. 1182(a)(4) and 1183a. *See also* 8 CFR 212.23(a)(4) and (10).

[58] *See* INA section 212(a)(4)(E)(i), 8 U.S.C. 1182(a)(4)(E)(i). *See also* 8 CFR 212.23(a)(20).

Further, DHS does not believe that the rule disadvantages recipients of humanitarian benefits. For example, DHS believes that the imposition of a fee or a lack of a fee waiver does not infringe upon the ongoing protections offered by the Cuban Adjustment Act of 1966 (CAA). The CAA allows Cuban natives or citizens living in the United States who meet certain eligibility requirements to apply to become lawful permanent residents.[59] Applicants under the CAA have previously paid fees. Under the CAA, a native or citizen of Cuba who has been inspected and admitted or paroled into the United States and who has been physically present in the United States for at least one year may apply for permanent residency in the United States. An alien under the CAA submits Form I–485, Application to Register Permanent Residence or Adjust Status, and does not need to file a visa petition or have an immigrant visa immediately available to him or her.[60] Generally, when an alien has a pending Form I–485, he or she may apply for employment authorization by filing a Form I–765, Application for Employment Authorization.[61] For this reason, DHS believes that aliens who benefit from the CAA have unique advantages compared to other humanitarian populations, such as asylum seekers, who may have to wait months or years before being eligible to apply to become a lawful permanent resident. The CAA does not prohibit the charging of fees for applicants, and DHS believes that the imposition of a fee or a lack of a fee waiver does not infringe upon the ongoing protections that the CAA affords to qualified individuals.

As provided in the NPRM, USCIS will continue to notify the general public of eligibility for fee waivers for specific forms under 8 CFR 106.3 through policy or website updates. Individuals who may qualify for such a fee waiver will still need to meet the requirements to request a fee waiver as provided in 8 CFR 106.3(b) and (d).

As discussed above, in response to commenters' concerns, DHS will allow petitioners for and recipients of SIJ classification who, at the time of filing, have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency, to submit requests for fee waivers for Form I–485 and associated forms, as well as Forms N–400, N–600, and N–600K. *See* Table 3: Categories and Forms Without Fees or Eligible for Fee Waivers.

Comment: A few commenters wrote that, at a minimum, USCIS should allow a proactive application process for discretionary fee waivers. These would allow individuals to alert USCIS to their need for a waiver of an application fee rather than having to wait to receive an invitation from USCIS first.

Response: DHS has clarified the USCIS Director's fee waiver provision at 8 CFR 106.3(b) and 106.3(c) in this final rule because it was not necessary to have a separate section authorizing the Director to waive fees for groups or individuals. See new 8 CFR 106.3(b). Proposed 8 CFR 106.3(c) could be used to grant group or individual fee waivers, thus proposed 8 CFR 106.3(b) was redundant. As provided in new 8 CFR 106.3(b), the Director of USCIS may authorize the waiver, in whole or in part, of a form fee required by 8 CFR 106.2 that is not otherwise waivable under this section, if the Director determines that such action is an emergent circumstance, or if a major natural disaster has been declared in accordance with 44 CFR part 206, subpart B. New 8 CFR 106.3(b) authorizes the Director to designate a group eligible for fee waivers as appropriate. As previously indicated, DHS notes that the Director's discretionary provision has never been and is not intended for whole categories of aliens to request fee waivers directly to the Director. *See* 75 FR 58974. Although many applicants may believe they personally need a waiver of an application fee, the discretionary provision is meant to provide for discrete and limited fee waivers when there are emergent circumstances and the other eligibility requirements are met. Therefore, DHS is maintaining the provision that individuals may not directly submit requests for fee waivers to the USCIS Director.

Comment: The commenter stated that the proposal to make Form I–765 fee waivers discretionary for affirmative asylum seekers may cause additional burdens for low-income households.

Response: DHS acknowledges the commenter's concern; however, as stated in the NPRM and in this final rule, fee waivers for the Form I–765 will not be available to asylum seekers. *See* 84 FR 62296–62301. USCIS is continuing to provide a fee exemption for the initial Form I–765 filing for individuals who were granted asylum (asylees) or who were admitted as refugees. Therefore, there is no fee waiver request necessary for asylees filing an initial Form I–765. Asylees and refugees will generally continue to be required to pay the relevant fee for renewal EADs. As indicated previously, DHS has clarified the provisions regarding the USCIS Director's discretion as it relates to fee waivers in 8 CFR 106.3(b), as the individual provision in the proposed 8 CFR 106.3(b) was redundant.

8. Fee Waiver Documentation

Comment: A commenter recommended that USCIS expand the types of documentary evidence accepted in support of fee waiver applications. Several commenters stated that applicants should not be required to procure additional new documents, such as federal tax transcript, to demonstrate household income. The commenters stated that, obtaining a transcript would substantially complicate the process of applying for a fee waiver because individuals may not have access to a computer and several days to six weeks or more may be required to wait on delivery via the mail. Some commenters indicated that the proposal creates a burdensome new requirement that many applicants will be unable to meet, either because it's too difficult to obtain the documentation or because they were too poor to file taxes with a foreign government.

Response: USCIS currently requests copies of income tax returns from applicants requesting fee waivers. Tax transcripts are easily requested through the Internal Revenue Service (IRS) website or paper filing and are free to taxpayers. USCIS cannot accept incomplete copies of tax returns or copies that are not signed or submitted to the IRS to support fee waiver requests, because they may not validly reflect the applicant's household income. USCIS believes that the proposed change will reduce its administrative burden for fee waiver processing and reduce the number of fee waiver requests that are rejected because of improper documentation, inadequate information, and no signatures for household members. In terms of the non-filing letter from the IRS, USCIS is concerned about not receiving documentation of no-income. Therefore, obtaining information from the IRS in transcripts, a W–2, or proof of non-filing, if applicable, is sufficient documentation to establish the necessary income or no income. DHS believes that, while this might place a small additional burden on applicants, the change will ultimately benefit applicants by mitigating future rejections and ensuring that fees are waived for deserving applicants.

Comment: A commenter stated the proposed changes would increase the

[59] See *https://www.uscis.gov/greencard/caa* (last accessed 03/10/2020).

[60] See Public Law 89–732 (1966).

[61] See *https://www.uscis.gov/greencard/caa* (last accessed 03/10/2020).

inefficiencies in processing fee waiver requests, place an unnecessary burden on the Internal Revenue Service (IRS) for requests for documentation from immigrants, and add burden on USCIS increasing the complexity of adjudicating fee waiver requests. Plus, USCIS would need to continuously track the IRS transcript request processes.

Response: As part of its regular operations, the Internal Revenue Service (IRS) provides customer service including providing tax transcripts. Tax transcripts can be obtained by calling the IRS or submitting a request online, through the mail or by fax. As the IRS, and other federal, state, and local agencies regularly provide information and services to their customers as part of their daily operations, the proposed form changes should have a minimal impact on them. The Department of the Treasury was provided with the proposed and final rule to review, and they did not object to the requirement for the tax transcript.

Comment: A commenter stated that requiring separate fee waiver submissions for derivative family members was overly burdensome and provided USCIS data to demonstrate that survivors applying for humanitarian protections frequently included derivative family members in their applications. Many commenters stated that requiring each applicant to submit their own form when applying for fee waivers imposes a large, duplicative burden on applicants. Commenters recommended that family members should be allowed to continue submitting a single fee waiver application with all relevant information collected in one location. Another commenter said survivors applying for humanitarian protections frequently included derivative family members in their applications and provided USCIS data to demonstrate this fact.

Response: Over 90 percent of the fee waiver requests filed were for individual applicants [62] and many other forms are already required to be submitted individually. Therefore, DHS does not believe that requiring Form I–912 for each applicant or petitioner in a household will unduly burden applicants. The change will reduce the number of fee waiver requests that are rejected for failure to obtain all signatures of included family members. DHS has determined that the benefit of fewer rejections exceeds the small increase in burden that this change may add for a small percentage of fee waiver requests.

Comment: A commenter recommended that USCIS continue to allow use of applicant generated, non-form fee waiver requests and objected to option of a written statement being eliminated for Form I–918, Petition for U Nonimmigrant Status.

Response: Adjudicating ad hoc fee waiver requests has proven to be difficult for USCIS due to the varied quality and information provided in ad hoc letter requests. Form I–912 is easy to complete, and it provides standardization that will assist USCIS in our review of requests. In addition, there is no filing fee for Form I–918. Therefore, DHS declines to make changes in this final rule in response to this comment and will require submission of Form I–912 to request a fee waiver.

9. Cost of Fee Waivers

Comment: Many commenters stated that DHS' application of the beneficiary-pays principle is arbitrary, capricious, unsupported, and unjustified. Commenters indicated that restricting the income requirements from 150 percent of FPG to 125 percent is unjustified, especially because DHS did not estimate how many people the change would affect. Multiple commenters opposed the beneficiary-pay model as it would not be a fair or just system, writing that it ignores the inequities that exist across incomes and that the ability-to-pay model has been working for years. A commenter wrote that DHS' justification that the use of fee waivers haves increased in a good economy was faulty, writing that DHS cited statistics for USCIS fee waivers from FY 2008 to 2011—a period of economic recession. Another commenter said that DHS' argument that fee waivers have become too costly to sustain fails to account for recent fee increases or indicate whether fee waiver volume has changed. The commenter wrote that fee waivers between 2016 and 2017 did not increase and the NPRM does not acknowledge the recent decline in fee waivers in FY 2018.

Response: DHS explained in the NPRM that fee waivers had increased to unmanageable levels and that DHS had to do something to curtail the amount of free services being provided by USCIS. In prior years, USCIS' fees have given significant weight to the ability-to-pay principle and shifted the costs of certain benefit requests to other fee payers. In the FY 2016/2017 fee rule, DHS noted that the estimated annual forgone revenue from fee waivers and exemptions has increased markedly, from $191 million in the FY 2010/2011 fee review to $613 million in the FY 2016/2017 fee review.[63] *See* 81 FR 26922 and 73307. In the FY 2016/2017 NPRM, DHS estimated that the increase in fee waivers accounted for 9 percent of the 21 percent weighted average fee increase. *See* 81 FR 26910. In the same NPRM, DHS provided notice that in the future it may revisit the USCIS fee waiver guidance with respect to what constitutes inability to pay under 8 CFR 103.7(c). *See* 81 FR 26922.

In this final rule, DHS is aligning USCIS' fees more closely to the beneficiary-pays principle. Without the changes to fee waiver policy implemented in this final rule, fees would increase by a weighted average of 30 percent, which is 10 percent more than in the fee schedule implemented in this final rule. In an effort to mitigate the total weighted average fee increase and preserve equitable distribution of costs for adjudication and naturalization services, DHS declines to make changes in this final rule in response to the comment.

Comment: Some commenters stated that USCIS' justification to make the fee schedule more equitable with the beneficiary-pays approach fails to consider the effect on applicants or benefits resulting from fee waivers. A few commenters stated that setting fees at full cost recovery would be inadequate as it does not take into account the benefits side of the equation, such as the added earnings of citizenship relative to prior earnings as a legal immigrant. The commenters stated that including benefits would show that all costs are indeed paid and covered.

A few commenters wrote that USCIS has taken actions that increase operating costs (*e.g.,* extreme vetting, re-interviewing individuals, enhanced background checks, decrease in staffing) which the department now seeks to pass onto the public via the beneficiary-pays principle and by eliminating fee waivers.

Response: Consistent with historical practice, this final rule sets fees at a level to recover the estimated full operating costs of USCIS, the entity within DHS that provides almost all immigration adjudication and

[62] *See* Tables 10–11. Distribution of Total Approved Applicants per Fee Waiver Request (Form I–912) in the RIA.

[63] Since USCIS includes a projection for fee waivers/fee exemptions when setting its fees to recover full cost, it does not forgo revenue unless the total dollar amount of actual fee waivers/fee exemptions exceeds the projected amount that was included in the fee setting process. The dollar amount of actual fee waivers/fee exemptions in excess of the projected amount included in the fee setting process is considered foregone revenue.

naturalization services. *See* Homeland Security Act of 2002, Public Law 107–296, sec. 451, 116 Stat. 2142 (Nov. 26, 2002) (6 U.S.C. 271). The statute authorizes recovery of the full costs of providing immigration adjudication and naturalization services. As provided in the NPRM and RIA, the fees account for all anticipated operational costs and adjudicative actions based on the best information available at the time USCIS conducted the FY 2019/2020 fee review.

DHS considered the effects of the revised fee schedule on applicants and petitioners, as documented in the RIA, Final Regulatory Flexibility Analysis (FRFA), SEA and relevant sections of this final rule. As noted elsewhere in this preamble, DHS is not required to conduct a cost-benefit analysis of the impacts on all applicants of each change in a fee or change in USCIS fees or fee-related regulations. As stated elsewhere in this preamble,[64] DHS is required by OMB Circular A–4 to include all total projected costs, benefits, and transfers annualized and monetized over a specified implementation period, which for this final rule is 10 years. The final rule intends to merely recover the estimated full cost to USCIS of providing immigration adjudication and naturalization services, including services provided without charge to asylum applicants and other immigrants.

However, this rule sets fees to offset USCIS costs to provide immigration adjudication and naturalization services at an adequate level. DHS anticipates that applicants and petitioner will consider the potential benefits, including the potential for increased earnings as noted by the commenter, weigh those benefits against the cost of applying, including the fee, and decide if the benefits outweigh the costs. DHS believes that many LPRs will determine that the benefits of naturalization, including the prospect of additional earnings, exceed the cost of the fee for Form N–400.

Comment: Another commenter wrote that there are errors and a lack of supporting documentation in the NPRM. They stated that this lack of information made it impossible to verify or understand calculations that USCIS relies on to justify the proposed changes to the fee waivers. The commenter provided the following examples and criticisms:

- ''In the FY 2019/2020 fee review, USCIS determined that without changes to fee waiver policy, it would forgo revenue of approximately $1,494 million.''—supporting document states foregone revenue for 2017 was $367,243,540.
- ''The proposed fee schedule estimates $962 million forgone revenue from fee waivers and fee exemptions.''—no supporting documents.
- ''The difference in forgone revenue is $532 million.''—no supporting documents.
- ''Without changes to fee waiver policy, fees would increase by a weighted average of 31 percent, which is 10 percent more than in the proposed fee schedule.''—no supporting documents.
- ''As shown in the supporting documentation for this rule, the number and dollar volume of fee waiver requests and foregone revenue has trended upward during periods of economic improvement. That indicates that, should the economy worsen, the number of fee waiver requests will increase to a level that could threaten the ability of USCIS to deliver programs without disruption.''—While there is supporting documentation for this statement, its meaning is unclear as no analysis is given comparing the fee waiver usage to economic performance.
- ''In the FY 2016/2017 fee rule, DHS noted that the estimated annual forgone revenue from fee waivers and exemptions has increased markedly, from $191 million in the FY 2010/2011 fee review to $613 million in the FY 2016/2017 fee review.''
- USCIS miscalculated the surcharge needed to add onto other fees to make up for lost revenue.

Response: All examples cited by the commenter do not directly impact fee calculations. Rather, they are byproduct estimates of multiple operational data elements including fees, workload receipts, and fee-paying receipts. Additional information on the historical dollar value of approved fee waiver requests is located in the supporting documentation that accompanies this final rule. Additionally, DHS used the best available information at the time it conducted the FY 2019/2020 fee review to calculate fees and does not calculate a surcharge to add onto other fees. Instead, it estimates the total cost of performing USCIS' anticipated workload by form and divides those costs by the estimated fee-paying volume for each form.

Regarding the commenter's question about the volume of fee waiver requests increasing during periods of a good economy, as indicated in the NPRM, DHS determined that the current trends and level of fee waivers are not sustainable. As shown in the supporting documentation that accompanies this final rule, the number and dollar value of approved fee waiver requests has remained high during periods when the U.S. economy was improving. As the economy worsens, the number of fee waiver requests could increase to a level that could threaten the ability of USCIS to deliver programs without disruption. DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter wrote that USCIS data is incomplete as it only shows fee waiver trends through FY 2017 and requested the data on fee waiver approval rates for the past two fiscal years be released.

Response: The NPRM contained information USCIS had available at the time it conducted the FY 2019/2020 fee review. It provides more than adequate data upon which to base the fee waiver regulatory changes made in this final rule. However, in response to the commenter and to demonstrate that fee waiver levels remain high, DHS has included FY 2018 and FY 2019 fee waiver data in the supporting documentation that accompanies this final rule for informational purposes. DHS has also included the actual dollar value of approved fee waiver requests for FY 2013–FY 2019.

10. Changes to Form I–912, Request for Fee Waiver

Comment: One commenter recommended that USCIS revert to and retain the previous version of Form I–912 (03/13/2018 edition).

Response: DHS declines to revert to the previous version of the form as this final rule establishes revised criteria for eligibility. The Form I–912 version submitted with this final rule incorporates the relevant provisions.

Comment: One commenter recommended that USCIS restore helpful language in instructions and forms that clarifies that applicants need only meet one of multiple possible grounds of qualification for a fee waiver and clarify that applicants only need to provide documentation for one basis. A commenter also noted that the proposed Form I–912 contains provisions that are difficult to understand, citing the request for applicants to include ''a receipt number'' (Part 1, Question A) as an example. One commenter recommended that Part 1. Question 1.A's instruction should be changed to, ''[i]f available, provide the receipt number'' as the applicant may not yet have a receipt number.

[64] Section IV A, Statutory and Regulatory Requirements, Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs).

Response: DHS clarified the provision regarding the basis of eligibility for a fee waiver by indicating that the applicants should select the basis for qualification. DHS added a clarification to the form to indicate that the receipt number is only required if the applicant has already been provided with a receipt number.

Comment: One commenter stated that Part 1, ''Question 1.B's new guidelines allowing fee waivers for those impacted by a disaster are unclear. The form states in Part 1 that in order to be eligible, these applicants must have an annual household income at or below 125 percent of the FPG. They must then provide information about their income in Part 3, discussed in more detail below. However, in Part 3, number 11 they are asked to provide information about their expenses, debt, or losses incurred in the disaster. It is unclear why this additional information is needed, if the applicant has already been required to document their income at or below 125 percent of the FPG. This information request does not fit into the eligibility guidelines based on income and is not relevant to USCIS' adjudication. We recommend either deleting item 11 in Part 3, or expanding the eligibility guidelines to include financial hardship for those impacted by a disaster who are unable to document low income. The same commenter later noted that ''Question #11 is redundant, as stated above, and we recommend that it be deleted.''

Response: DHS agrees that an applicant or petitioner impacted by a disaster who is otherwise eligible for a fee waiver would only need to provide documentation of income at or below 125 percent of the FPG and would not need to provide evidence of expenses, debt, or losses incurred in the disaster. DHS has removed the additional question from the form.

Comment: One commenter stated that Part 3 asks for gross income, but neither the form nor the instructions define the term. 'Gross income' needs to be explained, especially for those who are not able to simply refer to the ''gross income'' line on their tax return. We recommend that USCIS define 'gross income' on the form just below the heading for Part 3 and in the corresponding instructions. The commenter also recommends that Part 3., Question 6 explicitly instruct applicants where to find their gross income.

Response: Gross income includes wages, dividends, capital gains, business income, retirement distributions as well as other income without any adjustments.[65] This clarification has been added to Form I–912 instructions.

Comment: One commenter recommended increasing the chart in Part 3., Question 4 from four (4) spaces total for listing household members to six (6) spaces, along with instructions above the chart for what to do if the applicant needs more spaces. Alternatively, they also recommend providing the chart again in Part 7. for those who need more space to list household members.

Response: Requestors should use the Additional Information section if more space is required. DHS is not modifying the form in response to this comment. Adding additional charts or rows will unnecessarily increase the form length.

Comment: Commenters recommended explicitly instructing applicants that they need to attach a copy of their federal income tax transcripts.

Response: DHS has added an additional form instruction to indicate that requestors should provide income tax return transcripts.

Comment: One commenter stated that Part 3., Question 10 ''is a catch-all for describing special circumstances. Applicants could easily miss it. We recommend adding a new item number after 10 for those who have no income or are homeless to describe their circumstances, *e.g.,* '[i]f you have no income and/or are homeless, you may use this space to provide additional information.' ''

Response: To limit the burden on applicants, DHS will not be adding a question. However, question 10 has been updated to clarify that the space may be used for additional information which may include a statement about lack of income. Although a homeless person without income would generally qualify for a fee waiver based on income at or below 125 percent of the FPG, being homeless does not make an applicant eligible for a fee waiver.

11. Suggestions

Comment: A few commenters suggested alternatives to narrowing the requirements for fee waivers and changing their standards of evidence including limiting fee waivers allowed for specific applications (for example the first 25,000 fee waivers for Form I–90), have a lottery for fee waivers (for example: For those paying with credit card they can be entered in a lottery and if chosen the application is free, if not, then the card will be charged); offer fee reductions; and lower the threshold to 150 percent or 175 percent instead. A few commenters stated that partial fee waivers, with mechanisms such as reduced fees, sliding scale fee schedules, and family caps, should be used to facilitate applications from low- and middle-income immigrants. Several commenters wrote that USCIS should retain the previous fee waiver eligibility criteria.

Response: DHS recognizes that filing fees are a burden for some people of limited financial means. However, as previously stated, the cost of fee waivers and reduced fees are borne by all other fee payers, because they must be transferred to those who pay a full fee to ensure full cost recovery. DHS believes that it is more equitable to base fees on the beneficiary-pays principle. Thus, USCIS takes a relatively careful position with respect to transferring costs from one applicant to another through the expansion of fee waiver eligibility and discounting fees. To set fees at various levels based on income, as suggested by the commenter, would require deviation from the underlying fee-setting methodology and require some of the costs for those applications to be reassigned to other benefit requests. Therefore, DHS did not incorporate a reduced fee, sliding scale, or family cap in this final rule or the other suggestions provided by commenters.

Comment: Others suggested USCIS set a higher limit of at least 200 percent instead of 125 percent FPG.

Response: DHS will not adopt the suggestion to increase the income requirement to 200 percent of the poverty line. As previously discussed, DHS selected the 125 percent of the FPG threshold as it is consistent with the income threshold in other areas related to immigration benefit adjudication, the public charge inadmissibility rule, and affidavit of support requirements under INA section 213A, 8 U.S.C.1183a, and 8 CFR 212.22(b)(4).

F. Comments on Fee Exemptions

Comment: One commenter opposed USCIS' proposal to remove most fee exemptions and to formalize limits to its discretion to provide fee exemptions. The commenter stated that USCIS failed to provide any rationale to justify this regulatory constraint. The commenter said narrowing the regulatory authority of the Director of USCIS to receive requests and waive fees for a case or specific class of cases would unnecessarily tie the hands of future policymakers. The commenter also stated that it is unclear how this

[65] See IRS, Definition of Adjusted Gross Income, available at *https://www.irs.gov/e-file-providers/definition-of-adjusted-gross-income* (last visited March 7, 2020).

authority would be exercised and how USCIS would adequately publicize any such exercise of discretion.

Response: DHS authorized the USCIS Director to approve and revoke exemptions from fees or provide that the fee may be waived for a case or class of cases that is not otherwise provided in 8 CFR 103.7(c) in 2010. *See* old 8 CFR 103.7(d); 75 FR 58, 961, 58990. Since then, that provision has been implemented effectively without providing publicly available guidance for how a person may request that the Director exercise that authority for an individual who feels like he or she is worthy of special consideration by the Director. USCIS receives several million fee-paying requests per year and to permit an individual to request a fee waiver from the Director using authority that may only be delegated to one other person could result in an unmanageable level of requests. USCIS has approved waiver eligibility and group exemptions in the case of natural disasters or significant USCIS errors. DHS explained in the proposed rule that it was concerned that the current authority provides too much discretion to a future Director to expand fee exemptions and waivers beyond what may be fiscally sound and shifting burden to just a few fee payers. In the 2010 fee rule, DHS stated that it thought the limits that it was imposing in that rule on fee waivers would ensure that fee waivers are applied in a fair and consistent manner, that aliens who are admitted into the United States will not become public charges, and that USCIS will not shift an unreasonable amount of costs to other fee-paying benefit requests.[66] Unfortunately, that goal was not achieved, and as stated in the NPRM, the current level of fee waivers is not sustainable. *See* 84 FR 62300. Thus, prescribing a limit in the regulations on the ability of future Directors to waive or exempt fees on a discretionary basis was determined to be necessary. Nevertheless, based on the use of 8 CFR 103.7(d) by Directors since 2010, the restrictions are consistent with the relief that has been provided; thus new 8 CFR 106.3(b) and (c) is not a major departure from how that provision has been applied.

Table 4 below provides a list of filing fee exemptions as provided in the rule. See new 8 CFR 106.2.

TABLE 4—FILING FEE EXEMPTIONS[67]

Form[68]	Eligibility category	Reason for filing (if applicable)	Final rule regulation section	Statutory or regulatory authority if applicable
I–90, Application to Replace Permanent Resident Card.	Applicant who has reached his or her 14th birthday and the existing card expires after his or her 16th birthday.	N/A	8 CFR 106.2(a)(1)	8 CFR 264.5(a).
I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.	For nonimmigrant member of the U.S. Armed Forces.	Initial Filing	8 CFR 106.2(a)(2)(i)	8 CFR 106.3(e)(5)—Agreement between U.S. government and other nations.
	For a nonimmigrant member of the North Atlantic Treaty Organization (NATO) armed forces or civil component.	Initial Filing.	8 CFR 106.2(a)(ii).	8 CFR 106.3(e)(5)—Agreement between U.S. government and other nations.
	For nonimmigrant member of the Partnership for Peace military program under the Status of Forces Agreement.	Initial Filing	8 CFR 106.2(a)(ii)	8 CFR 106.3(e)(5)—Agreement between U.S. government and other nations.
I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker.	For filing Form I–129CWR, Semiannual Report for CW–1 Employers.	N/A	8 CFR 106.2(a)(4)(B)(iii)	8 CFR 106.3(e)(5)—Agreement between U.S. government and other nations.
I–129F, Petition for Alien Fiancé(e).	For a K–3 spouse as designated in 8 CFR 214.1(a)(2) who is the beneficiary of an immigrant petition filed by a U.S. citizen on a Petition for Alien Relative, Form I–130.	N/A	8 CFR 106.2(a)(5)(ii)	Previous regulations at 8 CFR 103.7(b)(1)(i)(K).
I–131, Application for Travel Document.	Applicants who filed USCIS Form I–485 on or after July 30, 2007, and before October 2, 2020 and paid the Form I–485 fee.	Any application	8 CFR 106.2(a)(7)(iv)	Required by regulations in effect at the time the request was filed.
	Applicants for Special Immigrant Status based on an approved Form I–360 as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (''ISAF'').	Any application	8 CFR 106.2(a)(7)(iv)	National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181 (Jan 28, 2008) and Omnibus Appropriations Act, 2009 Public Law 111–8 (Mar. 11, 2009).
I–360 Petition for Amerasian, Widow(er), or Special Immigrant.	• A petition seeking classification as an Amerasian; • A self-petition for immigrant classification as an abused spouse or child of a U.S. citizen or lawful permanent resident or an abused parent of a U.S. citizen son or daughter; or • A petition for special immigrant juvenile classification; or A petition seeking special immigrant visa or status an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (''ISAF'').	Any application	8 CFR 106.2(a)(16)	Policy based on INA section 245(l)(7).
Form I–485, Application to Register Permanent Residence or Adjust Status.	Applicants for Special Immigrant Status based on an approved Form I–360 as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (''ISAF'').	Any application	8 CFR 106.2(a)(17)(iii)	National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181 (Jan 28, 2008) and Omnibus Appropriations Act, 2009 Public Law 111–8 (Mar. 11, 2009).
	Applicants filing as refugees under INA section 209(a).	Any application		*Previous 8 CFR 103.7(b)(1)(i)(U)(3).*

[66] 75 FR 58973.

[67] In general, USCIS exempts a fee for an application or request to replace a document based on USCIS error.

[68] Some supplemental forms may not have fees as the fees are part of the main form, including Form I–130A, Supplemental Information for Spouse Beneficiary, Form I–485 Supplement J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j), Form I–539A Supplemental Information for Application to Extend/Change Nonimmigrant Status.

[69] If more than one Form I–600 is filed during the Form I–600A approval period on behalf of beneficiary birth siblings, no additional fee is required.

[70] No additional fee for a Form I–800 is required when filing for children who are birth siblings.

[71] Re-registration applicants must still pay the biometric services fee.

TABLE 4—FILING FEE EXEMPTIONS [67]—Continued

Form [68]	Eligibility category	Reason for filing (if applicable)	Final rule regulation section	Statutory or regulatory authority if applicable
I–485 Supplement A, Adjustment of Status under Section 245(i).	When the applicant is an unmarried child less than 17 years of age, when the applicant is the spouse, or the unmarried child less than 21 years of age of a legalized alien and who is qualified for and has properly filed an application for voluntary departure under the family unity program.	N/A	8 CFR 106.2(a)(17)(iv)	INA section 245(i).
I–290B, Notice of Appeal or Motion.	For an appeal or motion for denial of a petition for a special immigrant visa from an individual for a special immigrant status as an Afghan or Iraqi Interpreter, or Iraqi or Afghan National employed by the U.S. Government or the International Security Assistance Forces (''ISAF'').	Any application	8 CFR 106.2(a)(14)(ii)	National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181 (Jan 28, 2008) and Omnibus Appropriations Act, 2009 Public Law 111–8 (Mar. 11, 2009).
I–539, Application to Extend/Change Nonimmigrant Status.	Nonimmigrant A, G, and NATO		8 CFR 106.2(a)(19)	8 CFR 106.3(e)(5)—Agreement between the U.S. government and other nations.
I–589, Application for Asylum and for Withholding of Removal.	Applications filed by unaccompanied alien children who are in removal proceedings.		8 CFR 106.2(a)(20)	Public Law 110–457, 122 Stat. 5044 (2008).
I–600, Petition to Classify Orphan as an Immediate Relative [69].	First Form I–600 filed for a child on the basis of an approved Application for Advance Processing of an Orphan Petition, Form I–600A, during the Form I–600A approval or extended approval period.		8 CFR 106.2(a)(21)(i)	Previous 8 CFR 103.7(b)(1)(i)(Y), (Z).
I–600A/I–600 Supplement 3, Request for Action on Approved Form I–600A/I–600.	Filed in order to obtain a first extension of the approval of the Form I–600A or to obtain a first time change of non-Hague Adoption Convention country during the Form I–600A approval period.		8 CFR 106.2(a)(23)(i)(A)	Previous 8 CFR 103.7(b)(1)(i)(Y), (Z).
I–765, Application for Employment Authorization.	Refugee	Initial EAD	8 CFR 106.2(a)(32)(ii)(B)	Policy.
	Paroled as refugee	Initial EAD	8 CFR 106.2(a)(32)(ii)(B)	Policy.
	Asylee	Initial EAD	8 CFR 106.2(a)(32)(ii)(C)	Policy.
	N–8 or N–9 nonimmigrant	Initial EAD	8 CFR 106.2(a)(32)(ii)(G)	8 CFR 106.3(e)(5)—Agreement between the U.S. government and another nation or nations.
	Victim of severe form of trafficking (T–1 nonimmigrant).	Initial EAD	8 CFR 106.2(a)(32)(ii)(D)	Policy based on INA section 245(l)(7).
	Victim of qualifying criminal activity (U–1 nonimmigrant).	Initial EAD	8 CFR 106.2(a)(32)(ii)(E)	Policy based on INA section 245(l)(7).
	Dependent of certain government and international organizations, or NATO personnel.	Initial EAD Renewal EAD, Replacement EAD.	8 CFR 106.2(a)(32)(ii)(F) 8 CFR 106.2(a)(32)(iv)(C)	Based on 106.3(e)(5)—An agreement between the U.S. government and another nation or nations.
	Taiwanese dependent of Taipei Economic and Cultural Representative Office TECRO E–1 employees.	Initial EAD, Renewal EAD, Replacement EAD.	N/A	8 CFR 106.3(e)(5)—An agreement between the U.S. government and another nation or nations.
	VAWA Self-Petitioners as defined in section 101(a)(51)(D) of the Act (Applicant adjusting under the Cuban Adjustment Act for battered spouses and children (principal) who has a pending adjustment of status application (Form I–485)).	Initial EAD	8 CFR 106.2(a)(32)(ii)(I)	Policy based on INA section 245(l)(7).
	VAWA Self-Petitioners as defined in section 101(a)(51)(E) of the Act (Applicant adjusting based on dependent status under the Haitian Refugee Immigrant Fairness Act for battered spouses and children (principal) who has a pending adjustment of status application (Form I–485)).	Initial EAD	8 CFR 106.2(a)(32)(ii)(I)	Policy based on through INA 245(l)(7).
	VAWA Self-Petitioners as defined in section 101(a)(51)(F) of the Act (Applicant adjusting under the Nicaraguan Adjustment and Central American Relief Act for battered spouses and children (principal) who has a pending adjustment of status application (Form I–485)).	Initial EAD	8 CFR 106.2(a)(32)(ii)(I)	Policy based on INA section 245(l)(7).
	Applicant for Special Immigrant Status based on an approved Form I–360 as an Afghan or Iraqi Translator or Interpreter, Iraqi National employed by or on behalf of the U.S. Government, or Afghan National employed by or on behalf of the U.S. government or employed by the International Security Assistance Forces (''ISAF'').	Initial EAD, Renewal EAD, Replacement EAD.	8 CFR 106.2(a)(32)(ii)(J)	Public Law 110–181 (Jan 28, 2008) and Public Law 111–8 (Mar. 11, 2009).
	An applicant who filed USCIS Form I–485 on or after July 30, 2007 and before [INSERT EFFECTIVE DATE OF 2018/2019 FEE RULE] and paid the Form I–485 filing fee.	Initial EAD, Renewal EAD, Replacement EAD.	8 CFR 106.2(a)(32)(ii)(A)	Required by regulations in effect when form was filed.
	Principal VAWA Self-Petitioners who have approved petitions pursuant to section 204(a) of the Act.	Initial EAD	8 CFR 106.2(a)(32)(ii)(H)	Policy based on INA section 245(l)(7).
	Any current Adjustment of Status or Registry applicant filed for adjustment of status on or after July 30, 2007, and before [INSERT EFFECTIVE DATE OF 2018/2019 FEE RULE] and paid the appropriate Form I–485 filing fee.	Initial EAD, Renewal EAD, Replacement EAD.	8 CFR 106.2(a)(32)(iv)(A)	Required by regulations in effect when form was filed.
	Request for replacement Employment Authorization Document based on USCIS error.	Replacement EAD	8 CFR 106.2(a)(32)(iii)	8 CFR 106.3(e)(6).
I–765V, Application for Employment Authorization for Abused Nonimmigrant Spouse.	Any applicant	N/A	8 CFR 106.2(a)(32)(v)	Policy based on INA section 245(l)(7).
I–800, Petition to Classify Convention Adoptee as an Immediate Relative [70].	The first Form I–800 filed for a child on the basis of an approved Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I–800A, during the Form I–800A approval period.	Initial Filing	8 CFR 106.2(a)(33)(i)	8 CFR 103.7(b)(1)(i)(JJ), (LL).
Form I–800A Supplement 3, Request for Action on Approved Form I–800A.	Filed in order to obtain a first extension of the approval of the Form I–800A or to obtain a first time change of Hague Adoption Convention country during the Form I–800A approval period.	N/A	8 CFR 106.2(a)(35)(i)(A)	8 CFR 103.7(b)(1)(i)(JJ)(1).

TABLE 4—FILING FEE EXEMPTIONS [67]—Continued

Form [68]	Eligibility category	Reason for filing (if applicable)	Final rule regulation section	Statutory or regulatory authority if applicable
I–821, Application for Temporary Protected Status [71].	Any applicant	Re-registration	8 CFR 106.2(a)	INA section 245(l)(7).
I–821D, Consideration of Deferred Action for Childhood Arrivals.	Any requestor		8 CFR 106.2(a)(38)	Policy decision based on *DHS et al.* v. *Regents of the Univ. of Cal. et al.,* No. 18–587 (S.Ct. June 18, 2010).
I–914, Application for T Nonimmigrant Status.	Any applicant	N/A	8 CFR 106.2(a)(45)	Policy but based on INA section 245(l)(7).
I–918, Petition for U Nonimmigrant Status.	Any applicant	N/A	8 CFR 106.2(a)(46)	Policy but based on INA section 245(l)(7).
N–336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA).	An applicant who has filed an Application for Naturalization under sections 328 or 329 of the Act with respect to military service and whose application has been denied.	N/A	8 CFR 106.2(b)(2)	*See* INA secs. 328(b)(4), 329(b)(4).
N–400, Application for Naturalization.	An applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service.	N/A	8 CFR 106.2(b)(3)	*See* INA secs. 328(b)(4), 329(b)(4).
N–565, Application for Replacement Naturalization/Citizenship Document.	Application is submitted under 8 CFR 338.5(a) or 343a.1 to request correction of a certificate that contains an error.	N/A	8 CFR 106.2(b)(5)(ii)	Policy based on 8 CFR 106.3(e)(6).
Form N–600, Application for Certificate of Citizenship.	Member or veteran of any branch of the U.S. Armed Forces.	N/A	8 CFR 106.2(b)(6)	Based on National Defense Authorization provisions.
Other—Claimant under section 289 of the Act.	Claimant	N/A	8 CFR 106.2(c)(9)	INA 289.

1. EAD (Form I–765) Exemption

Comment: A commenter stated that DHS should not charge a fee for applications for employment authorization for individuals granted withholding of removal, indicating that it violates United States treaty obligations under Article 17 of the Refugee Convention. Individuals who have been granted withholding of removal have been found by an immigration judge to meet the legal definition of a refugee, and are authorized to remain lawfully in the United States for as long as that status continues, citing to INA section 241(b)(3), 8 U.S.C. 1231(b)(3); 8 CFR 1208.16, 1208.24. The commenter indicated that the U.S. Supreme Court has recognized that withholding of removal is the mechanism by which the United States implements its obligation under Article 33 of the Refugee Convention to ensure that refugees are not returned to a place where they will face persecution, citing to *INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 440–41 (1987). The commenter wrote that just as much as asylees, individuals granted withholding of removal have a right, under Article 17(1) of the Refugee Convention, to obtain authorization to work on the most favorable terms that the United States allows to nationals of a foreign country. The commenter also indicated that Australia only charges the equivalent of 25 U.S. dollars—half of what DHS proposes to charge for asylum applications.

Another commenter said the imposition of a fee for work authorization for those individuals who have been granted withholding of removal is in conflict with the U.S. legal obligations. The commenter said such individuals have an urgent, recognized humanitarian need to live and work in the United States, and therefore, USCIS should continue its historic practice of exempting these individuals from work authorization fees.

Response: DHS is continuing to provide a fee exemption for the initial Form I–765, Application for Employment Authorization, for individuals who were granted asylum (asylees) or who were admitted as refugees, consistent with Article 17(1) of the 1951 Convention relating to the Status of Refugees (as incorporated in the 1967 Protocol relating to the Status of Refugees). *See* 84 FR 62302; 8 CFR 106.2(a)(32)(ii)(B). Consistent with past practice, asylees and refugees submitting a Form I–765 for EAD renewals will generally be required to pay the relevant fee. *See* 8 CFR 106.2(a)(32).

However, DHS is not providing a fee exemption for initial requests for an EAD for individuals granted withholding of removal. *See* 84 FR 62301. Fees associated with access to protection and work authorization do not jeopardize United States compliance with its non-refoulement obligations under Article 33 of the 1951 Refugee Convention. The United States ensures compliance with non-refoulement obligations not through the asylum process, but through the withholding of removal provisions, currently codified at section 241(b)(3) of the INA. *See INS* v. *Stevic,* 467 U.S. 407 (1984). USCIS uses the Form I–589 solely to adjudicate affirmative applications for asylum. It is immigration judges, within the Department of Justice, who evaluate withholding of removal claims in the context of removal proceedings before them. The asylum process ''does not correspond to Article 33 of the 1951 Convention, but instead corresponds to Article 34'' of the 1951 Refugee Convention, which provides that party states ''shall as far as possible facilitate the assimilation and naturalization of refugees.'' *See INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 441 (1987) (quotation marks omitted). As the Supreme Court has recognized, Article 34 is ''precatory'' and ''does not require [an] implementing authority actually to grant asylum to all those who are eligible.'' *Id.* Further, although the United States is a party to the 1967 Refugee Protocol, which incorporates both Articles 33 and 34 of the 1951 Refugee Convention, the Protocol is not self-executing. *See, e.g., Stevic,* at 428 n.22. It is the withholding statute at INA section 241(b)(3) and the asylum statute at INA section 208 that, respectively, constitute the U.S. implementation of these treaty obligations. Nothing in either of these two provisions precludes the imposition of a filing fee for asylum applications or work authorization for those granted withholding of removal. Imposition of asylum application and work authorization filing fees are fully consistent with United States domestic implementing law and Article 17 of the 1951 Refugee Convention, which relates to refugees engaging in employment. *See Weinberger* v. *Rossi,* 456 U.S. 25, 34 (1982) (noting the general presumption that United States law conforms to U.S. international treaty obligations). DHS has further clarified the immigrant categories eligible for fee exemptions and clarified which renewal and

replacement EAD are eligible for fee exemptions. *See* new 106.2(a)(32).

2. TPS

Comment: Another commenter stated that fee exemption limitations would be especially harmful to TPS applicants. The commenter added that USCIS is planning to charge TPS applicants a separate biometric service fee, even though the proposal bundles that cost for every other category of benefit applicant. The commenter concluded by saying TPS applicants would be required to pay $570 to obtain TPS protections and begin to earn an income, which is unaffordable.

Response: In this final rule, DHS removes the Form I–765 fee exemption in 8 CFR 244.6(b) for TPS if the individual is an initial TPS registrant and is under 14 years of age or over 65 years of age, and DHS establishes a biometric services fee of $30 for TPS applicants and re-registrants. As we stated in the NPRM, DHS is removing the fee exemption because application fees from other form types have always been used to fund the costs of processing fee-exempt filings. Continuing to exempt these populations from paying associated fees would result in the costs of their requests being borne by the other proposed fees. Thus, DHS determined that initial TPS registrants under 14 years of age or over 65 years of age should pay for their own EAD.

The biometric services fee that TPS applicants and re-registrants must pay is changed from $85 to $30, a reduction of $55 per filing. This $30 fee, which will be required regardless of age, reflects the cost of providing biometric services to TPS applicants and re-registrants. *See* new 8 CFR 244.17(a). This biometric services fee will partially offset the increase in the fee or the removal of the fee exemption for Form I–765, Application for Employment authorization, so that the total cost of applying for Temporary Protected Status and requesting employment authorization for those who would not have been exempt from the Form I–765 fee is increasing from $545 [72] to $630 for initial TPS applicants.[73] The cost of re-registering for TPS and requesting employment authorization will increase from $495 [74] to $580.[75] DHS notes that TPS applicants and re-registrants may request fee waivers. *See* 8 CFR 106.3.

The commenter correctly noted that DHS did not incorporate the cost of biometrics into the cost of Form I–821, Application for Temporary Protected Status. In this final rule, DHS incorporates the cost of providing biometric services into the underlying fee for most applications and petitions. However, the maximum fee for Form I–821, Application for Temporary Protected Status is set in legislation at $50 for initial TPS applicants and $0 for re-registrants. *See* INA section 244a(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B). Therefore, DHS is not able to increase the fee for Form I–821 and cannot incorporate the cost of biometrics into the form fee. Thus, DHS maintains a separate biometric services fee for TPS registrants and re-registrants and requires the biometric services fee for re-registrants under age 14 to recover the full cost of providing such services. New 8 CFR 106.3(a)(37)(iii) and 244.17(a).

DHS declines to make changes in this final rule based on this comment. DHS also notes that 8 CFR 244.6(b) is updated to be consistent with new 8 CFR 106.2 and 106.3 in relation to the Form I–765 fees for TPS.

G. Comments on Specific Fees

1. Fees for Online Filing

Comment: A few 545 suggested that, rather than just raising the fees, USCIS should focus on processing times and becoming more efficient, stating that the process is ''severely paper intensive'' and could benefit from a more streamlined electronic process. One commenter cited a 2005 report from DHS Office of the Inspector General (OIG) which found that USCIS information technology (IT) systems were primarily paper-based and duplicative, and that USCIS' ability to process immigration benefits was inefficient. Another commenter stated that USCIS has done little to shift to digital applications despite prior fee hikes. One commenter said paper filing is extremely laborious for petitioners, and that many of the concerns that led USCIS to propose higher fees and beneficiary limits could be solved by implementing electronic filing. Another commenter outlined the benefits of moving to electronic process, including cost savings and the ability for ''essential workers to arrive on time.'' One commenter stated that USCIS has failed to deliver promised improvements to its online filing abilities and other modernization initiatives that would result in more streamlined operations. The same commenter stated that in 2019, legal service providers still reported many challenges in utilizing USCIS online filing systems, and that modernization continues to be pushed on to USCIS customers even to the detriment of customer service. A commenter wrote that they were concerned about USCIS moving to online filing based on their experiences with the Department of State's National Visa center; they were frustrated by software glitches and processing issues (*e.g.,* lost documents, erroneous file rejection, lack of information after lengthy waits on hold) which the commenter said should be addressed before fees are raised. One commenter stated if USCIS wants to save money, it should stop requiring an endless flow of paperwork. The commenter provided a list of forms that businesses in the CNMI must fill out when new employees are hired and stated that the redundancy wasted both their and USCIS' time and resources. The commenter referred to a bill from Congressman Sablan that would give long-term CW Visa personnel permanent status and stated their hope that there will not be constant paperwork required for those requests.

Response: On March 13, 2017, the President signed Executive Order 13781, entitled ''Comprehensive Plan for Reorganizing the Executive Branch.'' [76] The order instructed the Director of OMB to propose a plan to improve the efficiency, effectiveness, and accountability of the Executive Branch. The resulting June 2018 OMB Report, ''Delivering Government Solutions in the 21st Century'' recognized that an overarching source of government inefficiency is the outdated reliance on paper-based processes and prioritized the transition of Federal agencies' business processes and recordkeeping to a fully electronic environment.[77] The report noted that Federal agencies collectively spend billions of dollars on paper management, including the processing, moving, and maintaining of large volumes of paper records and highlighted the key importance of data, accountability, and transparency.[78]

[72] Total of $545 equals $50 for Form I–821 plus $85 biometric services fee plus $410 for Form I–765.

[73] Total of $630 equals $50 for Form I–821 plus $30 biometric services fee plus $550 for Form I–765.

[74] Total of $495 equals $85 biometric services fee plus $410 for Form I–765.

[75] Total of $580 equals $30 biometric services fee plus $550 for Form I–765.

[76] E.O. 13781, 82 FR 13959 (Mar 16, 2017).

[77] OMB, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations* 18 (2018), available at *https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf.*

[78] *Id.* at 100.

Even more significantly, it cites USCIS' electronic processing efforts as an example of an agency initiative that aligns with the prioritized reforms.[79]

DHS understands that, while USCIS has embraced technology in adjudication and recordkeeping, it remains bound to the significant administrative and operational burdens associated with paper submissions. The intake, storage, and handling of paper require tremendous operational resources, and the information recorded on paper cannot be as effectively standardized or used for fraud and national security, information sharing, and system integration purposes. Technological advances have allowed USCIS to develop accessible, digital alternatives to traditional paper methods for handling requests. Every submission completed online rather than through paper provides direct and immediate cost savings and operational efficiencies to both USCIS and filers—benefits that will accrue throughout the immigration lifecycle of the individual and with the broader use of online filing and e-processing.

As various online functions are developed, USCIS makes them available to the public, providing the option of engaging with USCIS either online or on paper. DHS recognizes that, if presented with optional new technology, people adopt new practices at varying rates.[80] In this case, the complexity of the immigration benefit request system may exacerbate the tendency toward the status quo. Those familiar with paper-based forms and interactions may feel there is no reason to change a method that has worked for them.

DHS agrees that transitioning to e-processing for benefit requests is an important step in improving the service and stewardship of USCIS and to promote the objectives of the Government Paperwork Elimination Act, E-Government Act, and E.O. 13781.[81] Therefore, and in response to the public comments, USCIS has calculated the amount of upfront cost savings that it recognizes from an online versus paper filing in the current environment and determined that it saves approximately $7 per submission. To encourage the shift of those capable of filing online into the electronic channel and increase the usage of USCIS e-processing for those forms for which online filing is currently available, DHS will set the fees for online filing at an amount $10 lower than the fees established in this final rule for filing that form on paper. New 8 CFR 106.3(d).[82] *See* Table 5: Fees for Online Filing for a comparison of paper and online filing fees.

TABLE 5—FEES FOR ONLINE FILING

Immigration benefit request	Online filing fee	Paper filing fee	Difference
I–90 Application to Replace Permanent Resident Card	$405	$415	$10
I–130 Petition for Alien Relative	550	560	10
I–539 Application to Extend/Change Nonimmigrant Status	390	400	10
N–336 Request for Hearing on a Decision in Naturalization Proceedings	1,725	1,735	10
N–400 Application for Naturalization	1,160	1,170	10
N–565 Application for Replacement Naturalization/Citizenship Document	535	545	10
N–600 Application for Certificate of Citizenship	990	1,000	10
N–600K Application for Citizenship and Issuance of Certificate	935	945	10
G–1041 Genealogy Index Search Request	160	170	10
G–1041A Genealogy Records Request	255	265	10

DHS adjusts USCIS' fee schedule in this final rule to ensure it recovers the estimated full cost of providing immigration adjudication and naturalization services. USCIS' cost baseline reflected in this final rule accounts for the costs of intake and adjudication of applications received online and on paper. To provide for full cost recovery, DHS adjusts the fees for filing applications on paper when online filing is available to be higher than those fees would be in the absence of the lower fees for online filing. The increased revenue anticipated from the higher fees for those forms when filed on paper will offset the reductions in revenue anticipated from the lower fees for online filing. USCIS will further evaluate the effects of these changes in future biennial fee reviews.

As for the comments directed at the Department of State (DOS) online processing, USCIS has no control over the efficacy of DOS systems. DHS may learn from the DOS issues, however, and will, of course, work to minimize any glitches.

Comment: Some commenters wrote that switching to online filing would create a barrier to immigrants without access to technology, and the option should exist to choose between e-filing and paper submissions.

Response: USCIS does not require that any immigration benefit request be filed online. Filing on paper remains a valid option. However, this final rule specifies that forms currently eligible for online filing will be $10 more if filed on paper.

Comment: A few commenters recommended USCIS maintain the current fees for processing Form I–129 petitions for H–2A beneficiaries until the online Electronic Immigration System (ELIS) can be established and USCIS can conduct a robust analysis to more accurately determine an appropriate fee schedule consistent with Federal guidelines for user fees.

Response: USCIS must recover its full cost of providing immigration adjudication and naturalization services. DHS adjusts the fees for forms that are currently eligible for online filing to be $10 lower if filed online than the fee for the same forms filed on paper to reflect the known cost-savings to USCIS of receiving an application electronically. DHS declines to delay adjusting the fee for Form I–129H2A

[79] *Id.* at 101–02.

[80] Brian Kennedy & Cary Funk, Pew Research Group, *28 percent of Americans are 'strong' early adopters of technology* (July 12, 2016), *available at http://www.pewresearch.org/fact-tank/2016/07/12/28-of-americans-are-strong-early-adopters-of-technology/;* Charlie Wells, The Wall Street Journal, *Forget Early Adopters: These People are Happy to Be Late* (Jan. 26, 2016), *available at https://www.wsj.com/articles/forget-early-adopters-these-people-are-happy-to-be-late-1453827437.*

[81] *See* President's Management Council, Executive Office of the President, *President's Management Agenda* 7 (2018), *available at https://www.whitehouse.gov/wp-content/uploads/2018/04/ThePresidentsManagementAgenda.pdf.*

[82] U.S. Customs and Border Protection accepts USCIS Forms I–192 and I–212 online. Available at *https://www.cbp.gov/travel/international-visitors/e-safe* (last viewed Mar. 27, 2020). However, USCIS has no data on the cost of online filing with CBP. Therefore, this $10 online fee reduction applies to USCIS forms submitted to USCIS only.

because USCIS must recover its full costs.

DHS does not provide for a lower online filing fee for Form I–129H2A in this final rule. As described above, DHS is increasing the fees for filing an application on paper above the level it would otherwise establish when the application is also eligible for online filing. This will provide for full cost recovery by USCIS. However, because online filing is not yet available for Form I–129H2A, DHS cannot increase the fee for a paper filing to offset the anticipated reduction in revenue from a lower fee for online filing and still provide for full cost recovery. If DHS raised the fee for filing Form I–129H2A on paper in anticipation of future online filing and a lower fee for filing online, USCIS would recover revenue in excess of its estimated full cost of adjudication until such time as online filing and a lower online filing fee are available. Thus, DHS cannot establish lower fees for online filing for Form I–129H2A, or any other applications for which online filing is not yet available, and still provide for full cost recovery. DHS may consider a lower fee for Form I–129H2A if filed online in future rulemakings if Form I–129H2A is available for online filing.

2. Biometric Services Fee

Comment: One commenter questioned why USCIS would forego approximately $220,884,315 in biometric services fee revenue. The commenter added that the NPRM allows for biometric services fees for TPS applicants and those filing EOIR forms; therefore, there should continue to be a fee for this service. The commenter concluded that if DHS implements this proposal, it will be confusing for applicants, attorneys, and government staff to implement and it will lead to delays in proper filing of applications and petitions. The same commenter recommended that USCIS use the biometric services fee to supplement fraud investigations or consider raising this fee in order to provide additional revenue.

Response: The commenter misunderstands DHS's approach to recovering the estimated full cost of providing biometric services. Although DHS eliminates the separate biometrics service fee of $85 for many application types in this final rule, it establishes fees for most forms to reflect the estimated full cost of adjudication, including the cost of biometric services that are typically associated with that form. Thus, DHS will continue to recover the cost of providing biometric services, but it will do so by adjusting form fees to reflect the total cost of an adjudication, including providing biometric services. DHS will not forego any revenue associated with the biometric services fee because of this change.

DHS believes that this change in its method of recovering the cost of biometric services will provide benefits to applicants and USCIS. Most applicants and petitioners will no longer need to determine if they must submit a separate biometric services fee in addition to the fee for their request. DHS believes that this will reduce confusion among requestors and decrease rejections for incorrect fees. Fewer rejections for incorrect fees should increase administrative efficiency for USCIS.As provided in new 8 CFR 103.17, DHS is also establishing a separate biometric services fee for additional requests for which it could not include the costs to USCIS of administering biometric services in the ABC model used for the NPRM. First, DHS codified revised 8 CFR 208.7(a)(1)(i), which requires that biometrics be submitted for an application for employment authorization from an applicant for asylum or to renew such an EAD. See Asylum Application, Interview, and Employment Authorization for Applicants, 85 FR 38532, 38626 (June 26, 2020); new 8 CFR 208.7(a) (1)(i). That rule takes effect on August 25, 2020. Second, on February 19, 2020, USCIS implemented the Commonwealth of the Northern Mariana Islands (CNMI) long-term resident status program. It was created by the Northern Mariana Islands Long-Term Legal Residents Relief Act. 48 U.S.C. 1806(e)(6).[83]

Applicants must file Form I–955, Application for CNMI Long-Term Resident Status, together with Form I–765, Application for Employment Authorization, by August 17, 2020. When the CNMI long-term resident status program was established, USCIS required that a biometric services fee be submitted with the Form I–765.[84] Because the CNMI long-term resident program and fee NPRM were under development simultaneously, DHS was unable to include the cost of biometric services for CNMI long-term resident program in the ABC model for the NPRM. Therefore, the fee for Form I–765 does not include the costs for that service. DHS proposed new 8 CFR 103.17 in contemplation of the need for a separate fee in the future if biometric services was required by regulations or policy, but where the costs had not been considered in setting the benefit request fee. As a result, and consistent with the actions taken for TPS, EOIR forms, and in accordance with new 8 CFR 103.17, DHS requires that CNMI long-term resident applicants and applicants for asylum who are applying for employment authorization submit a $30 biometric services fee with their Form I–765. 8 CFR 106.2(a)(32)(i)(A), (B).

Comment: One commenter opposed a separate biometric services fee for TPS applicants, stating that USCIS is breaching Congress's $50 cap on TPS filing by imposing a separate biometric fee.

Response: The commenter is correct in stating that the fee for Form I–821, Application for Temporary Protected Status, is statutorily limited to $50 for initial TPS applicants and $0 for re-registrants. *See* INA section 244a(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B). However, the commenter is incorrect in stating that charging TPS applicants and re-registrants a separate biometric services fee constitutes a breach of any statute. DHS has specific statutory authority to collect ''fees for fingerprinting services, biometric services, and other necessary services'' when administering the TPS program. *See* 8 U.S.C. 1254b.

Before this final rule, all TPS applicants and re-registrants aged 14 years and older were subject to the $85 biometric services fee, in addition to any applicable fees for Forms I–821 and I–765. Therefore, adjusting the biometric services fee for TPS applicants and re-registrants to $30 represents a $55 reduction in the biometric services fee that these individuals may pay. DHS also notes that TPS applicants and re-registrants may apply for fee waivers based on eligibility criteria established by USCIS.

In this final rule, DHS removes the Form I–765 fee exemption in 8 CFR 244.6(b) for TPS if the individual is an initial TPS registrant and is under 14 years of age or over 65 years of age, and DHS establishes a biometric services fee of $30 for TPS applicants and re-registrants. As we stated in the NPRM, DHS is removing the fee exemption because fees from other form types have always been used to fund the costs of processing fee-exempt filings. Continuing to exempt these populations

[83] *See,* CNMI Long-Term Resident Status, available at *https://www.uscis.gov/working-united-states/cnmi-long-term-resident-status* (last reviewed/updated Feb. 19, 2020).

[84] *See* USCIS Form I–765, Application for Employment Authorization, page 23 (stating, ''Special Instructions for Applicants for Commonwealth of the Northern Mariana Islands (CNMI) Long-Term Resident Status—(c)(37). All applicants under this category must pay the biometric services fee of $85. The biometric services fee and the filing fee for the I–765 application cannot be waived.''). Available at *https://www.uscis.gov/i-765.*

from paying associated fees would result in the costs of their requests being borne by the other proposed fees. Thus, DHS determined that initial TPS registrants under 14 years of age or over 65 years of age should pay their own Form I–765 fee and biometric services fee. The biometric services fee that TPS applicants and re-registrants must pay is changed from $85 to $30, a reduction of $55 per filing. This $30 fee, which will be required regardless of age, reflects the cost of providing biometric services to TPS applicants and re-registrants. *See* new 8 CFR 244.17(a).

DHS declines to make changes in this final rule in response to the comment.

Comment: A few commenters stated that including a biometrics screening and fee for children under 14 is unnecessary and that it is inappropriate to charge a single fee for Form I–485 that includes the cost of biometrics to both adults and children under 14 years of age who do not submit biometric information. A few commenters stated that imposing a biometric services fee where USCIS does not capture biometric data would deter families from entering the United States as a unit.

Response: As explained previously, DHS will expand the collection of biometric information for TPS re-registrants under the age of 14, remove the biometrics fee exemption from 8 CFR 244.17(a), and revise the form instructions for Form I–821 to require a $30 biometrics service fee from every TPS registrant regardless of age. *See* 84 FR 62303 and 62368. This change assigns the costs of TPS applications and re-registrations to those who benefit from them. DHS uses biometrics beyond criminal history background checks to include identity management and verification in the immigration lifecycle. Therefore, biometrics will be collected without age limitation, although it may be waived at DHS's discretion.

DHS also acknowledges that this final rule increases the fees for children under 14 years old who file an I–485 concurrently with a parent filing an I–485 by eliminating the reduced I–485 child fee. This final rule establishes the fee for Form I–485, Application to Register Permanent Residence or Adjust Status, at $1,130 for all applicants.

The commenters correctly wrote that the Form I–485 fee established in this final rule includes the average cost of biometric services associated with processing those applications. The inclusion of biometric services reduces the average cost of Form I–485 and the final fee established in this final rule. Processing a given application may be more or less costly than processing another application of the same type because of the evidence and other factors that adjudicators may consider. Therefore, DHS establishes its fees, unless otherwise noted, at a level sufficient to recover the estimated full cost of adjudication. DHS calculated the Form I–485 fee to reflect the full cost of adjudication, including the average cost of biometric services associated with those applications.

DHS declines to make changes in this final rule in response to these comments.

3. Genealogy Fees, Forms G–1041, Genealogy Index Search Request, and G–1041A, Genealogy Records Request

Comment: Numerous commenters generally opposed increasing fees for genealogy search and records requests. Other commenters, many identifying themselves as professional genealogists and/or individual family genealogists, opposed the proposed increased fees, stating that they oppose the fee increase for the following reasons:

- No other government record or research request fees are close to the proposed increased costs.
- The 500 percent fee hike is unjustified, especially after fees tripled 3 years ago.
- The NPRM did not present data or specifics to substantiate the costs. DHS cannot claim such fees are necessary to cover costs when USCIS did not provide cost analysis to support the claim. The proposed fees for G–1041 and G–1041A are arbitrary and capricious.
- The nature of genealogical research often requires broad investigation, requiring several search and record requests.

Some commenters stated that the reasoning presented in the NPRM does not make sense, and expressed doubt that the cost of providing these services could possibly have risen enough in 3 short years to justify an increase of this magnitude, including:

- Workload volume submitted in Tables 1 and 5 are the same and do not indicate any increase in workload after the increase in fee schedules;
- Table 4 shows a combined total increase of only 7,200 requests in the last three years;
- Table 24 shows how costs will be *reduced* to the agency by decreasing the administrative burden through electronic versions of records;
- The proposal provides no real basis of comparison of real costs;
- DHS does not currently have enough data to estimate the effects for small entities; and
- The expected use in the next fiscal year shows almost no impact to USCIS.

Response: DHS recognizes commenters' concerns regarding the scope of the fee increases for Forms G–1041 and G–1041A in the NPRM. The proposed increase reflected changes in USCIS' methodology for estimating the costs of the genealogy program to improve the accuracy of its estimates. In response to public comments on the proposed genealogy fee increases, USCIS further refined the methodology used to estimate genealogy program costs. Based on the refined methodology, this final rule establishes a fee for Form G–1041, Genealogy Index Search Request, when filed online as $160 and $170 when filed on paper. Using the same methodology refinement, DHS establishes a fee for Form G–1041A, Genealogy Records Request, when filed online as $255 and $265 when filed by paper.

INA section 1356(t)(1) authorizes DHS to set the genealogy fee for providing genealogy research and information services at a level that will ensure the recovery of the costs of providing genealogy services separate from other adjudication and naturalization service's fees. USCIS must estimate the costs of the genealogy program because it does not have a discrete genealogy program operating budget. Nor does USCIS discretely identify and track genealogy program expenditures. The same office that researches genealogy requests, the National Records Center, also performs other functions, such as FOIA operations, retrieving, storing, and moving files. In the FY 2016/2017 fee rule, DHS estimated the costs of the genealogy program indirectly using projected volumes and other information. The projected costs included a portion of Lockbox costs, genealogy contracts, and other costs related to the division that handles genealogy, FOIA, and similar USCIS workloads. *See* 81 FR 26919. This estimation methodology underestimated the total cost to USCIS of processing genealogy requests by not fully recognizing costs associated with the staff required to process genealogical requests. Therefore, other fees have been funding a portion of the costs of the genealogy program, and DHS is correcting that in this rule.

In FY 2018, USCIS incorporated the genealogy program into the National Records Center (NRC). This change enabled USCIS to revise its cost estimation methodology to incorporate a proportional share of the NRC's operating costs based on the staffing devoted to the genealogy program. DHS estimated the costs of the genealogy program using this methodology for the first time in its FY 2019/2020 fee review

and subsequently proposed to base the fees for Forms G–1041 and G–1041A on these revised cost estimates. DHS did not apply cost reallocation to the fees for Forms G–1041 and G–1041A. DHS believes that these revised cost estimates and fees reflect more accurately the true costs to USCIS of operating the genealogy program than the previous indirect estimation methodology.

As requested by public comments received on the NPRM, USCIS examined the proposed genealogy fees, and decided to further refine its cost estimation for the genealogy program. For this final rule, USCIS reviewed the costs attributable to the NRC to identify those that directly support the genealogy program. USCIS determined that some NRC costs do not directly support the genealogy program and are not attributable to Forms G–1041 and G–1041A. USCIS removed the non-attributable costs to the genealogy program from its cost estimates for Forms G–1041 and G–1041A. USCIS maintained in its genealogy program cost estimates a proportional share of NRC overhead costs based on the number of staff at the NRC supporting the genealogy program. Thus, USCIS reduced its estimate of the genealogy program's total cost by $0.9 million. In this final rule, DHS establishes the fee for Form G–1041, Genealogy Index Search Request, when filed online as $160, the fee for a paper filed G–1041 as $170, the fee for Form G–1041A, Genealogy Records Request, when filed online as $255, and the fee for a paper filed G–1041A as $265 to reflect its revised, lower cost estimates directly attributable to the USCIS genealogy program. To the extent that DHS will no longer recover a full proportionate share of the NRC's costs via fees for Forms G–1041 and G–1041A, USCIS will recover those costs through the fees assessed for other immigration benefit requests.

DHS appreciates the public's feedback on the USCIS genealogy program and has implemented changes in this final rule in response to these comments.

Comment: Some commenters claimed that taxpayers have already paid to acquire, manage, and store these records. Taxpayers already support the government substantially and should not be charged for access to records.

Response: DHS understands the commenters' concerns regarding the potential for duplicative payment. However, USCIS does not receive taxpayer funds for the genealogy program, nor do taxes pay for the acquisition, management, or storage of records in USCIS' custody. Therefore, DHS must recover the estimated full cost of the genealogy program, including managing and storing records, via USCIS' fee schedule.

When DHS receives a request for genealogical records, it must identify whether USCIS possesses relevant records, retrieve, and review them for release where appropriate. These activities incur costs beyond the general costs of record management and storage that DHS incorporates into other immigration benefit request fees via the Records Management activity. USCIS estimates the costs of the genealogy program via the Research Genealogy activity, as shown in the Cost Objects section of the supporting documentation that accompanies this final rule. Therefore, DHS establishes fees for Forms G–1041 and G–1041A to recover these additional costs. DHS has explicit authority to recover the costs of providing genealogical services via genealogy fees. *See* 8 U.S.C. 1356(t).

DHS declines to make changes in this final rule in response to these comments.

Comment: Some commenters opposing the fee increase focused on income and ability-to-pay, such as the following:

- The increased fees would be far beyond the financial means of most average Americans and make it impossible for genealogists and families to make and pay for requests. Only the rich and wealthiest would be able to access these records.
- Many individuals doing genealogy research tend to be older and on limited income.
- A few commenters said that 2018 data from the Federal Reserve Board indicated that the proposed increased fees would place access to Federal public records beyond the financial capabilities of an estimated 40 percent of Americans. Many commenters stated that records should be easily obtainable to all and not used to generate revenue for the government.

Response: DHS recognizes the concerns of commenters and acknowledges the substantial increase in the fees for Forms G–1041 and G–1041A. In response, USCIS refined its cost estimation methodology for the genealogy program as described above. In this final rule, DHS establishes the fee for Form G–1041, Genealogy Index Search Request, when filed online as $160, the fee for a paper filed G–1041 as $170, the fee for Form G–1041A, Genealogy Records Request, when filed online as $255, and the fee for a paper filed Form G–1041A as $265 to reflect its revised, lower cost estimates for operating the USCIS genealogy program.

In this final fee rule, DHS emphasizes the beneficiary-pays principle. Consistent with its approach to most other fees addressed in this final rule, DHS establishes the fees for Forms G–1041 and G–1041A at a level that reflects the estimated full cost of providing those services. DHS does not establish these fees to limit access to genealogical records, and they do not augment government tax revenue. DHS declines to require other individuals filing immigration benefit requests to subsidize users of the genealogy program.

Comment: Multiple commenters stated that the proposed fee increases for record requests seems to be a punishment for citizens who want access to ancestors' records. Multiple individuals stated that USCIS would be ''holding them hostage'' by demanding exorbitant and unjustified fees to access documents on immigration ancestors. The commenters wrote that these records should already be publicly accessible under the law.

Response: DHS rejects the characterization of the proposed fees as a way to punish or hold hostage individuals who seek records related to their ancestors via the USCIS genealogy program. In this final rule, DHS establishes the fees for Forms G–1041 and G–1041A at a level sufficient to recover the estimated full cost of providing access to genealogical records, as provided for by law. *See* INA section 286(t), 8 U.S.C. 1356(t). DHS is not motivated by any other consideration and declines to make changes in this final rule in response to these comments.

Comment: One commenter stated that USCIS most likely has indices of all files in digital form, therefore the time required to type a name into a computer, read the result, and email it to the requester is a matter of minutes and the salary and benefits of the employees do not justify a fee of $240. A few commenters stated that USCIS should publish the figures for the ''actual out-of-pocket costs'' of searching indices and providing copies of records found and the estimate of the number of requests likely to be processed so that the public can judge whether the fees are appropriate to the cost of providing the service.

Response: DHS acknowledges that USCIS possesses indices of many different types and series of records. These indices aid USCIS in efficiently identifying records that may be related to a given genealogical request. However, to fulfill genealogical records requests, USCIS incurs costs beyond identifying records that may be relevant

to a particular inquiry. In addition to identifying relevant records, USCIS must retrieve the relevant records and manually review them before release to ensure compliance with federal privacy statutes. In addition to these direct costs, USCIS also incurs overhead costs associated with storing and managing the records, including relevant facilities costs. In this final rule, DHS estimates the total cost, including applicable indirect costs, of completing Form G–1041, Genealogy Index Search Request, to be $160 when filed online and the total cost of completing a paper Form G–1041, Genealogy Index Search Request, to be $170. Therefore, DHS establishes the fee for Form G–1041 as $160 when filed online and a paper filed Form G–1041 as $170. In this final rule, DHS estimates the total cost, including applicable indirect costs, of completing Form G–1041A, Genealogy Records Request, to be $255 when filed online and the total cost of completing a paper Form G–1041A, Genealogy Records Request, to be $265. Therefore, DHS establishes the fee for Form G–1041A as $255 when filed online and the fee for a paper filed Form G–1041A as $265.

Comment: Many commenters stated that it was vital to be able to obtain records and family artifacts held in files about their ancestors' immigration to the United States and path to becoming Americans. A commenter stated that the records provide information that genealogists often cannot find in any other extant record. Some commenters said public access and researching genealogy helps educate themselves, their children, and other generations on important parts of immigration history, such as the Chinese Exclusion Act and the Holocaust. Multiple commenters wrote ''an informed and educated citizenry is essential for our democracy to continue to prosper.'' A few commenters said studies show that children perform better in school if they know about their ancestors. A few commenters wrote that genealogy research is an integral part of the Church of Jesus Christ of Latter-day Saints and the proposed increase in fees would be a burden to those of that faith. Some commenters said that Daughters of the American Revolution and Native Americans search records to confirm applications for memberships. Ancestral history projects research American slaves brought to South Carolina and Virginia. A fee increase would negatively affect legitimate organizations that keep detailed, complete, and accurate records of American history and would forestall efforts to complete the histories of minority citizens. A few commenters stated that USCIS genealogy records contain information no longer found in Europe, where the Nazis destroyed records during World War II.

Response: DHS recognizes the importance of genealogical records and the connections they can provide to immigrant ancestors. In this final rule, DHS establishes the fees for Forms G–1041 and G–1041A at a level sufficient to recover the estimated full cost of providing access to genealogical records, as provided for by law. *See* INA section 286(t), 8 U.S.C. 1356(t). The fees established in this final rule are intended to recover the estimated full cost of providing genealogical record services and are not motivated by any other consideration. DHS declines to make changes in in this final rule in response to these comments.

Comment: Several commenters wrote that the information provided is essential as part of an application process to those pursuing dual citizenship.

Response: DHS recognizes the value of genealogical records to individuals who are pursuing dual citizenship. However, as an agency funded primarily through user fees, USCIS must recover the full cost of the services it provides. Consistent with the beneficiary-pays principle emphasized throughout this final rule, DHS declines to require other immigration benefit requestors to subsidize individuals requesting genealogical services from USCIS. DHS declines to make changes in this final rule in response to these comments.

Comment: A few individuals stated that affordable access to genealogy is important to helping determine genetic medical problems and allowing family members to take proactive precautions that foster improved public health as well as substantial cost-savings by federal and state financial medical services.

Response: DHS recognizes that individuals may value and request genealogical records for many different reasons. However, DHS is not aware of any data demonstrating the monetary value of health information that may be derived from such records. Consistent with the beneficiary-pays principle emphasized throughout this final rule, DHS declines to require other immigration benefit requestors to subsidize individuals requesting genealogical services from USCIS. DHS declines to make changes in this final rule in response to these comments.

Comment: Several commenters stated that the proposed fees are far from advancing the goals of the USCIS Genealogy Program and instead would likely be the demise of the program. Some commenters wrote that the proposed increase in fees would price-out and prevent researchers from accessing records, significantly reducing the number of requests for documents, and essentially closing down USCIS' Genealogy Program. Many commenters stated that the proposed increase in fees appears intentionally designed to put an end to people using the Genealogy Program. Numerous commenters addressed how the hefty charges for the initial research, regardless of whether USCIS identified any records, would be by itself a substantial deterrent to genealogical research.

Response: DHS acknowledges the substantial increase in fees for Forms G–1041 and G–1041A in this final rule. In this final rule, DHS established the fees for Forms G–1041 and G–1041A to recover the estimated full cost to USCIS of providing genealogical services. In setting these fees, DHS is not motivated by any other consideration. DHS does not intend to discourage individuals from requesting genealogical records, to deter genealogical research, or to eliminate the USCIS genealogy program. DHS declines to make changes in this final rule in response to these comments.

Comment: Many commenters wrote that the proposed change would be in violation of the Freedom of Information Act (FOIA). Some further commented that the proposed fees are inexplicable given that USCIS often directs a majority of requests to the FOIA program for processing. Several commenters questioned how there could be a charge, other than standard FOIA fees, if the information is available via FOIA. Some commenters wrote that a charge of $240 to simply search an index is unacceptably high compared to standard DHS cost and timeframes for FOIA requests because this fee would equal 6 hours of searching the Master Index, when index searches should usually be able to be completed in an hour or less, undercutting the intent of the FOIA.

Response: There is no conflict between the Freedom of Information Act and DHS' operation of the USCIS genealogical program. Nor is USCIS constrained in establishing fees for its genealogical services to the levels established under FOIA. USCIS formerly processed requests for historical records under USCIS' Freedom of Information Act (FOIA)/Privacy Act (PA) program but the demand for historical records grew dramatically. Because the records were not subject to FOIA exemptions, that

process was not the most suitable for genealogy request. *See Establishment of a Genealogy Program;* Proposed rule, 71 FR 20357–20368 (April 20, 2006). The genealogy program was established to relieve the FOIA/PA program from burdensome requests that require no FOIA/PA expertise, place requesters and the Genealogy staff in direct communication, provide a dedicated queue and point of contact for genealogists and other researchers seeking access to historical records, and cover expenses through fees for the program. and, reduce the time to respond to requests. *Id* at 20364. In this final rule, DHS establishes the fees for Forms G–1041 and G–1041A at levels sufficient to recover the estimated full cost of providing access to genealogical records, as provided for by law. *See* INA section 286(t), 8 U.S.C. 1356(t). In this final rule, using the refined methodology described above, DHS estimates the total cost, including applicable indirect costs, of completing Form G–1041, Genealogy Index Search Request, to be $160 when filed online and the total cost of completing a paper Form G–1041, Genealogy Index Search Request, to be $170. Therefore, DHS establishes the fee for Form G–1041 as $160 when filed online and a paper filed Form G–1041 as $170. In this final rule, DHS estimates the total cost, including applicable indirect costs, of completing Form G–1041A, Genealogy Records Request, to be $255 when filed online and the total cost of completing a paper Form G–1041A, Genealogy Records Request, to be $265. Therefore, DHS establishes the fee for Form G–1041A as $255 when filed online and the fee for a paper filed Form G–1041A as $265.

DHS appreciates the commenters' concerns regarding differences between the FOIA process and the genealogical index search and records request processes. Before 2017, the USCIS staff who processed FOIA requests also processed some genealogical records requests, particularly records from 1951 or later. However, USCIS moved the genealogical program to the NRC in 2017. Since that time, dedicated USCIS genealogical staff process all genealogical records requests. Commenters are mistaken in stating that the genealogy program sends appropriately filed genealogy requests through the FOIA process. DHS acknowledges that both FOIA requests and genealogical records requests are subject to review under the Privacy Act of 1974 to ensure that USCIS does not inappropriately release information to third parties. However, USCIS' genealogy program is distinct from the FOIA program and the fees DHS establishes for Forms G–1041 and G–1041A reflects the estimated full cost of only the USCIS genealogy program. DHS declines to make changes in this final rule in response to these comments.

Comment: Numerous commenters stated that USCIS needs to comply with its own retention schedules and send appropriate records to NARA, as required by law. Multiple commenters wrote that requests for documents, such as A-files, visa and registry files, and alien registration forms, should already be at NARA per law and for a minimal cost. Some commenters wrote that NARA could manage records more efficiently, accessed more freely, and reproduced more economically, as preserving and providing access to historical records of the federal government is one of NARA's core missions and areas of expertise. Many commenters requested information on USCIS' plan and timeline to move all the records to NARA for release.

Response: DHS acknowledges that many records in USCIS' possession are due to be transferred to NARA under its existing records retention schedules. USCIS strives to adhere to its records retention schedules and transfer files to NARA expeditiously when records are eligible for transfer. Unfortunately, issues such as incomplete/non-existent file indices or other operational difficulties may inhibit and delay such transfers. USCIS works with NARA to address all such issues and expects to transfer more files to NARA in the near future. DHS agrees that NARA is the appropriate repository for permanently retained records. DHS declines to make any changes in this final rule in response to these comments.

Comment: Many commenters stated that implementation of increased fees should not occur without careful explanation and discussion of alternatives. Several commenters suggested alternatives, including rolling back or reducing fees for record requests, aligning an increase with inflation rates, charging less for family genealogy, allowing NARA to provide free or much lower cost access to the files, digitizing all documents and allowing access on-line, transferring records to an appropriate repository, and/or limiting USCIS holdings to non-historical records. A commenter suggested that all pre-1948 indices and records be copied to NARA, following a federal government census rule that information can be disclosed after 72 years. A few commenters wrote that encouraging requests via electronic submissions for index searches and documents, as stated in the proposed rule, and digitization of records is worthy, as it should result in lower fees, greater efficiency, and ease of use, not the reverse.

Response: DHS appreciates and agrees with the commenters' reasoning that filing index search requests and records request online increases efficiency and, all else equal, reduces the cost to USCIS of providing the associated services. To reflect these reduced costs, in this final rule, DHS implements a fee of $160 for Form G–1041, Genealogy Index Search, when filed online and a fee of $170 for a paper filed Form G–1041. Similarly, DHS implements a fee of $255 for Form G–1041A, Genealogy Records Request, when filed online and a fee of $265 for a paper filed Form G–1041A. The difference between the fee for a form filed online and a form filed on paper represents the estimated reduction in cost to USCIS of providing the relevant service.

DHS also appreciates commenters' suggestions to reduce the fees for record requests. As described above, in response to public comments received on its NPRM, USCIS further refined its cost estimation methodology for the genealogy program. These refinements reduced the estimated cost of the USCIS genealogy program by $0.9 million, leading to a commensurate reduction in the fees for Forms G–1041 and G–1041A from the levels proposed in the NPRM.

DHS evaluated alternatives to increasing the genealogy fees. Unfortunately, alternative approaches such as increasing the fees for Forms G–1041 and G–1041A by the rate of inflation would not enable USCIS to recover the estimated full cost of providing genealogical services. Such an approach would require other immigration benefit requestors to subsidize the USCIS genealogy program. As stated elsewhere, consistent with the beneficiary-pays principle emphasized throughout this final rule, DHS declines to require other immigration benefit requestors to subsidize the USCIS genealogy program.

Comment: A couple of commenters suggested other changes to the proposed fees, including basing the cost on the number of pages and time for staff to prepare the records for transmission as well as using some of the new funds to fix problems that exist with managing records at USCIS (*e.g.,* losing indexes or records, staffing issues). A few commenters wrote that if a search returns no information, then USCIS should not charge a fee or should issue a partial refund.

Response: DHS understands the commenters' suggestions. However,

USCIS must recover the cost of its operations through user fees. DHS is setting the fees for Form G–1041 and G–1041A at levels that represent the estimated full cost to USCIS of providing genealogical services. These fees represent the estimated average cost of completing an index search or a records request. USCIS does not track or differentiate the costs incurred based on the number of pages of documents involved in a request, nor does USCIS track the time each individual genealogy request requires. Charging a la carte fees as suggested would be burdensome to administer because we would need to track the time spent on every request and invoice for payment. That system would not function properly, or efficiently or provide for full cost recovery. DHS declines to adopt the commenters' suggestion to establish the fees for Forms G–1041 and G–1041A using this method.

Furthermore, DHS incurs costs associated with index searches and records requests regardless of whether DHS ultimately identifies relevant records that can be provided to the requestor. Refunding the fee for Form G–1041 and G–1041A that do not result in records or information provided to the requestor would defy the principles of full cost recovery. DHS declines to require other applicants and petitioners to subsidize the cost of processing Forms G–1041 and G–1041A when those requests do not identify information for release to the requestor.

Comment: Several commenters suggested repealing the tax cuts implemented by President Trump that resulted in a substantial budget deficit instead of implementing the proposed increase in fees.

Response: The USCIS genealogy program is funded by user fees, consistent with statutory authority. *See* INA section 286(t), 8 U.S.C. 1356(t). DHS is adjusting the fees for Forms G–1041 and G–1041A to reflect USCIS' estimated full cost of providing the relevant services.

Comment: One commenter said that although immigration fees should not increase, non-immigration related genealogical search fees should increase to recover those costs.

Response: DHS thanks the commenter for their input but declines to adopt the recommendation. DHS is adjusting the fees for Forms G–1041 and G–1041A to reflect USCIS' estimated full cost of providing the relevant services.

4. Form I–90, Application To Replace Permanent Resident Card

Comment: A commenter stated that the $40 reduction would not lead to any real financial relief to LPRs who want to apply for naturalization when the citizenship fees will increase by 83 percent. The commenter stated that, due to long processing times, many citizenship applicants must, for all practical purposes, pay the fees for both Forms I–90 and N–400, which total $1,585, in order to keep green cards up to date. The commenter said it failed to see how this ''miniscule'' reduction in Form I–90 fees helps the agency accomplish its goals.

Response: In this final rule, DHS adjusts the fee for Form I–90, Application to Replace Permanent Resident Card, to $405 when filed online and the fee for a paper filed Form I–90 to $415. Most applicants for Form I–90 must pay the current $455 fee plus an $85 biometric services fee, thus making the total current fees $540. These amounts represent USCIS' estimated full cost adjudicating Form I–90, including the cost of providing similar services without charge to asylum applicants and other immigrants. In setting these fees, DHS intends to achieve full cost recovery for USCIS, as provided in law, while emphasizing the beneficiary-pays principle of user fees. DHS is not motivated by any other consideration in establishing these fees, thus, we did not consider any interplay between the fees for Forms I–90 and N–400 in the NPRM, nor do we in the final rule. The new fee for Form I–90 of $405 when filed online represents a $50 decrease from the previous fee of $455. The new fee for a paper filed Form I–90 of $415 represents a $40 decrease from the previous fee of $455. The new fees include the cost of biometric services, thus making the total decrease $135 when filed online or $125 when filed on paper. These adjustments reflect efficiencies USCIS has achieved in adjudicating Form I–90, thereby reducing the estimated cost of adjudication. The lower fee for Form I–90 when filed online reflects the estimated cost savings to USCIS of receiving the application online. These fee adjustments are intended to ensure that the fees accurately reflect the estimated full cost of adjudication. DHS declines to make any adjustments in response to this comment.

Comment: Another commenter said, by not only increasing the N–400 fee but also reducing the Form I–90 fee, the proposed rule would further discourage Form N–400 applicants from naturalizing and obtaining the full benefits of citizenship for both themselves and our nation. Similarly, another commenter said decreasing the Form I–90 fee while increasing the Form N–400 fee appears to be a conscious policy decision by USCIS to keep LPRs from applying for U.S. citizenship.

Response: DHS acknowledges that this final rule establishes increased fees for Form N–400 ($1,160 if filed online and $1,170 if filed on paper) while reducing the fees for Form I–90 ($405 if filed online and $415 if filed on paper) DHS does not intend to discourage naturalization and is not motivated by any consideration other than achieving full cost recovery while emphasizing the beneficiary-pays principle in establishing these fees. DHS declines to make any changes in this final rule in response to these comments.

Comment: A commenter said that the Form I–90 fee decrease is puzzling considering the current processing and adjudication of the corresponding benefits. The commenter said a simple renewal of a permanent resident card currently takes up to 11 months, wondered why issuing a new card takes that long, and it seems unlikely that these processing times will improve with a decreased fee.

Response: DHS acknowledges that USCIS' processing times for Form I–90 have exceeded it goals. However, USCIS has achieved efficiencies in adjudicating Form I–90 that have reduced the relative cost per adjudication. Thus, in this final rule DHS implements a fee for Form I–90, Application to Replace Permanent Resident Card, of $405 when filed online and a $415 fee for a paper filed Form I–90. DHS appreciates the implication that it may charge more for Form I–90, but to maintain consistency with full cost recovery. DHS declines to make any adjustments in this final rule in response to this comment.

5. Form I–131, Application for Travel Document, Refugee Travel Documents

Comment: A commenter stated that comparing Form I–131, Application for Travel Document, to a passport to set the fee for refugee travel documents is inappropriate because passports are valid for 10 or 5 years versus the 1 year for the Refugee Travel Document. The commenter recommended that refugee travel documents be valid for longer than a year for this reason and because other countries often require that travel documents be valid for 6 months beyond the expected period of stay. Furthermore, the commenter stated that adult U.S. passport renewals do not include a $35 execution fee, implying that DHS should not consider the execution fee in establishing the fee for a refugee travel document.

Response: DHS declines the commenter's request to extend the validity length of refugee travel documents (RTD). DHS did not propose

changes to the validity length of the RTD that is codified at 8 CFR 223.3(a)(2) and, besides the commenter, we do not think the public would think that an increase to the validity length of an RTD would be a subject open for public comment in a rule dealing primarily with fees. The fee for an RTD is linked to the fee for a passport because Article 28 of the 1951 U.N. Convention Relating to the Status of Refugees (''1951 Refugee Convention''), and the 1967 U.N. Protocol Relating to the Status of Refugees ''the 1967 Refugee Protocol''), which, by reference, adopts articles 2 through 34 of the 1951 Refugee Convention, requires state parties to issue documents for international travel to refugees lawfully staying in their territory and that fees charged for such documents shall not exceed the lowest scale of charges for national passports. *See* United Nations Protocol Relating to the Status of Refugees, Jan. 13, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 1967 Refugee Protocol. Consistent with past practice, DHS is increasing the fee for Form I–131, Application for Travel Document, when requesting a refugee travel document by $10, the amount of increase in the cost of a U.S. passport to $145 for adults and $115 for children. However, the term of an approved RTD is not related to that of a passport, and it will not be changed in this rule.

6. Form I–131A, Application for Travel Document (Carrier Documentation)

Comment: A few commenters opposed the fee increase for Form I–131A. One of these commenters questioned why the fee is being increased by $435, or 76 percent, when USCIS would only have to reimburse the Department of State (DOS) with $385 to replace lost documents. A commenter asked if DHS had considered the effect of this ''massive'' fee increase on a vulnerable population. Some commenters claimed DOS would not have to be reimbursed if USCIS international offices had not been closed.

Response: DHS acknowledges that the $1,010 fee established in this final rule for Form I–131A, Application for Travel Document (Carrier Documentation), represents a substantial increase of $435 relative to the previous fee. Consistent with full cost recovery and the beneficiary-pays principle emphasized throughout this final rule, the new fee of $1,010 represents USCIS' estimated full cost of adjudicating Form I–131A, including the cost of providing similar services to asylum applicants and other immigrants without charge, at the time of USCIS' FY 2019/2020 fee review.

Before Form I–131A was published, USCIS had completion rate data specific to providing carrier boarding documents. However, DHS did not use that completion rate data to establish a separate Form I–131A fee when it published Form I–131A. Instead, DHS set the Form I–131A fee to be the same as for other travel documents. Establishing Form I–131A and requiring fee payment using *Pay.gov* standardized requirements that were somewhat different or informal before the creation of Form I–131A. While not discussed in the FY 2016/2017 fee rule, DHS believed that the standardized Form I–131A might reduce the completion rate, and the cost, of the workload. When USCIS conducted its FY 2019/2020 fee review, it separated completion rate data for Forms I–131 and I–131A and proposed separate fees. At this point, Form I–131A existed for several years, so the completion rate data reflect the standardized process. Thus, we are setting a more accurate fee to reflect the full cost of adjudicating Form I–131A. The final fee for Form I–131A reflects the cost of USCIS processing, including the costs of USCIS reimbursement to DOS for action taken on behalf of USCIS. At the time of its FY 2019/2020 fee review, USCIS did not yet have sufficient information regarding office closures and the transfer of responsibilities between USCIS and the DOS to accurately reflect anticipated changes in the average cost of adjudicating Form I–131A. Thus, any potential cost savings related to the reduction in the number of offices USCIS maintains abroad are not included in this final rule. USCIS will incorporate all newly available information in its next fee review.

Commenters who claimed that USCIS would not need to reimburse the Department of State had it maintained its previous international presence are mistaken. USCIS reimburses DOS for all work performed on its behalf. This includes work performed on behalf of USCIS in locations where USCIS is not present and in locations where USCIS has an office. As USCIS has never had a presence in all countries where an individual may need to file Form I–131A, DOS has always adjudicated some Forms I–131A on behalf of USCIS. Altering USCIS's international presence did not change this operational necessity. DHS declines to make any changes in this final rule in response to these comments.

Comment: A commenter wrote that DHS failed to apprise stakeholders of its reasoning for the substantial increase to the Form I–131A fee. The commenter added that there is no justification for charging LPRs for the privilege of returning to their homes, jobs, and families.

Response: DHS disagrees with the commenter's assertion that DHS failed to explain or justify the fee increase for Form I–131A. In the NPRM, DHS explained that in the FY 2016/2017 fee review, USCIS calculated a single fee for Forms I–131 and I–131A. *See* 84 FR 62306 (Nov. 14, 2019). DHS clarified that in the FY 2019/2020 fee review, USCIS calculated a separate fee for Form I–131A to reflect differences between Form I–131 and Form I–131A, including the fact that Form I–131A is adjudicated abroad, where costs are typically greater than the cost of adjudicating an equivalent form domestically. This differentiation between Form I–131 and Form I–131A is consistent with the beneficiary-pays principle of user emphasized throughout the NPRM and this final rule, as it ensures that the fee an applicant pays better reflects the estimated full cost to USCIS of adjudicating the application. DHS declines to make changes in this final rule in response to the comment.

Comment: One commenter claimed these new fees are an attempt prevent LPRs from becoming U.S. citizens.

Response: DHS rejects the claim that its decision to adjust the fee for Form I–131A to $1,010 is motivated by any consideration other than USCIS achieving full cost recovery. The fee of $1,010 represents USCIS' estimated full cost of adjudicating Form I–131A, including the cost of providing similar services to asylum applicants and other immigrants without charge, at the time of USCIS' FY 2019/2020 fee review. DHS declines to make changes in this final rule in response to this comment.

7. Form I–192, Application for Advance Permission To Enter as a Nonimmigrant

Comments: A commenter said it did not oppose a fee increase associated with Form I–192 but wrote that the fee increase is quite high for an application fee that, if approved, grants entry to the U.S. for a relatively short time. The commenter said the proposal would cost Canadian citizens $1,400 on average and questioned whether USCIS was considering increasing the duration of authorized presence in the U.S. to a minimum of 5 years and a maximum of 10 years.

Many commenters suggested that the $485 or 52 percent increase for fees related to visa applications for victims of crime and victims of trafficking in persons is ''outrageous.'' A commenter wrote that the proposal to raise the Form I–192 fee defeats the purpose of

the U-visa, which protects victims of crime. The commenter wrote that raising fees to make this protection inaccessible to victims of crime runs counter to Congress' intent to provide protection to such victims for ''compelling humanitarian and public policy/safety reasons.'' Another commenter stated that the $485 increase for Form I–192 was particularly steep for U nonimmigrant status petitioners who often have medical bills related to being victims of crimes and who may not work before the submission of the application.

A few commenters said that raising the fee for Form I–192 may make it harder, if not impossible, for survivors of crime to petition for U nonimmigrant status. One commenter suggested that because survivors of domestic violence often have suffered financial abuse and survivors of human trafficking often have suffered financial exploitation, they will likely be unable to pay the fees.

A commenter indicated that the increase in the filing fee for Form I–192, combined with the elimination of a fee waiver for this form, would effectively eliminate a statutorily available waiver of inadmissibility for many applicants and prevent those inadmissible immigrants from obtaining status.

Multiple commenters stated that the NPRM ignores the fact that many applicants for survivor-based relief must also file ancillary forms that do have fees, including Form I–192.

Response: DHS acknowledges a considerable increase of the fee for Form I–192, Application for Advance Permission to Enter as a Nonimmigrant. The new fee established in this final rule represents the estimated full cost of adjudication. [85] *See* INA section 286(m), 8 U.S.C. 1356(m). As with other USCIS fees, the fee amount is derived from the cost to USCIS of providing the relevant service; the fee is not related to the duration of the benefit received. Therefore, DHS did not evaluate potential changes in the duration of authorized presence as part of this final rule.

DHS recognizes the commenters' concerns regarding vulnerable populations, particularly applicants for T nonimmigrant status and petitioners for U nonimmigrant status, who use Form I–192. Consistent with its commitment to preserve access to required fee waivers for populations identified in statute, the fee for Form I–192 will remain waivable for those seeking T and U nonimmigrant status, provided that those applicants file Form I–912, Request for Fee Waiver and demonstrate that they meet the requisite criteria for approval. *See* 8 CFR 106.3. DHS believes that maintaining access to fee waivers for these populations mitigates any concerns that the fee increase for Form I–192 would limit access to protections.

DHS declines to make changes in this final rule in response to these comments.

Comment: Another commenter stated that most of its clients who are pursuing T or U nonimmigrant status must file supplemental forms that often have very high fees, including Form I–192. The commenter indicated that most of the issues disclosed require very little, if any, further adjudication from USCIS, and, therefore, the fee is unnecessary and unfair.

Response: USCIS data also indicates that most aliens pursuing T and U nonimmigrant status must file Form I–192. Those aliens may request a fee waiver. DHS disagrees that Form I–192 requires little effort by USCIS. USCIS evaluates the evidence regarding the inadmissibility charges present (immigration violations, criminal issues, potential fraud, etc.) and the alien's responses and evidence provided to address those charges. Depending on the number of inadmissibility grounds and complexity of the individual filing, those adjudications may require considerable time and resources.

In many cases, aliens file Form I–192 with U.S. Customs and Border Protection, which adjudicates those filings. In the NPRM, DHS explained that USCIS had incorporated cost and workload volume information from CBP into its cost model to determine a single fee for Form I–192 that reflects the estimated full average cost of adjudicating Form I–192 for CBP and USCIS. *See* 84 FR 62321.

DHS declines to make changes in this final rule in response to the comment.

Comment: One commenter stated that Form I–192 was created to encourage eligible individuals to complete the immigrant visa process abroad, promote family unity, and improve administrative efficiency.

Response: Form I–192, Application for Advance Permission to Enter as a Nonimmigrant, is not part of the immigrant visa process. It appears that the commenter may have confused Form I–192 with Form I–601A, Application for Provisional Unlawful Presence Waiver. DHS declines to make changes in this final rule in response to the comment.

8. Form I–193, Application for Waiver of Passport and/or Visa

Comment: One commenter said that the proposed 377 percent fee increase for Form I–193 is ''startling.'' Another commenter stated that the 377 percent increase is ''outrageous'' given the time and effort required to fill out and adjudicate the form with just one page of content. The commenter also stated that a small number of applicants use the form to travel, usually in extenuating circumstances beyond the control of the applicant. As such, it is unlikely that there would be a high incidence of fraud or abuse to justify such a fee increase. The commenter also said that it is unreasonable to expect applicants to pay the $2,790 fee on the spot.

Response: DHS acknowledges a substantial increase in the fee for Form I–193. In its NPRM, DHS explained that USCIS incorporated cost and workload volume information from CBP into its ABC model to determine a single fee for Form I–193 that reflects the estimated full average cost of adjudicating Form I–193 for CBP and USCIS. *See* 84 FR 62321. CBP adjudicates most filings of Form I–193 and incurs a majority of the costs associated with adjudication. As documented in the NPRM, in FY 2017 CBP incurred an estimated $18.0 million in costs to adjudicate filings of Form I–193. This final rule establishes the fee for Form I–193 at a level sufficient to recover the full average estimated cost of adjudication for both USCIS and CBP.

DHS declines to make changes in this final rule in response to these comments.

9. Form I–290B, Notice of Appeal or Motion

Comment: A commenter stated that increasing the fee for Form I–290B places U-visa petitioners at risk of not being able to exercise their due process rights and threatens their ability to appeal or reopen their petition. Another commenter recommended that USCIS fully refund the filling fee for Form I–290B if the agency determines, after adjudicating, that the underlying petition denial was the result of clear USCIS error.

Response: DHS recognizes the importance of maintaining access to Form I–290B to ensure that individuals have the ability to appeal or file a

[85] In accordance with INA section 286(m), 8 U.S.C. 1356(m), USCIS total costs include the cost of similar services provided without charge to asylum applicants and other immigrants, which encompass fee exemptions, waivers, and setting fees below the amount suggested by the model. Throughout the remainder of this rule, when USCIS refers to the estimated full costs of adjudication, in the interest of the economy of words and improving readability, that term includes the cost of services provided without charge to asylum applicants and other immigrants in accordance with the INA.

motion to reopen or reconsider a decision. In recognition of this, DHS deviated from the beneficiary-pays principle to transfer some of the costs for adjudicating Form I–290B to all other fee payers. The proposed fee for Form I–290B was far below the estimated cost to USCIS of processing I–290B filings, an increase of only 5 percent. *See* 84 FR 62293. In this final rule, DHS adjusts the fee for Form I–290B from $675 to $700, an increase of approximately 3.7 percent. Furthermore, in the NPRM, DHS clarified that Form I–290B would remain fee-waivable for VAWA self-petitioners, applicants for T nonimmigrant status and petitioners for U nonimmigrant status, petitioners, and T nonimmigrant status applicants. *See* 84 FR 62297. DHS believes that maintaining access to fee waivers for vulnerable populations mitigates any concerns that the fee increase for Form I–290B would limit access for protected categories of individuals.

In general, USCIS does not refund a fee or application regardless of the decision on the application. There are only a few exceptions, such as when USCIS made an error which resulted in the application being filed inappropriately or when an incorrect fee was collected.

DHS declines to make changes in this final rule in response to these comments.

10. Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant

Comment: Multiple commenters opposed the proposed fee increase for Form I–360, stating that it would harm the ability of religious organizations to petition for their workers. Commenters stated that this would impact the non-profit organizations associated with these religious workers and the communities that they support.

Response: DHS recognizes the importance of maintaining access to Form I–360 for individuals and organizations. In recognition of this, DHS proposed in the NPRM to deviate from the beneficiary-pays principle, transfer some of the costs for adjudicating Form I–360 to all other fee payers, and hold the fee for Form I–360 far below the estimated full cost to USCIS of processing I–360 petitions, proposing to increase the fee by only 5 percent. *See* 84 FR 62293. The fee to recover full cost would have exceeded $5,500.[86] Such a high fee would place an unreasonable burden on petitioners. In this final rule, DHS adjusts the fee for Form I–360 from $435 to $450, an increase $15 or approximately 3.4 percent as discussed in the proposed rule. DHS declines to make changes in this final rule in response to these comments.

11. Form I–485, Application To Register Permanent Residence or Adjust Status

a. Debundling Interim Benefits

Comment: Multiple commenters wrote that the proposed debundling of interim benefits led to excessive fees. Many commenters stated that the steep increase in fees, along with the elimination of waivers will make adjustment of status unattainable for many low-income and working-class people. A few commenters said this change would create a catch-22 where immigrants with low income can afford to apply to adjust but cannot afford to seek employment authorization. A commenter stated that the proposed change would force highly skilled workers to pay $1,075 more for dual-intent visas than H–1B or L–1 dual-visa applicants. Other comments wrote that charging fees for concurrently filed ancillary Forms I–765 and I–131 with Adjustment of Status applications, along with renewals, would create a perverse incentive for USCIS to delay interim benefit and Form I–485 adjudications in order to receive additional funds. A few commenters wrote the proposed changes would force immigrants out of the legal immigration system. Other commenters added that this change could contribute to family separation. A commenter claimed USCIS ignores the fact that children will need to have a travel authorization, and therefore will still need to file Form I–131 for advance parole. One commenter stated this change will deny immigrants the path to citizenship. Another commenter said USCIS' purpose is an attempt to discourage families from being able to afford to apply for legal permanent residence.

Response: DHS acknowledges the total cost increase for adjustment of status applicants who request interim benefits. The fees DHS establishes in this final rule accurately reflect the estimated full cost of adjudicating those applications, including the cost of providing similar services to asylum applicants and other immigrants without charge. USCIS did not realize the operational efficiencies envisioned when it introduced bundled filings for interim benefits and adjustment of status applications, which was implemented to address the same commenter accusation of a revenue incentive. *See* 72 FR 4894 (stating, ''This creates the perception that USCIS gains by processing cases slowly.''). USCIS has no data to indicate that it takes less time to adjudicate interim benefits bundled with an I–485 than it does to adjudicate standalone I–131 and I–765 filings. Therefore, DHS declines to adopt the commenters' recommendation to continue bundled adjustment of status filings; this final rule eliminates bundling.

Individuals applying for adjustment of status are not required to request a travel document or employment authorization. With bundled interim benefits, individuals may have requested interim benefits that they did not intend to use because it was already included in the bundled price. Debundling allows individuals to pay for only the services actually requested. Thus, many individuals may not pay the full combined price for Forms I–485, I–131, and I–765.

DHS and USCIS are not profit-seeking entities. Neither benefit from delays in Form I–485 adjudications that may result in individuals filing for additional interim benefits. USCIS would use any revenue received to fund immigration adjudication services and minimize future fee increases.

After adjusting the results of the FY 2019/2020 fee review to account for removal of the ICE transfer, exclusion of the DACA renewal fee, and other changes, DHS establishes the fee for Form I–131, Application For Travel Document, as $590 and the fee for Form I–765, Application for Employment Authorization as $550.

b. Form I–485 Child Fee

Comment: Some commenters opposed this provision because of its effect on families and children. A commenter said this NPRM would burden families who would be required to pay an increased total cost for multiple concurrent adjustments and create barriers for low-income and working-class individuals. Another commenter said this change would have a negative effect of children and youth, either delaying their ability to unite with family or deterring it completely.

Response: DHS acknowledges a substantial increase in the fee for Form I–485 for child applicants who are under 14 years old and are filing with at least one parent. Consistent with the beneficiary-pays principle of user fees emphasized throughout this final rule, DHS adjusts the fee for all Forms I–485, except those filed by refugees, to $1,130 to reflect the estimated full cost of adjudication. This fee represents an increase of $380 relative to the previous fee of $750. DHS declines to make

[86] *See* the FY 2019/2020 Immigration Examinations Fee Account Fee Review Supporting Documentation in the docket for more information.

changes in this final rule in response to these comments.

Comment: A commenter cited USCIS' justification for removal of the reduced fee for children because processing them is not distinguished by age. The commenter stated that, if the completion rate is influenced by time to adjudicate (*e.g.,* conduct background checks), this would likely be shorter for children. The commenter said USCIS has not provided data or analysis to address this concern, and that this an extreme hike for a small portion of applications.

Response: USCIS used the data available at the time when it conducted the FY 2019/2020 fee review to determine the fee for Form I–485. USCIS does not have data to support the commenter's contention that that the time required to adjudicate a Form I–485 (*i.e.,* the completion rate) is less for a child's application than for an adult's application, because USCIS data does not separate Form I–485 adjudications by the age of the applicant. *See* 84 FR 62305 and 81 FR 73301. Therefore, USCIS calculated the estimated average cost of adjudicating all Forms I–485. In this final rule, DHS adjusts the fee for all Forms I–485, except those filed by refugees, to $1,130 to reflect the estimated full cost of adjudication.

DHS declines to make changes in this final rule in response to the comment.

c. Form I–485 Reduced Fee for Asylees

Comment: Multiple commenters highlighted the cost to asylum applicants and asylees of filing Form I–589, Form I–765, and if granted asylum, Form I–485 to adjust status. A commenter stated, ''Regarding asylee Form I–485 applications, this proposed rule would cause a significant harm to be placed on those who have come to the United States after fleeing persecution in their country of origin. After waiting years for an asylum interview and sometimes more than a year after that interview for a grant of asylum, an asylee should not have any additional obstacles placed on their path to obtaining a green card, which they will use to show their lawful presence and employment authorization. This proposed change is an unnecessary impediment to asylees' integration in our society and economy.'' Another commenter wrote that the elimination of fee waivers for adjustments of status, including asylees, runs counter to the intent of Congress and will create a significant barrier that will prevent many asylees from regularizing their immigration status. Another commenter reiterated that the high fees for Form I–485 and ancillary benefits and the elimination of fee waivers will make adjustment of status unattainable for many low-income and working class people, particularly asylees. The commenter stated that increasing the overall cost of adjustment of status would undermine family unity and prevent many low-income individuals from becoming permanent residents.

Response: DHS recognizes the additional burden placed on asylum applicants with the introduction of a $50 fee for Form I–589 in this final rule. Therefore, DHS establishes in this final rule a reduced fee of $1,080 for Form I–485 when filed by an individual who has been granted asylum after having paid the $50 fee for Form I–589 as a principal applicant. *See* new 8 CFR 106.2(a)(16)(ii). The reduced fee will be available to otherwise qualifying individuals regardless of whether USCIS or EOIR ultimately granted the asylum claim. DHS reiterates, as it did in the NPRM and this final rule, that DHS does not intend to deter asylum applications with the introduction of the $50 fee for Form I–589. DHS believes that effectively refunding the Form I–589 fee for approved asylees when they adjust will ensure that individuals with legitimate asylum claims do not experience a net increase in cost through the time they adjust status to that of lawful permanent resident as a result of the new fee for Form I–589.

DHS provides in this final rule that only one Form I–485 reduced fee filing will be available per Form I–589 fee paid. This approach ensures that USCIS will only provide a single $50 discount for each Form I–589 filing that ultimately results in a grant of asylum, meaning that the total value of fee reductions available to Form I–485 applicants will match the value of Form I–589 fees collected from those applicants. DHS makes the reduced fee available only to the principal applicant on an approved Form I–589 for which the $50 fee was paid. The reduced fee Form I–485 may not be transferred from the principal applicant to derivatives listed on the same Form I–589 or to other derivative beneficiaries. If DHS provided all individuals granted asylum the opportunity to file Form I–485 with a reduced fee, the ultimate value of the fee reductions could exceed the value of the revenue generated from the Form I–589 fee, resulting in a net cost to USCIS that must be passed on to other fee payers. Similarly, DHS provides that an individual qualifying for the Form I–485 reduced fee may file Form I–485 only once utilizing the reduced fee. If USCIS accepts a Form I–485 filed with the reduced fee and subsequently denies the application, that applicant may reapply as permitted but will not qualify for the reduced fee on any subsequent filing. This ensures that the value of the fee reductions will not exceed the value of the Form I–589 fees paid by the affected applicants. If USCIS rejects a Form I–485 filed by an asylee with a reduced fee, the applicant will not have used their single reduced fee filing, and the applicant may reapply and qualify for the reduced fee.

DHS did not change its cost projections, volumes forecasts, or revenue anticipated from Form I–485 in this final rule in response to the introduction of the reduced fee for Form I–485. DHS does not anticipate receiving any Form I–485 filings during the FY 2019/2020 biennial period for this fee rule that are eligible for the reduced fee. This reflects the fact that asylum applicants will begin to pay the $50 fee for Form I–589, a pre-requisite to qualify for the reduced fee Form I–485, as of the effective date of this final rule. Those asylum applicants must have their claims adjudicated and approved before becoming eligible to adjust status one year after their asylum claim was granted. Thus, DHS does not anticipate any reduced fee Form I–485 filings until more than 1 year after the effective date of this final rule. Furthermore, because DHS anticipates no reduced fee filings during FY 2019/2020, USCIS anticipates no costs during FY 2019/2020 associated with charging less than the estimated full cost of adjudication of Form I–485 that must be reallocated to other fee-paying applicants. Therefore, no fees increase in this final rule as a result of the introduction of the reduced fee Form I–485, and the fee for Form I–485 would remain $1,130 even in the absence of the reduced fee. USCIS will evaluate the Form I–485 reduced fee in future fee reviews using all available data at that time, consistent with its evaluation of all other fees.

d. Other Form I–485 Comments

Comment: A commenter said USCIS' proposed changes to Supplement A to Form I–485 have no justification. The commenter said USCIS proposes removing from the Supplement A form the instruction that there is no fee for certain persons. The commenter stated that USCIS is making it even more difficult for applicants to identify the few instances where they are not obligated to pay large fees. The commenter wrote that the change would obfuscate the fact that some individuals are exempted from paying the fee by statute, leading fewer people to apply because they would erroneously believe they must pay the fee. The commenter

also wrote that the provision creates a way for USCIS to re-investigate granted adjustments under INA section 245(i), 8 U.S.C. 1255(i), going back more than 20 years, resulting in potentially stripping lawful permanent residents of their status.

Response: DHS erroneously stated in the NPRM that it proposed deleting text from Form I–485, Supplement A, related to those categories of adjustment applicants who are not required to pay the $1,000 sum. No such text appears on the form itself, but rather is found in the instructions. DHS will retain the language concerning the exceptions from paying the INA section 245(i), 8 U.S.C. 1255(i) sum in the Instructions for Form I–485 Supplement A, and in the rule.

Comment: A commenter recommended phasing in the increased Form I–485 fee over several years. A commenter recommended that the validity period of employment authorization and advance parole for dependent children also be increased from 1 to 2 years.

Response: In this final rule, DHS adjusts the fee for all Form I–485 applications, except those filed by refugees, to $1,130 to reflect the estimated average full cost of adjudication. DHS declines to adopt the commenter's suggestion of phasing in the increased fee over time, because USCIS would not be able to achieve full cost recovery during the phase-in period. DHS also declines to adopt the recommendation to extend the validity period of employment authorization and advance parole for dependent children.

Comment: A commenter opposed deleting language regarding 245(i) penalty fee exemptions from the regulations.

Response: In this final rule, DHS includes language in 8 CFR 106.2(a)(17) detailing the categories of applicants for adjustment of status under INA section 245(i), 8 U.S.C. 1255(i) who are not required to submit the $1,000 sum per the statute.

Comment: One commenter said that the increased fee for the Form I–485, when considered in combination with the separate fees for the Form I–765 and Form I–131, will have negative impacts on industries that use the Employment-Based Third Preference Unskilled Workers (Other Work) category, such as meat/poultry processers, home healthcare providers, hospitality/lodging employees.[87] The commenter assumes that the rate of pay for workers in those industries is not as high as in other fields and the fees represent a larger percentage of those worker's wages.

Response: The NPRM emphasizes the beneficiary-pays principle. DHS believes that a single fee for Form I–485 will reduce the burden of administering separate fees and better reflect the estimated full cost of adjudication. By making the filing fee equal for all applicants, whether they are family-based or employment-based, the cost of adjudication for the benefit of each individual applicant will be sustained by that applicant, and other applicants are not burdened with subsidizing the cost of adjudication. In this final rule, DHS adjusts the fee for all Form I–485 applications, except those filed by refugees and certain Special Immigrants, to $1,130 to reflect the estimated average full cost of adjudication. *See* 8 CFR 106.2(a)(17)(iii).

Requiring fees paid for each renewal of interim benefits, such as employment or travel authorization, also aligns with the beneficiary-pays principal by preventing other applicants from being burdened with fees for benefits they do not wish to receive or subsidizing fees for benefits for which they do not apply. The fee increases associated with Form I–485 and interim benefits are not exclusive to employment-based applicants and therefore are not adjusted based on the filing category or rate of pay of workers.

DHS declines to make changes in this final rule in response to the comment.

12. Form I–526, Immigrant Petition by Alien Investor

Comment: A commenter said the fee review for EB–5 forms, such as Form I–526, failed to meet the objectives of ensuring USCIS has adequate resources and to recover the full operating costs of administering the national immigration benefits system. The commenter said the fee increase for Form I–526 was too low to balance the workload increase reported by USCIS and would not reverse the current ''critically inadequate'' service associated with this form. The commenter also said the fee increase was too low given that this fee is paid by affluent immigrant investors ''who value time.'' The commenter cited USCIS data to demonstrate that the processing time associated with Form I–526 had increased since 2016 and wrote that time spent processing this application was likely to increase due to the EB–5 Immigrant Investor Program Modernization regulation that went into effect on November 21, 2019. *See* 84 FR 35750. The commenter wrote that the 9 percent increase in the fee for this form suggests that USCIS considers the 3–4-year processing time for this form to be acceptable. However, the commenter also wrote that USCIS' projected workload volume for Form I–526 was ''three times too high'' considering data from 2018–2019. The commenter said the EB–5 Immigrant Investor Program Modernization regulation would dampen demand for use of this form and suggested that the number of form receipts for 2020 would be less than the 5,000 average annual receipts from 2018–2019. The commenter wrote that due to this overestimation of the number of Form I–526 receipts, the fee analysis ''overestimates revenue and underestimates receipt fees needed to cover costs.'' The commenter said that if the number of Form I–526 receipts is closer to 4,000, the $16 million in revenue would not provide enough financial resources to cover costs and provide adequate service. The commenter suggested that USCIS had failed to consider the future workload associated with ''thousands'' of Form I–526 submissions that are still pending from previous years in its fee analysis, and that the agency should account for ''an environment of long backlogs and falling receipts'' in revising the fee for this form. The commenter reiterated that the current processing time for this form was far too long and stated that the agency should consider targeting more reasonable processing times for this form, such as the 240-day target recently suggested in the U.S. Senate. Another commenter wrote that USCIS had overestimated the workload volume associated with Form I–526.

Response: In its fee reviews, USCIS evaluates the estimated cost of processing all incoming workloads to determine the fees necessary to recover full cost. USCIS does not consider the cost of processing existing pending workloads in setting fees, as setting fees on that basis would place the burden of funding the processing of previously received applications and petitions on future applicants. Thus, DHS declines to include the cost of all pending Form I–526 workload in this analysis and final rule.

DHS acknowledges that USCIS' volume projections for Form I–526 in the FY 2019/2020 fee review substantially exceed the receipts in FY 2018 and FY 2019. As with other forms, USCIS created its volume projections for Form I–526 using the best information available at the time it conducted the FY 2019/2020 fee review. The commenter is

[87] See USCIS, *Employment-Based Immigration: Third Preference EB–3,* available at *https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-third-preference-eb-3* (last reviewed/updated March 27, 2020).

correct in stating that if USCIS has overestimated the receipt volume for Form I–526, then it has also overestimated the amount of revenue that the revised Form I–526 fee will generate. Such a scenario would also imply that USCIS had overestimated the total amount of costs to be recovered, as fewer staff would be necessary to adjudicate the newly received Forms I–526. However, it is possible that, as the commenter contends, if USCIS overestimated the anticipated volume of Form I–526 filings, it underestimated the Form I–526 fee that would be necessary to recover the full cost of adjudication. USCIS will review and reevaluate all fees during its next biennial fee review. If USCIS determines that the fee is insufficient to recover full cost, DHS may adjust the fee through a future rulemaking.

DHS acknowledges that current processing times for Form I–526 extend far beyond its processing time goals. DHS believes that adjusting USCIS fees to provide for full cost recovery constitutes the best means of addressing resource constraints that have led to growth in pending caseloads. DHS declines to make changes in this final rule in response to the comment.

Form I–539, Application To Extend/Change Nonimmigrant Status

Comment: A commenter opposed the proposed fee increase for Form I–539 because it would pose a financial burden to clients who are survivors of violence and U nonimmigrants.

Response: DHS acknowledges that this final rule increases the fee for Form I–539 to $390 if filed online and $400 if filed on paper. However, DHS disagrees with the commenter's assertion that the fee increase for Form I–539 would unduly burden U nonimmigrants. In its NPRM, DHS clarified that those seeking or holding T and U nonimmigrant status would remain eligible to apply for fee waivers for Form I–539 and other associated forms. *See* 84 FR 62297. DHS believes that maintaining access to fee waivers for these vulnerable populations mitigates any concerns that the increase in the fee for Form I–539 would limit access for protected categories of individuals. DHS declines to make changes in this final rule in response to the comment.

13. Form I–589, Application for Asylum and Withholding of Removal Fee

Comment: Multiple commenters generally opposed charging asylum applicants a fee. Commenters stated:

- DHS should not expect people fleeing harm and in need of protection to pay a fee.
- These individuals often have few economic resources, the few resources that they do have are necessary for survival.
- They should not endure the added burden of a fee to gain asylum and other immigration services.
- Asylum seekers joining family in the United States are often financially dependent on their family members, and an asylum fee would create an additional burden on their families.
- Asylum should not be based on an applicant's socio-economic status.
- Fees would be detrimental to survivors of torture, impacting their mental health and well-being by obstructing access to live and work in the United States.
- A $50 fee would further endanger asylum seekers' health and safety.
- DHS should consider asylum seekers' humanity and suggested that the rule dehumanized the issue.
- Commenters rejected the notion that those seeking asylum represent a cost that the nation must recoup.
- If the revenue from these fees were being used to assistance to those seeking asylum, they would be less opposed to the fee increases.
- DHS did not provide adequate justification for charging an asylum fee.

Response: DHS acknowledges the humanitarian plight of legitimate asylum seekers. In recognition of the circumstances of many of these applicants, DHS establishes a $50 fee for Form I–589 for most applicants (unaccompanied alien children in removal proceedings who file Form I–589 with USCIS are not required to pay the fee). DHS expects that charging this fee will generate some revenue to offset adjudication costs, but DHS is not aligning the fee with the beneficiary-pays principle, because the estimated cost of adjudicating Form I–589 exceeds $50. As DHS stated in its NPRM, it does not intend to recover the full cost of adjudicating asylum applications via the Form I–589 fee. *See* 84 FR 62318. Instead, DHS establishes a $50 application fee to generate some revenue to offset costs. DHS will recover the additional costs of asylum adjudications (via cost reallocation) by charging other fee-paying applicants and petitioners more, consistent with historical practice and statutory authority. *See* INA section 286(m), 8 U.S.C. 1356(m). DHS does not intend to discourage meritorious asylum claims or unduly burden any applicant, group of applicants, or their families.

In the NPRM, DHS provided substantial justifications for establishing an asylum application fee. DHS explained that USCIS has experienced a continuous, sizeable increase in the affirmative asylum backlog over the last several years. DHS explored ways to alleviate the pressure that the asylum workload places on the administration of other immigration benefits and determined that a minimal fee would mitigate fee increases for other immigration benefit requests. *See* 84 FR 62318. DHS estimated the cost of adjudicating Form I–589 and considered asylum fees charged by other nations. DHS also considered the authority provided in INA section 208(d)(3), various fee amounts, whether the fee would be paid in installments over time or all at once, if the fee would be waivable, and decided to establish a minimal $50 fee.

As stated in the NPRM, DHS believes that the fee can be paid in one payment, would generate revenue to offset costs, and not be so high as to be unaffordable to an indigent applicant. *See* 84 FR 62319. Further, DHS has provided the advance notice of and the reasons for the change in its longstanding policy as required by the APA. This change will only apply prospectively to asylum applications filed after the effective date of this final rule.

Nevertheless, as a result of the concerns raised by commenters, DHS is providing in this final rule that Form I–485 filed in the future for principal asylum applicants who pay the Form I–589 fee of $50 and are granted asylum and apply for adjustment of status will pay a fee that is $50 less than other Form I–485 filers. *See* new 8 CFR 106.2(a)(17)(ii). DHS will provide only one reduced fee per Form I–589 filing fee paid. If a Form I–485 filing with a $50 reduced fee is denied, USCIS will not accept future discounted I–485 filings from the same applicant. That is because DHS anticipates a one-to-one relationship between the fees collected and discounts provided. If an approved principal asylee were to file multiple Forms I–485 with the reduced fee, it could illogically result in the $50 fee for Form I–589 causing a net revenue loss to USCIS. DHS will not deviate from its primary objective of this final rule to set fees at a level necessary to recover estimated full cost by allowing multiple I–485 reduced fee filings. Unaccompanied alien children in removal proceedings who filed Form I–589 with USCIS, and thus did not pay the $50 Form I–589 fee, are not eligible to file Form I–485 with the reduced fee.

Comment: Additional commenters on the asylum fee generally opposed the

proposed fees for asylum indicating that the proposal runs counter to U.S. ideals, and stated:

• The United States has no precedent in international law to charge for asylum, the fee does not support the humanitarian interests of the United States, would be against the values of the United States and Congressional intent, and our moral and constitutional obligation to provide sanctuary to those who need it.

• The United States would become one of only four countries to charge such a fee if DHS implemented the proposal.

• Processing asylum requests is a fundamental right guaranteed by international agreements to which the United States adheres.

• The United States should endeavor to resolve, rather than exacerbate, humanitarian crises and the U.S. is required under domestic and international law to provide refuge to people fleeing violence and seeking protection in the United States.

• Significant changes to the conditions of asylum services should be carried out by Congress, and not through administrative processes.

• Charging a fee for asylum requests is discrimination and an attempt to block legal immigration of people of color and/or non-wealthy backgrounds.

• The right to seek and to enjoy asylum from persecution is enshrined in the United Nations Universal Declaration of Human Rights of 1948 and supported by the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

• The United States is obligated to accept asylum seekers under international and domestic law, and therefore should not refuse asylum seekers because of an inability to pay the fee. Thus, the proposed asylum fees would be a dereliction of legal duty and violate the 1951 Refugee Convention, which prevents signatory countries from taking any action that would ''in any matter whatsoever'' expel or return a refugee to a place where his or her life or freedom would be threatened.''

• The creation of an asylum fee suggests that the United States will shy away from international problems rather than confront them.

• One commenter said that under the Universal Declaration of Human Rights, the United States is obligated by international law to accept refugees and accord them certain rights and benefits, such as access to courts.

• A fee for asylum violates the INA and that Congress did not intend to authorize fees for asylum applicants, but instead intended that the cost services to asylum seekers should be paid by fees from the IEFA.

Response: DHS disagrees with commenters' assertions that an asylum fee violates the INA, that there is no precedent in international law for charging a fee for asylum applications, and that charging a fee is discriminatory and against the values, morals, and Constitution of the United States. DHS also disagrees that the United States is required to provide asylum to those fleeing violence and seeking protection, as the United States' non-refoulement obligations are met by the statutory withholding of removal provisions at INA section 241(b)(3). Asylum is a discretionary benefit available to those who meet the definition of a refugee and who are not otherwise ineligible.

Although the United States is a party to the 1967 U.N. Protocol Relating to the Status of Refugees (''1967 Refugee Protocol''), which incorporates Articles 2 through 34 of the 1951 U.N. Convention Relating to the Status of Refugees (''1951 Refugee Convention''), the Protocol is not self-executing. *See INS* v. *Stevic,* 467 U.S. 407, 428 n.22 (1984). The asylum statute at INA section 208 and withholding of removal statute at INA section 241(b)(3) constitute the U.S. implementation of international treaty obligations related to asylum seekers. The asylum provisions of the INA do not preclude the imposition of a filing fee for asylum applications. INA section 208(d)(3), 8 U.S.C. 1158(d)(3) specifically authorizes the Attorney General to impose a fee for the consideration of an asylum application that is less than the estimated cost of adjudicating the application.

Furthermore, DHS believes that the asylum fee may arguably be constrained in amount, but a fee is not prohibited by the 1951 Refugee Convention, 1967 Refugee Protocol, United States constitution, or domestic implementing law. Article 29(1) of the 1951 Refugee Convention and the 1967 Refugee Protocol, as incorporated by reference, refers to the imposition of fees on those seeking protection, and limits ''fiscal charges'' to not higher than those charged to nationals of a given country for similar services, but does not bar the imposition of such fiscal charges. The $50 fee is reasonably aligned with the fees charged to United States nationals for other immigration benefit requests. Thus, a $50 fee for asylum applications is in line with international and domestic law.

DHS also considered the asylum fees charged by other nations, including Australia, Fiji, and Iran. A $50 fee is in line with the fees charged by these other nations. DHS further believes that the $50 fee would not require an applicant to spend an unreasonable amount of time saving to pay the fee.

DHS declines to make changes in this final rule in response to these comments.

Comment: With regard to the Form I–589 fee and the fee for an initial Form I–765 filed by an asylum applicant, commenters stated:

• Asylum seekers should not have to pay for an asylum application or an associated work permit because they are not authorized to work for months once in the United States and would have no way of earning money to pay for the fees.

• Asylum seekers in detention, who earn at most $1 a day would have no way to pay the $50 fee.

• Asylum seekers are not allowed to work more than 4 hours a day and are thus unable to pay increased fees.

• Asylum seekers who are poor or need to ''quickly flee situations of peril or harm'' would be harmed by the asylum fee proposal, and that such individuals would not be able to earn enough money to pay asylum fees once in detention.

• Asylum seekers are often minors with no means to support themselves and therefore cannot afford an asylum fee.

Response: DHS acknowledges the commenters' concerns about asylum seekers' ability to pay the fees for the asylum application and associated EAD. DHS considered the effect of the fees on asylum seekers and believes the fees would not impose an unreasonable burden on applicants or prevent asylum seekers from seeking protection or EAD. DHS also acknowledges that the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, provides a range of protections for unaccompanied alien children. As such, DHS excluded unaccompanied alien children in removal proceedings, a particularly vulnerable population, from the imposition of the $50 asylum application fee.

The services that USCIS provides at no cost or below cost impacts the final fees imposed on other fee-paying applicants. However, DHS seeks to make the USCIS fee schedule more equitable for all applicants and petitioners in this final rule. Therefore, DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter stated that asylum seekers provide services to the United States, such as investments in their education and pay taxes, that DHS

should consider before increasing asylum fees. Several commenters stated that DHS should not raise asylum fees because asylum seekers are important to the U.S. economy and workforce.

Response: DHS acknowledges that asylum seekers invest in their educations and pay taxes like other immigrants do. When considering whether to increase or establish new fees, including fees for asylum seekers, USCIS examined its recent budget history, service levels, and immigration trends, and also assessed anticipated costs, revenue, and operational demands. USCIS has experienced a continuous, sizeable increase in the affirmative asylum backlog and explored ways to alleviate the pressure that the asylum workload places on USCIS. As stated in the NPRM, DHS does not intend to recover the estimated full cost of adjudicating asylum applications via the Form I–589 fee. 84 FR 62318. DHS will recover the additional costs of asylum adjudications (via cost reallocation) by charging other fee-paying applicants and petitioners more for other types of applications.

DHS declines to make changes in this final rule in response to the comment.

Comment: Many commenters addressed gender-based violence as a reason for women and girls fleeing their countries of origin to seek asylum in the United States. Another commenter stated that an asylum fee will disproportionately impact women and minorities. Several commenters discussed domestic violence survivors who rely on asylum status and work authorization for protection. Some commenters said that young people flee sexual and physical violence, and even torture. One commenter said survivors often have no support systems in the U.S. and therefore face homelessness and economic hardship, which are two of the three most urgent and prevalent systemic challenges, confronting immigrant women in the U.S. A couple of commenters said the asylum seekers who flee domestic violence are often eligible for asylum as well as other types of humanitarian immigration benefits, such as U nonimmigrant status. In certain instances, it makes sense for survivors to apply for different types of relief simultaneously as they may get access to work authorization faster under one type of relief, which, in turn, can help them avoid being financially dependent on their abuser. Therefore, the commenter said an asylum fee may force survivors to choose between different types of immigration relief to their detriment. A commenter discussed rates of gender-based violence in El Salvador, Honduras, Guatemala, Venezuela, and China and concluded that sexual violence survivors seeking asylum in the U.S. are often doing so as a last resort because there is little hope of finding protection and safety from their abusers and assailants in their home countries. Therefore, an asylum fee would make it virtually impossible for the most vulnerable immigrant survivors of horrific domestic and sexual abuse to live free from the violence of their abusers. A commenter discussed the gender-based and gang violence that causes people to flee their countries and claimed that the $50 asylum fee would serve to enable smugglers and traffickers to pay the fees for asylum seekers to extort their help in smuggling enterprises.

Response: DHS recognizes the challenges that gender-based violence survivors face when fleeing from the violence of their abusers. This final rule establishes the Form I–589 fee at only $50 because DHS believes it is not an unreasonable amount. DHS disagrees that the fee forces applicants to choose between applying for different forms of relief or protection and enables smugglers and traffickers to extort applicants. DHS does not believe that establishing an asylum application fee of $50 unduly burdens or harms any applicants. DHS carefully assessed the costs associated with the adjudication of asylum applications and other types of immigration benefit requests and concluded that the $50 fee for asylum applications is warranted. The approximate cost of adjudicating an asylum application is $366. A $50 fee is well below the full cost of adjudicating the application. Moreover, the asylum application fee is in line with international treaty obligations under the 1951 Refugee Convention, as incorporated by reference in the 1967 Refugee Protocol, and domestic implementing law.

DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter stated that USCIS is promising the same inadequate service it has been providing in the past few years and is asking immigrant and refugee families to pay more to not get their applications processed. The commenter stated that the proposal to charge for asylum applications contradicts the 2005 Notice of Adjustment of the Immigration Benefit Application Fee Schedule which states, ''fees collected from persons filing immigration benefit applications and petitions are deposited into the Immigration Examinations Fee Account and are used to fund the full cost of providing immigration benefits, including the full cost of providing benefits such as asylum and refugee admission for which no fees are assessed.''

Response: DHS acknowledges the concerns of the commenter related to delays in the processing of applications. DHS has experienced a continuous, sizeable increase in the affirmative asylum backlog over the last several years. One of the ways in which DHS seeks to alleviate the pressure of the increasing workload on the administration of immigration benefits is to charge a $50 fee for asylum applications. The fee will generate some revenue to help offset costs. As far as the 2005 notice is concerned, it described the asylum fee requirements, but does not preclude the establishment of a fee.

DHS declines to make changes in this final rule in response to the comment.

Comment: Some commenters wrote that they question the statutory authority to charge a fee to asylum applicants. Commenters stated that United States is obligated to accept asylum seekers under international and domestic law, and therefore should not refuse asylum seekers because of an inability to pay the fee. One commenter wrote that charging an asylum fee would have global consequences effecting the standard of care and rule of law in humanitarian protections. Comments stated that the United States has no precedent in international law to charge for asylum, a fee for asylum applications is discriminatory, and a fee for asylum is against the values of the United States.

Response: DHS recognizes the vulnerable situations of many individuals who apply for asylum. DHS considered all of the points the commenters raised when deciding to establish an asylum application fee. INA section 208(d)(3), 1158(d)(3) specifically authorizes the Attorney General to impose a fee for the consideration of an asylum application that is less than the estimated cost of adjudicating the application. As stated in the NPRM, DHS considered the authority provided in INA section 208(d)(3), whether the fee would be paid in installments or over time, and various fee amounts. DHS decided to establish a $50 fee because it could be paid in one payment, would generate some revenue to offset costs, and not be so high as to be unaffordable to even an indigent alien. 84 FR 62320. Thus, the lack of resources that asylum applicants possess and the burdens that they face contributed to DHS's decision to establish a minimal $50 fee.

Furthermore, DHS disagrees that there is no precedent in international law for charging an asylum application fee. DHS believes that the asylum application fee may arguably be constrained in amount, but a fee is not prohibited by the 1951 U.N. Convention Relating to the Status of Refugees (''1951 Refugee Convention''), 1967 U.N. Protocol Relating to the Status of Refugees (''1967 Refugee Protocol''), United States constitution, or domestic implementing law. Article 29(1) of the 1951 Refugee Convention and the 1967 Refugee Protocol, as incorporated by reference, refers to the imposition of fees on those seeking protection, and limits ''fiscal charges'' to not higher than those charged to nationals of a given country for similar services, but does not bar the imposition of such fiscal charges. The $50 fee is reasonably aligned with the fees charged to United States nationals for other immigration benefit requests.

Comment: One commenter stated that if asylum seekers have to pay for their own initial Employment Authorization Document (EAD), it is likely that asylees will not apply for an EAD, which may be used against them when USCIS adjudicates their asylum application.

Response: DHS infers that the commenter is suggesting that asylum applicants will pursue unauthorized employment rather than pay the Form I–765 fee to lawfully obtain an EAD, and that will result in USCIS denying their application because they worked in the U.S. without authorization. DHS expects that asylum applicants will not pursue such an option and instead find a lawful way to pay the fee. As DHS noted in the NPRM, initial applicants with pending claims of asylum are a large workload volume for USCIS. In this final rule, DHS emphasizes that the person receiving the benefit should pay the fee. While DHS appreciates the need for asylum seekers to obtain lawful employment while their applications are pending, Congress has made it clear that fees primarily fund USCIS. After analyzing the costs of EADs for asylum applicants and considering the other factors raised by the commenters, DHS maintains its position that asylum applicants should pay the fee for the initial and renewal EADs.

Comment: Some commenters wrote that the fee for asylum applications would cause the U.S. to break its treaty obligations and contradicts the intent of the 1980 Refugee Act. Some commenters agreed and more specifically stated that the proposal would conflict with Congressional intent to offer humanitarian assistance to those fleeing persecution regardless of national origin, race, age, gender, or financial status. A commenter said requiring asylum applicants to pay a fee violates the principle of non-refoulement because it would likely result in the expulsion of potential refugees merely on the basis of their financial status, and since the imposition of the asylum application fees would also be a barrier to apply for relief under the Convention Against Torture, it also conflicts with U.S. treaty commitments. Multiple commenters indicated an inability to pay the proposed fee would hinder asylum seekers' ability to apply for asylum and gain needed protection, thereby forcing asylum seekers to return to their country of origin to face further persecution and even death. A commenter wrote that the asylum fee proposal would increase the number of cases sent to immigration courts because individuals would not have the funds to pay for asylum applications. A few commenters stated that the unprecedented fee would restrict life-saving access to the legal system.

A commenter provided a lengthy comment on the 1951 Refugee Convention and the Refugee Act of 1980, stating that courts have interpreted the federal regulations establishing the asylum process and the INA as creating a constitutionally protected right to petition the United States for asylum. This in turn triggers the safeguards of the Fifth Amendment's Due Process Clause. The commenter said, because the proposed fee would operate as complete bar to some asylum seekers' ability to exercise their constitutionally protected right to petition for asylum, it violates the guarantee of due process that accompanies that right. The commenter stated that the rule should therefore be rejected. The commenter also said DHS has also failed to consider Article 32 of the 1951 Refugee Convention, which provides that refugees shall be expelled only pursuant to a decision reached in accordance with due process of law. The commenter said the United States cannot recognize the right to apply for asylum as a component of due process for the purposes of its own Constitution while contending that Article 32 of the 1951 Refugee Convention can be satisfied without such a guarantee. Similarly, the commenter said DHS neglects Article 3's guarantee of equal protection by facially discriminating among refugees based on wealth and disparately affecting refugees based on national origin or race. Another commenter spoke of several court cases that set due process and equal protections precedent for asylees: (1) *Mathews* v. *Eldridge,* 424 U.S. 319 (1976), (2) *Griffin* v. *Illinois,* 351 U.S. 12, 19 (1956), (3) *Smith* v. *Bennett,* 365 U.S. 708 (1961), and (4) *Burns* v. *State of Ohio,* 360 U.S. 252, 258 (1959).

Some commenters pointed to the 1994 asylum reform initiative, which sought to impose a $130 fee on asylum applicants but was withdrawn following extraordinary opposition from the public. The argument that won then is applicable now, the commenter wrote, and that charging for an asylum application is contrary to United States international obligations to permit refugees to seek asylum in the United States and in violation of 8 U.S.C. 1158(a)(1).

Several commenters noted that the vast majority of signatories to the 1951 Refugee Convention or 1967 Refugee Protocol do not charge an asylum fee. Multiple commenters wrote that the U.S. would become just the fourth nation to charge fees for asylum. Similarly, a commenter said only three countries currently charge a fee for asylum because such a policy is ''universally considered'' dangerous, discriminatory, and wrongheaded. Similarly, several comments stated that the United States has been a world leader in refugee protection for a long time and wrote that if the U.S. begins charging fees for asylum, other nations may choose to follow suit. The commenters described this outcome as ''disastrous'' given the increasing need for refugee resettlement worldwide. A commenter wrote that imposing a fee for asylum seekers is not feasible and would break with international precedent by denying such individuals access to ''a universal human right.'' A commenter suggested there was a global consensus for rejecting fees for refugees and asylum seekers and wrote that any additional barriers to asylum adjudication could result in ''even more deaths.'' Another commenter expounded on this point and questioned why USCIS neglected to discuss why most nations do not charge fees for asylum. The commenter also requested that USCIS ''investigate the context of migration'' in the nations that do charge fees for asylum, and said that, of these, only Australia was another ''Western'' nation. One commenter stated that charging a fee for asylum would place the U.S. ''in the same position as countries that abuse human rights'' and would contravene the work the U.S. has done to become a leader in refugee protection. A few commenters said that a fee for Form I–589 would make the United States the first, and only, country to charge asylum applicants to

access protection with no possibility of fee waiver.

One commenter wrote that Australia's direct cash assistance to asylum seekers has no equivalent in the United States. Another commenter added that Australia, whose policies towards asylum seekers have garnered international criticism, charges half of what DHS proposes to charge for asylum applications. A commenter noted that the United States will now have harsher asylum regulations than Iran, whose policies allow asylum seekers to obtain a fee waiver.

Response: DHS disagrees that the establishment of an asylum application fee is in violation of United States international treaty obligations, the principle of non-refoulement, and domestic implementing law. Although the United States is a party to the 1967 Refugee Protocol, which incorporates Articles 2 through 34 of the 1951 Refugee Convention, the Protocol is not self-executing. *See, e.g., Stevic,* at 428 n.22. The asylum statute at INA section 208 and withholding of removal statute at INA section 241(b)(3) constitute the U.S. implementation of international treaty obligations related to asylum seekers. DHS believes that the asylum application fee may arguably be constrained in amount but is not prohibited by the 1951 U.N. Convention Relating to the Status of Refugees (''1951 Refugee Convention''), 1967 U.N. Protocol Relating to the Status of Refugees (''1967 Refugee Protocol''), United States constitution, or domestic implementing law. Article 29(1) of the 1951 Refugee Convention, and as incorporated by reference in the 1967 Refugee Protocol, refers to the imposition of fees on refugees, and limits ''fiscal charges'' to not higher than those charged to nationals of a given country for similar services. A $50 fee is reasonably aligned with the fees charged to U.S. nationals for other immigration benefit requests. Moreover, INA section 208(d)(3), 8 U.S.C. 1158(d)(3), specifically authorizes DHS to impose a fee for the consideration of an asylum application that is less than the estimated cost of adjudicating the application. The approximate cost of an asylum application is $366. Thus, a $50 fee for asylum applications is in line with U.S. international treaty obligations and domestic implementing law.

DHS disagrees with the commenters' assertions that a $50 fee would operate as a complete bar on asylum seekers' ability to apply for asylum and access to equal protection and due process of law. The commenter refers to Article 32 of the 1951 Refugee Convention, which provides that ''[t]he expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law.'' The commenter also refers to Article 3 of the 1951 Refugee Convention, which states that the provisions of the Convention shall apply ''to refugees without discrimination as to race, religion, or country of origin.'' DHS believes that the establishment of a minimal fee of $50 to apply for asylum is not cost-prohibitive or overly burdensome for asylum seekers. This final rule does not bar asylum seekers from filing asylum applications. Also, charging a $50 fee for an asylum application does not restrict an asylum seeker's access to a decision reached in accordance with due process of law or discriminate against refugees.

Moreover, DHS does not intend to recover the estimated full cost of adjudicating the asylum application, as the fee amount is well below the approximate full cost of $366 for adjudicating an asylum application. DHS maintains that charging a fee for asylum applications will help alleviate the pressure that the growing asylum workload places on the administration of other immigration benefits and would generate some revenue to help offset costs.

As discussed in the NPRM, DHS requested a report from the Law Library of Congress on fees charged to asylum applicants by countries that are a party to the 1951 Refugee Convention and/or its 1967 Refugee Protocol. The Law Library of Congress surveyed the 147 signatory countries to the 1951 Refugee Convention and/or the 1967 Refugee Protocol, and of 147 countries, identified three countries that charge a fee for initial applications for asylum or refugee protection. DHS considered the asylum fees charged by other nations, including Australia, Fiji, and Iran, and the $50 fee is in line with the fees charged by these other nations. *See* 84 FR 62319.

DHS disagrees with commenters' assertions that charging a fee for asylum would place the United States in the same position as countries that abuse human rights and would contravene the work the United States has done to become a leader in refugee protection. DHS acknowledges the comments related to the policies of other nations, such as Australia and Iran. Each nation has its own unique needs and different asylum workloads. Given the growing scale of the affirmative asylum workload in the United States, DHS explored ways to alleviate the pressure of the affirmative asylum workload. DHS believes that establishing a minimal fee of $50 for Form I–589 would help USCIS generate revenue and offset costs, as well as mitigate fee increases for other immigration benefit requests.

Comment: Some commenters said the asylum application fee, Migrant Protection Protocols (MPP), CBP ''metering,'' and ''safe third country agreements'' are counter to the international legal principle of non-refoulement and indicate a clear effort on the part of the administration to dismantle asylum in the United States.

Response: The commenter's concerns regarding MPP, CBP ''metering'', and safe third country agreements are outside of the scope of this rulemaking and DHS provides no response to those subjects in this final rule. DHS believes that fees associated with access to asylum and work authorization in the United States are not prohibited by the 1951 U.N. Convention Relating to the Status of Refugees (''1951 Refugee Convention''), 1967 U.N. Protocol Relating to the Status of Refugees (''1967 Refugee Protocol''), United States constitution, or domestic implementing law, and do not run counter to the principle of non-refoulement. Article 29(1) of the 1951 Refugee Convention, and as incorporated by reference in the 1967 Refugee Protocol, refers to the imposition of fees on refugees seeking protection, and limits ''fiscal charges'' to not higher than those charged to nationals of a given country for similar services, but does not bar the imposition of such fiscal charges. The $50 fee is reasonably aligned with the fees charged to United States nationals for other immigration benefit requests. INA Section 208(d)(3) authorizes the imposition of fees for asylum applications. The asylum application fee is in line with domestic implementing law and does not contravene international treaty obligations.

Comment: Some commenters suggested that migration patterns in the U.S. are unique and questioned whether the proposed rule was a racist and xenophobic response to increasing levels of immigration from Latin America. Some commenters discussed the characteristics of common countries of origin for asylees. Two commenters wrote that the asylum fee provision would impact thousands of Asian immigrants, and provided data from FY 2017 that shows 27,759 Chinese immigrants and 4,057 Indian immigrants applied for asylum, accounting for 12 percent and 2.9 percent of asylum seekers. Another commenter stated that approximately 1.5 million Africans have left Africa for the United States or Europe since 2010,

according to the United Nations, and that Nigeria was the seventh most represented country of origin for affirmative asylum cases filed in the U.S. from 2016–2018 according to a DHS report. Another commenter claimed that the asylum fee is indicative of xenophobia and racial animus toward those from Mexico and Central America, as Mexico, Haiti, El Salvador, Honduras, and Guatemala, respectively, had the highest denial rates of the 10 nationalities with the most asylum decisions between 2012 and 2017 (according to a 2018 report by CNN). The commenter claimed that high denial rates for people from these countries are partly due to the inaccessibility of legal assistance, and higher fees will exacerbate the disparity. One commenter stated that if the United States is not willing to address the root causes of migration, it cannot also place a fee on asylum seekers fleeing the violence and poverty of the countries that the U.S. refuses to aid.

Response: DHS disagrees that the asylum application fee is a racist and xenophobic response to increasing levels of migration and acknowledges the concerns of the commenters related to asylum seekers fleeing violence and poverty. Asylum is a discretionary benefit available to those who meet the definition of a refugee and are otherwise eligible. DHS recognizes that many legitimate asylum seekers face poverty and violence and considered the challenging circumstances that many asylum seekers face when deciding to establish a minimal fee of $50. The fee is well below the cost of adjudicating the asylum application, which is consistent with INA section 208(d)(3). The establishment of an asylum application fee is not animated by racism or xenophobia, but rather, it is animated by a need to respond to the increasing affirmative asylum workload and generate some revenue to offset costs. USCIS must address these issues regardless of the myriad factors that contribute to individuals claiming asylum in the United States.

Comment: Some commenters discussed the impact of an asylum fee on children. One commenter said the proposed rule disregards the best interests of children, as it would charge unaccompanied children for applying for asylum, writing that children should not have to shoulder the burden of the large backlog of cases and slow processing of immigration applications. One commenter said that 56 percent of the applications from Central America were filed by unaccompanied children, many of whom are fleeing the most high-volume countries of origin and are in danger without the help of the U.S. Another commenter noted that derivative applicants who do not file independent asylum applications cannot assert their own, independent claims. Many asylum-seeking families submit individual applications for all family members to pursue every possible avenue of relief for all family members. The cost per application will have a negative impact on these families. Multiple commenters wrote that applying a fee to asylum applications could result in deportations or compel vulnerable children and families to return to countries they fled, risking continued persecution or death. Several commenters pointed out that asylum seekers are in danger of human trafficking and other crimes, and that the asylum fee bars them from the protections that legal status affords. A few commenters stated that asylum should only be based on evidence of perceived or actual persecution and not whether asylum seekers have financial assets. A commenter suggested the asylum fee proposal was ''cruel and inhumane'' and that asylum seekers should not have to prioritize asylum fees over feeding their families.

Response: DHS acknowledges the commenters' concerns about the potential effects of the asylum application fee on children and their families. DHS recognizes that the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, provides a range of protections for unaccompanied alien children. DHS excludes unaccompanied alien children in removal proceedings, a particularly vulnerable population, from the imposition of a $50 asylum application fee. 8 CFR 106.2(a)(20).

DHS acknowledges the commenters' concerns about asylum seekers' ability to pay fees for multiple asylum applications depending on the circumstances of principal and derivative applicants, including children. DHS considered the effect of a fee on asylum seekers and believes it would not impose an unreasonable burden on applicants or prevent asylum seekers from seeking protection. The services that USCIS provides at no or below cost impacts the fees imposed on other fee-paying applicants. DHS seeks to make the USCIS fee schedule more equitable for all applicants and petitioners. Nevertheless, DHS considered the challenges that asylum seekers face and establishes an asylum application fee that is well below the cost of adjudicating the application.

Comment: Multiple commenters discussed the very limited resources with which asylum seekers come to the U.S., and the resulting inaccessibility of transportation, housing, healthcare, and other necessities. Several commenters noted that asylum seekers are ineligible for public assistance programs unless and until they are granted asylum, and they rely on nonprofit and community resources for housing, basic toiletries, school supplies, clothing, and public transportation. The commenters claim that the asylum fee unjustly burdens those who need resources and support the most. One commenter cited a Human Rights Watch publication to claim that asylum seekers' financial resources often fail to cover the bare necessities of life, such as food, medicine, and shelter. Another commenter said that many asylum seekers do not have financial resources because of ''the nature of flight from perilous situations,'' and wrote that asylum seekers are considered ''non-qualified'' immigrants for the purposes of qualification for federal public assistance.

One commenter said that USCIS claims the $50 fee is large enough to produce a revenue stream while small enough to remain affordable. The commenter cited a Washington Post article that discusses the extreme poverty of asylum seekers to emphasize the inability of these people to pay any fee, no matter how small. Another commenter added that USCIS should take into account $50 as a percentage of Gross National Income (GNI) in asylees' home countries, citing World Bank and TRAC Immigration data. A commenter wrote that the $50 fee for asylum would not be a deterrent for some asylum seekers, but that the ''calculus is not so simple'' for others who will not be able to afford the fee. The commenter provided anecdotes about the personal backgrounds of asylum seekers to provide context about the challenging financial situations many asylum seekers or refugees face.

Response: DHS acknowledges the challenges that asylum seekers face, including extreme poverty and limited access to resources. In recognition of these circumstances, DHS establishes a minimal $50 fee for Form I–589 for most applicants (unaccompanied alien children in removal proceedings who file Form I–589 with USCIS are not required to pay the fee). DHS considered various fee amounts and whether the fee would be paid in installments over time. DHS has established a minimal $50 fee that can be paid at one time, would not require an applicant to save for an unreasonable amount of time, would generate revenue to offset costs, and would not be so high as to be

unaffordable to an indigent applicant. *See* 84 FR 62319. DHS does not intend to recover the full cost of adjudicating asylum applications via the Form I–589 fee. DHS will recover the additional costs of asylum adjudications by charging other fee-paying applicants and petitioners more. DHS does not intend to discourage meritorious asylum claims or unduly burden any applicant, group of applicants, or their families.

Comment: A commenter stated that this NPRM functions under the ''deterrence paradigm'' to prevent asylum seekers from coming to the United States. They claimed that such deterrence policies do not work, citing a report by the American Immigration Council which showed that comprehensive knowledge of the dangers and possible futility of seeking asylum had little impact on the intentions of Hondurans to seek asylum in 2014.

Response: DHS does not intend to deter legitimate asylum seekers from filing asylum applications via the $50 asylum application fee. The goals behind establishing a $50 asylum application fee include alleviating the pressure of the growing affirmative asylum workload on the administration of other immigration benefit requests and generating some revenue to offset costs. DHS believes the minimal fee of $50 is not unreasonably burdensome and does not prevent legitimate asylum seekers from submitting asylum applications.

Comment: A few commenters indicated that the $50 fee does not mitigate the fee increase of other immigration benefit requests. One of these commenters stated that since DHS will still rely on other benefit requesters to cover the costs of the asylum process, as authorized by Congress, the decision to charge an asylum fee is unacceptable.

A few commenters reasoned that, because the process costs around $300 per applicant, a $50 fee would not meaningfully address the deficit associated with asylum adjudication but would still be prohibitively expensive for vulnerable people. One commenter added that this is an arbitrary departure from the ''full cost'' standard required for federal agencies, and that USCIS should charge applicants the full cost of adjudicating the application.

One commenter cited the Asylum Division's quarterly statistics, which indicate that DHS experienced a 40 percent decrease in affirmative filings between 2017 and 2018. The commenter stated that USCIS is unable to alleviate a growing backlog despite a drop in affirmative filings. Two commenters cited a Migration Policy Institute study which shows that many factors contributing to the backlog are the result of U.S. policies.

Response: DHS carefully assessed the costs associated with the adjudication of asylum applications and other types of immigration benefit requests and concluded that the $50 fee for asylum applications is warranted. A minimal fee would mitigate the fee increase of other immigration benefit requests. DHS also relied on INA section 208(d)(3), which provides that ''fees shall not exceed the Attorney General's costs in adjudicating'' the asylum application. The approximate cost of adjudicating an asylum application is $366, and thus, the fee is below the full cost of adjudicating the application. The lower fee amount represents DHS's efforts to balance the needs and interests of USCIS in generating some revenue to offset costs against the socio-economic challenges faced by some asylum seekers.

DHS acknowledges the comments related to the growing affirmative asylum backlog, which played into DHS's decision to establish an asylum application fee. USCIS has taken several actions to address the affirmative asylum backlog, including: Identifying and employing strategies to maximize efficiencies in case processing across workloads; increasing adjudicative capacity by expanding its field office workforce and continuing significant facilities expansion; and reverting to reform scheduling, also known as Last In, First Out (LIFO) scheduling, which involves scheduling the most recently filed applications for interviews ahead of older filings. *See* USCIS announcement on Last in, First Out scheduling (January 2018), available at *https://www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog.* LIFO scheduling has contributed to a decrease in the growth of the asylum backlog. Even though USCIS has taken a range of measures to address the backlog, the number of pending affirmative asylum cases remains high.

Comment: One commenter cited a 2011 New York Immigrant Representation Study to say that with decreased ability to support themselves, asylum seekers would be far less likely to afford legal counsel and therefore have less chance of prevailing on their asylum claims.

Response: DHS believes that a minimal fee of $50 will not prevent asylum seekers from securing legal counsel or affect their chance of prevailing on their asylum claims. Asylum seekers may secure legal counsel as needed to assist them with the asylum application process. This final rule does not hinder or affect asylum seekers' access to counsel. With or without legal counsel, asylum applicants are given the opportunity to provide the information needed for an adjudicator to make a decision about their eligibility for asylum. DHS declines to make any changes in this final rule in response to the comment.

14. Form I–600A/I–600 Supplement 3, Request for Action on Approved Form I–600A/I–600

Comment: A commenter supported changes in the handling of Hague Adoption Convention Transition Cases, commenting that their personal experience in the adoption process had been very difficult. The commenter stated that having a prescribed system would be an improvement.

Response: DHS appreciates the support for the changes in handling intercounty adoption cases and agrees that the prescribed system is an improvement upon previous practice.

15. Form I–601A, Application for Provisional Unlawful Presence Waiver

Comment: Multiple commenters opposed increasing the fee for Form I–601A because it would harm family unity, discourage the use of consular processing, and undermine the use of Form I–601A to improve efficiency.

Response: DHS recognizes that Form I–601A can aid family unity and improve administrative efficiency through the use of consular processing. However, DHS disagrees with the commenters' contention that the fee increases enacted in this final rule for Form I–601A, from $630 to $960, undermines those goals. DHS adjusts the fee for Form I–601A to reflect the estimated full cost of adjudication. If DHS did not adjust fee to provide for USCIS to recover full cost, USCIS would be unable to devote sufficient resources to adjudication to limit the growth of pending caseload, thereby undermining the goals of family unity and efficient processing.

DHS declines to make adjustments in this final rule in response to these comments.

Comment: A commenter opposed the fee increase for Form I–601A because such waivers have allowed thousands of immigrants to pursue lawful permanent residence through consular processing. The commenter said the proposed increase for this waiver application, in conjunction with the costs of consular processing, would discourage immigrants from seeking lawful status and place them at risk of removal and long-term separation from their families.

Response: DHS recognizes that the provisional waiver process has enabled family unity and the use of consular processing to gain lawful permanent residence. However, DHS disagrees with the commenter's assertion that the fee increase for Form I–601A will discourage immigrants from seeking lawful status or result in long-term separation for families. DHS believes that the fee increase of $330, from $630 to $960, likely represents a small portion of the overall cost of utilizing consular processing to pursue lawful permanent residence. DHS also notes that noncitizens with an approved Form I–601A still trigger the unlawful presence ground of inadmissibility found in INA section 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B) upon departure.

DHS declines to make changes in this final rule in response to the comment.

16. Form I–751, Petition To Remove Conditions on Residence

Comment: Multiple commenters wrote regarding increases in the fee for Form I–751. Commenters wrote that the fee for Form I–751 would cause individuals who are unable to afford the new fee failing to petition to remove the conditions on their permanent residence, thereby losing their conditional lawful permanent resident status.

Response: DHS recognizes the importance of Form I–751 to individuals in conditional lawful permanent resident status. However, DHS disagrees with the commenters' contention that the fee increase for Form I–751, from $595 to $760, will render Form I–751 unaffordable to these individuals. Conditional lawful permanent residents have nearly two years between gaining that status and the 90-day period in which they are required to file Form I–751, during which they are able to work and save to afford the fee, or they may pay with a credit card. DHS adjusts the fee for Form I–751 to reflect the estimated full cost of adjudication and declines to make adjustments in this final rule in response to these comments.

Comment: Many commenters indicated the Form I–751 fee increase and elimination of the fee waiver would make it more difficult for low-income families to file timely and could have severe consequences, including the conditional resident's loss of lawful status and the risk of being placed into removal proceedings. A commenter stated that the unbundling and resulting increase in the fee for adjustment of status and ancillary applications, and the increased fee for provisional waivers could prevent low-income individuals from applying for immigration benefits. The commenter asked that USCIS hold current fees in place or increase the fees by a modest amount. One commenter said the proposed change would affect many older applicants who maybe be on fixed incomes, as well as people in single-income households.

Response: DHS acknowledges the changes in fee waiver eligibility and the increase in the fee for Form I–751 implemented in this final rule will render the process of removing conditions on lawful permanent resident status more expensive for individuals. However, DHS disagrees with the commenters' contention that the fee increase for Form I–751, from $595 to $760, will render Form I–751 unaffordable to these individuals. Conditional lawful permanent residents have nearly two years between gaining that status and the 90-day period in which they are required to file Form I–751, during which they are able to work and save to afford the fee.

DHS declines to adjust this final rule in response to these comments.

17. Form I–765, Application for Employment Authorization

Comment: A commenter wrote that Form I–765 fees are causing students to consider leaving the United States following graduation, removing talented workers from the U.S. economy and tax base. The commenter stated that the proposal would further disincentivize foreign students from studying in the United States. A commenter also wrote that the proposed fee increases could impede immigrant student's career advancement.

Response: DHS acknowledges the sizeable increase in the Form I–765 fee implemented in this final rule, adjusting the fee from $410 to $550. DHS adjusts the fee for Form I–765 to reflect the estimated full cost of adjudication. Although DHS recognizes that this fee increase imposes an additional burden on nonimmigrant students seeking employment authorization for Optional Practical Training, off-campus employment under the sponsorship of a qualifying international organization, or due to severe economic hardship, DHS is unaware of data to support the commenter's contention that fee for Form I–765 serves to deter students from coming to the United States. DHS declines to exempt students from the increased filing fee because USCIS must determine the student's eligibility under the applicable regulations at the time of application and the fee is necessary to recover the full costs of the adjudication. DHS does not believe the fee is an unreasonable burden for students who need employment-based training. DHS believes that employment in the United States will continue to appeal to individuals despite an increase of $140 in the cost of applying for an EAD.

DHS declines to make changes in this final rule in response to the comment.

Comment: Multiple commenters opposed the change to charge asylum applicants for their first Form I–765, Application for Employment Authorization. The comments are summarized as follows:

- Charging asylum seekers for the first work permit creates a ''catch 22'' situation where people cannot work so cannot afford to pay their asylum fees and may incentivize people to work illegally.
- USCIS should not charge $50 for asylum applications and further charge for an EAD while asylum cases are pending.
- Requiring individuals who are not authorized to work to pay such a substantial fee to acquire work authorization is cruel and counterintuitive.
- Asylum seekers have historically not been charged for their initial EAD because their flight from their country of origin leaves them in dire financial situations, and they often lack family support in the United States to assist them.
- Requiring asylum applicants to pay for an initial EAD before they have authorization to work will worsen the already precarious situation of a vulnerable population.
- People subject to the fee have already spent substantial time and money to get to the United States, have likely spent time in immigration detention, and have not been authorized to work since leaving their home country.
- USCIS should continue to exempt asylum seekers from fees associated with EADs because these individuals would not be able to afford fees before they can legally work. It did not make sense to charge asylum seekers for work permits before being granted protection.
- The EAD fee for asylum seekers will act as an unjust deterrent for asylum seekers.
- To levy an asylum fee in conjunction with the EAD fee was beyond contemplation and abominable and questioned how the government could expect asylum-seekers to obtain funds to cover these costs.
- The proposal was far from benign and employers could pay this work permit fee.
- This fee will force asylum applicants into seeking unauthorized

work, putting them at a higher risk of exploitation, placing an undue burden on investigative agencies, and ultimately putting those applicants in danger of facing further consequences for attempting to work without authorization.

• A fee for an initial work permit is illogical, because the U.S. benefits from self-sufficiency of asylum seekers and should therefore want to expedite the employment authorization process.

• It will burden local communities and service providers that must provide social services to asylum applicants unable to work.

• Local communities will suffer lost wages and tax revenue, as well as the labor that would otherwise be provided by asylees.

• State, local, community, and religious organizations will attempt to cover the EAD fee for asylum seekers, straining their resources and preventing them from serving more people.

• Preventing asylum seekers from authorized work restricts them from lawfully paying a fee for asylum.

• Allowing asylum seekers to have work authorization benefits local economies by asylum seekers paying taxes, filling skills gaps, and building the workforce.

• Asylees often bring a wide range of skills and experience and are useful to many businesses, and that the proposal would deny U.S. businesses of the opportunity to hire these workers.

• Nearly 65 percent of the asylum seekers in the commenter's program arrive in the U.S. with experience in STEM and healthcare fields.

• Employers would have difficulty finding labor substitutes if asylum seekers were kept out of the workforce. USCIS should conduct additional analysis on the impact of new fees for employment authorization.

• USCIS has not calculated the losses to tax revenue and the broader economy associated with a reduced number of asylees in the U.S.

• Asylees often come to the U.S. with in-demand skills, including skills that would be useful in the healthcare and information technology sectors, and the USCIS should estimate the costs borne to employers who would use asylees.

Response: DHS acknowledges the concerns of the commenters related to the requirement of a fee ($550) for initial filings of Form I–765 for applicants with pending asylum applications. Initial EAD applicants with pending asylum applications account for a large volume, approximately 13 percent, of the Form I–765 workload forecast and DHS has decided to no longer provide this service for free. Charging initial Form I–765 applicants with pending asylum applications allows DHS to keep the fee for all fee-paying EAD applicants lower. Asylum applicants will pay no more and no less than any other EAD applicant (except for those who are eligible for a fee waiver) for the same service.

DHS is acting in compliance with Section 208(d)(3) of the INA, which provides that, ''[n]othing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 286(m).'' DHS believes that charging asylum applicants for EADs does not impose an unreasonable burden on asylum seekers. This final rule does not impose or seek to impose any obligation on the part of employers, states, or community or religious organizations to pay the Form I–765 fee. Also, this final rule does not seek to burden local communities or service providers. DHS declines to make changes in this final rule in response to these comments.

USCIS disagrees that charging asylum seekers for the first work permit creates a conflict between contradictory conditions where aliens cannot work to pay their asylum fees and may incentivize people to work illegally. No asylum applicant may receive employment authorization before 180 days have passed since the filing of his or her asylum application. INA section 208(d)(2), 8 U.S. C. 1158(d)(2); 8 CFR 208.7(a)(1). This requirement has been in effect for over twenty years. *See,* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Section 604, Public Law 104–208; see also 62 FR 10337. Thus, an asylum seeker is unlikely to come to the United States expecting to be authorized to work immediately. Asylum seekers can, and do, rely on their own means, as well as family or community support to economically sustain themselves in the United States during the period of time that they are not employment authorized.

Comment: Several commenters wrote that if asylum seekers are unable to obtain employment authorization, they may be unable to pay for legal counsel, which will make it more difficult for them to prevail on the asylum applications. One commenter cited ''Accessing Justice: The Availability & Adequacy of Counsel in Immigration Proceedings,'' a study that showed that among non-detained individuals in immigration court, those with counsel saw success in 74 percent of cases compared with 13 percent of those unrepresented.

Response: DHS recognizes the economic challenges faced by asylum seekers. However, DHS does not believe that charging asylum seekers for a work authorization application will prevent them from obtaining legal counsel. DHS does not believe that the EAD fee is unduly burdensome for asylum seekers. Furthermore, DHS is acting within the scope of its statutory authority to establish fees for adjudication services, in accordance with INA sections 208(d)(3) and 286(m). DHS declines to make changes in response to these comments.

Comment: A commenter stated that fee exemptions for EAD applications by asylees should apply not only to initial applications, but also renewals. The commenter said the original rationale was that the initial EAD lasts for 2 years, and it was expected that asylees would be granted lawful permanent residence within that two-year period. Currently, however, the processing times for permanent residence by asylees range up to 26 months, so the commenter said USCIS should eliminate the fee for applications for renewal of employment authorization filed by asylees.

Response: DHS acknowledges the concerns related to processing times for EADs and adjustment of status applications. DHS does not believe that the fee for renewal EAD filings will present an insurmountable burden for asylees. Asylees are employment authorized incident to their status. DHS will continue to exempt asylees from the initial Form I–765 fee. However, considering that they are employment authorized incident to their status as an asylee and the EAD is matter of convenience and not necessary for ongoing employment, asylees submitting I–765 renewal applications will be required to pay the relevant fee, unless the asylee filed for adjustment of status on or after July 30, 2007 and before October 2, 2020 and paid the Form I–485 filing fee. DHS declines to adjust this final rule in response to these comments.

Comment: One commenter suggested that initial asylum applicants seeking employment authorization should be exempt from fees. Instead, they propose that the Form I–765 fee should increase by $10 to offset the cost.

Response: DHS appreciates the commenter's suggestion. DHS considered continuing to exempt asylum applicants from paying for their first Form I–765 filing. However, to more closely align with the beneficiary-pays principle, DHS declines to require other fee-paying applicants to subsidize

the cost of adjudicating the initial EAD applications of asylum applicants. DHS declines to adopt the change suggested by this commenter.

Comment: One commenter pointed out that work-eligible unaccompanied children need access to EADs in order to access housing, food, and clothing. Many minors reach adulthood before their Form I–589 application is adjudicated, losing access to foster care and other financial support, leaving them as reliant on work as adult applicants. Another commenter said that women and children will be particularly affected by the EAD application fee and stated that a fee waiver is necessary for these applications. Given that asylum seekers do not have access to social welfare benefits, women are especially at risk of hunger, abuse, homelessness, trafficking, and other coercive employment practices. This commenter cited data from the Women's Refugee Commission which emphasizes the benefits of employment for women who have experienced trauma, as many asylees have.

Response: DHS acknowledges that asylum applicants need access to employment authorization. DHS does not believe that this final rule hinders or prevents asylum seekers from applying for employment authorization. DHS believes that the EAD fee is not unduly burdensome for asylum seekers and is acting within the scope of its statutory authority to establish fees for adjudication services, in accordance with INA sections 208(d)(3) and 286(m). Regarding unaccompanied alien children (UAC), a UAC may be in the custody of the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR) or residing with a sponsor. *See* 8 U.S.C. 1232(b) and (c). A UAC should not need an EAD for an identity document, and to the extent that they do, the sponsor for the UAC is generally responsible for his or her Form I–765 fee. After turning 18, the same policy considerations for charging them for the Form I–765 apply as for charging all adults.

Comment: A few commenters claimed that the processing time for EAD applications is too long as is, and the new Form I–765 fee will present an unsurmountable burden. Doubling the waiting period, along with the $490 fee, presents an unjust financial hurdle for many asylum seekers and will prevent them from attaining self-sufficiency through work.

Response: DHS acknowledges that the fee and waiting period for the initial EAD may be an economic challenge to some asylum applicants, but DHS disagrees that it is insurmountable or unduly burdensome. Many asylum seekers spend thousands of dollars to make the journey to the United States. It is not unduly burdensome to require that asylum seekers plan and allocate their financial resources to pay a fee that all other noncitizens must also pay. USCIS must incur the costs of adjudicating Form I–765 submitted by an asylum seeker, and DHS does not believe it should shift that cost to other fee payers. Charging a fee for adjudication services is in line with INA section 208(d)(3), which provides that ''[n]othing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 1356(m) of this title.'' DHS declines to make changes in this final rule in response to these comments.

18. Form I–817, Application for Family Unity Benefits

Comment: A commenter said the fee decrease for Form I–817 is puzzling in light of the current processing and adjudication of the corresponding benefits because this form currently experiences inordinate delays for processing.

Response: DHS acknowledges that processing times for many forms, including Form I–817, have exceeded USCIS' processing time goals. DHS is setting the fee for Form I–817 at the level sufficient to recover the estimated full cost of adjudicating USCIS's anticipated workload receipt volumes. DHS hopes to be able to devote sufficient resources to Form I–817 adjudication to reduce pending caseload. DHS declines to make any adjustments in this final rule in response to the comment.

19. Form I–821D, DACA Renewal Fee

Comment: Many commenters wrote that they opposed the Form I–821D DACA renewal fees. Commenters stated that increasing DACA fees would make it difficult for individuals to renew their work permits and individuals could lose the ability to work legally in the United States. Commenters highlighted that many DACA requestors are students and may have difficulty paying the proposed fee in addition to the fee for filing Form I–765. Commenters wrote that the proposed fee increase would cause emotional and financial hardships for the families of DACA recipients. Commenters stated that the imposition of a fee for DACA would constitute an attempt to terminate the DACA program. Some comments stated that the Supreme Court might decide the future of the DACA program in the next few months; therefore, DACA recipients should not pay more for an uncertain benefit.

Response: DHS will not impose the proposed Form I–821D, Consideration of Deferred Action for Childhood Arrivals fee. It is not included in this final rule. USCIS will not receive any revenue from Form I–821D. Therefore, DHS removed the marginal costs directly attributable to the DACA policy from its cost baseline that informs the fee calculations for this final rule. The revenue DHS anticipated from the Form I–821D DACA fee in its NPRM to recover costs associated with overheads and cost reallocation will be collected through adjustments to the other fees addressed in this final rule.[88] DACA requestors will continue to pay the fees in place before September 5, 2017, $410 for Form I–765, Application for Employment Authorization, as well as a separate biometric services fee of $85.

Comment: Multiple commenters suggested that the ability to receive immigration protection and work authorization under DACA is crucial for immigrant survivors of domestic and sexual violence. The commenters cited a DOJ special report from December 2014 which indicates that women between the ages of 18 and 24 experience the highest rate of rape and sexual assault when compared to women of other age groups. The commenters stated that because most DACA requestors are young immigrants, the DACA eligible population is particularly vulnerable to violence and abuse.

One commenter said that increasing the DACA renewal fee by 55 percent will jeopardize the employment of domestic abuse survivors. The commenter stated that when a DACA holder is a victim of domestic violence and becomes eligible for U nonimmigrant status, it is important that they be able to renew their DACA and related work permits while they wait for their U nonimmigrant status so that can remain employed and not have to

[88] Although DHS requires DACA requestors to continue paying the fee for Form I–765, it has removed all DACA workload and fee-paying volume projections from USCIS' ABC model due to our decision to not impose a fee for Form I–821D in this final rule, consistent with Scenario D of the NPRM and the FY 2016/2017 fee rule. In its rules to establish USCIS fees, DHS has generally not relied on revenue from sources that are temporary in nature, including DACA. *See* 81 FR 73312. Including temporary programs in the model would allocate fixed costs and overhead to these programs, thereby introducing financial risk because USCIS would not be able to recover full cost if they are discontinued.

financially rely on their abusers. The commenter stated that processing time for petitions for U nonimmigrant status is between 52.3 and 53 months.

Response: DHS will not impose a fee for Form I–821D in this final rule. However, DACA requestors will continue to be required to submit Form I–765 for an EAD. To request a DACA renewal, DHS will continue to require the $410 Form I–765 fee and the $85 biometric services fee that were in effect before September 5, 2017. Furthermore, DHS reiterates that Form I–918 has no fee and Form I–192 remains fee waivable for U nonimmigrant status petitioners.

DHS declines to make changes in this final rule in response to these comments.

20. Form I–829, Petition by Investor To Remove Conditions on Permanent Resident Status

Comment: A commenter said the fee review for EB–5 forms, such as Form I–829, failed to meet the objectives of ensuring USCIS has adequate resources and to recover the full operating costs of administering the national immigration benefits system. The commenter said the modest 4 percent increase for Form I–829 fee is clearly too low for adequate service and noted that despite the form having a statutory requirement to be adjudicated within 90 days of filing, the processing time for this form is currently between 22 and 45 months.

Response: DHS acknowledges that processing times for many forms, including Form I–829, have exceeded the goals established by USCIS. Furthermore, DHS acknowledges its obligation to adjudicate Form I–829 filings within 90 days of the filing date or interview, whichever is later. *See* INA section 216(c)(3)(A)(ii), 8 U.S.C. 1186b(c)(3)(A)(ii). In this final rule, DHS adjusts the fee for Form I–829 to $3,900 to reflect the estimated full cost of adjudication. In estimating the full cost of adjudication, USCIS considers the costs to adjudicate incoming workloads and does not consider the resources necessary to adjudicate existing pending caseloads. If USCIS considered the cost to adjudicate existing, pending caseloads in its fee reviews, this would require future immigration benefit requestors to subsidize the cost of adjudicating previously received applications and petitions. DHS will not require future applicants and petitioners to subsidize the adjudication of existing, pending caseloads.

DHS declines to make changes in this final rule in response to the comment.

21. Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100 (NACARA))

Comment: A commenter said that the NPRM provided no explanation for the 532 percent fee increase for Form I–881. The commenter questioned if adjudication had changed drastically to justify the fee increase. Similarly, a couple commenters stated that USCIS' justifications did not explain the fee increase and the proposal was contrary to the purpose of the Nicaraguan Adjustment and Central American Relief Act (NACARA).

Response: DHS disagrees with the commenters' contention that DHS failed to explain or justify the fee increase for Form I–881. This final rule adjusts the fee for Form I–881 from $285 for individuals or $570 for families to a single fee of $1,810. As stated in the NPRM, DHS has not adjusted the fee for Form I–881 since 2005. Thus, the fee has not reflected USCIS' estimated full cost of adjudication since that time. The large increase results from a need for the fee to recover its proportionate share of USCIS' estimated full costs. In this final rule, DHS adjusts the fee for Form I–881 to reflect the estimated full cost of adjudication.

DHS declines to make change in this final rule in response to these comments.

22. Forms I–924, Application for Regional Center Designation Under the Immigrant Investor Program, and I–924A, Annual Certification of Regional Center

Comment: A commenter said the filing fee for Form I–924 is ''already vastly out of proportion'' with the work required to process the form. The commenter said the current fee of $17,795 may be appropriate for entities seeking a new regional center designation or an approval of an exemplar Form I–526 petition but is not reasonable for smaller-scale changes like a change to a regional center's name, ownership, or organizational structure. The commenter suggested there should be a much lower fee to accompany such minor changes (which are mandatory notifications to USCIS).

Another commenter said the fee adjustment for Forms I–924 and I–924A fails to meet the agency's stated objectives of adjusting fees to ensure USCIS has the necessary resources to provide adequate service to applicants and can recover the full operating costs associated with administering the immigration benefits system.

Response: DHS acknowledges that there may be a difference between the cost of adjudicating a Form I–924 filing that requests a new regional center designation and a filing that amends an existing regional center. However, DHS does not have data to document the difference in effort and cost between different types of Form I–924 filings. Thus, DHS estimated the full cost of adjudication for Form I–924 based on an estimate of the average level of effort required to adjudicate Form I–924. As noted in the rule initially establishing the $17,795 for this form, the proposed fee ''was determined using USCIS's standard fee-setting methodology, based on the number of hours required to adjudicate Form I–924. These adjudications require economists and adjudications officers to thoroughly review extensive business documents, economic impact analyses, and other project-related documents.'' [89]

DHS disagrees with the commenter's contention that the fee for Form I–924 is too low to provide adequate service. In its fee review, USCIS estimated that the fee for Form I–924 necessary to reflect the full, estimated cost of adjudication would be less than the existing fee of $17,795. In recognition of the resources available to I–924 filers and to limit the fee increases for other form types, DHS decided to maintain the fee for Form I–924 at the current level of $17,795 in this final rule.

DHS declines to make changes in this final rule in response to these comments.

23. Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant

Comment: Multiple commenters suggested the proposed $1,285 or 559 percent increase in the Form I–929 fee is excessive. The commenters stated that the petition benefits crime victims' family members. A commenter said the proposed fee would create a financial hardship for immigrant families and the proposed rule ignores the fact that survivors of domestic violence, sexual assault, and human trafficking may desperately need timely processing of ancillary applications to escape and overcome abuse. Another commenter said the proposed increase would inhibit a vulnerable population from reuniting with spouses, children, and in the case of minors, parents—directly in tension with congressional intent. A commenter indicated this increase would make applying extremely difficult for individuals who have

[89] USCIS, *U.S. Citizenship and Immigration Services Fee Schedule,* 81 FR 73292, 73310 (Oct. 24, 2016).

qualified family members. A commenter stated that it is important to incentivize individuals to come forward and report when they have been the victim of a crime and by keeping derivative applications for U-visa applicants affordable, USCIS would ensure that agencies prioritize public safety and family unity.

Response: DHS recognizes the importance of Form I–929 for promoting family unity for U nonimmigrants and their family members. In recognition of this importance, and consistent with its commitment to maintain fee waiver availability of statutorily protected classes of individuals, DHS proposed in the NPRM to continue to make the fee for Form I–929 waivable for those who file Form I–912, Request for Fee Waiver, and meet the fee waiver eligibility criteria. *See* 84 FR 62297. In this final rule, DHS reaffirms that the fee for Form I–929 will remain waivable for petitioning U nonimmigrants or lawful permanent residents who file Form I–912, Request for Fee Waiver, and meet the fee waiver eligibility criteria. DHS believes that maintaining access to fee waivers for this vulnerable population mitigates any concerns that the increase in the fee for Form I–929 would inhibit family unity.

In this final rule, DHS establishes the fee for Form I–929 as $1,485 to reflect the estimated full cost of adjudication, which includes the anticipated cost of fee waivers for Form I–929. DHS recognizes that this represents a significant increase of $1,255 in the fee. DHS notes that this increase is due, in part, to its commitment to preserve access to fee waivers for certain vulnerable populations. Because DHS anticipates that many filers will meet the fee waiver criteria, USCIS must charge fee-paying applicants more to recover the cost of processing fee-waived forms.

DHS declines to make changes in this final rule in response to these comments.

24. Form N–400, Application for Naturalization

a. N–400 Fee Increase

Comment: Some commenters stated that USCIS does not have statutory authority for raising the naturalization fees.

Response: DHS disagrees that USCIS does not have the statutory authority to raise naturalization fees. The Form N–400 fee adjustment is consistent with INA section 286(m), 8 U.S.C. 1356(m) (authorizing DHS to charge fees for adjudication and naturalization services at a level to ''ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants and other immigrants'') [90] and the CFO Act, 31 U.S.C. 901–03 (requiring each agency's Chief Financial Officer (CFO) to review, on a biennial basis, the fees imposed by the agency for services it provides, and to recommend changes to the agency's fees). Currently, there are no statutory provisions that require USCIS to limit the naturalization application fee. DHS declines to make any changes in this final rule in response to these comments.

Comment: Many commenters stated that Congress has asked USCIS to keep citizenship affordable, consistent with Congressional intent, USCIS has historically followed this directive by using other fees to subsidize naturalization fees, and that the proposed increase in naturalization fees and removal of fee waivers violates Congressional intent. A commenter provided quotations from 2010 and 2016 rulemakings stating this policy objective and wrote that USCIS is arbitrarily departing from the policy of reducing economic barriers to naturalization. Commenters also cited the U.S. Code's citizenship criteria and noted the absence of economic status. Commenters cited the 2019 DHS Appropriations Act and a recent Congressional Committee report in making this argument and especially opposing the removal of fee waivers for Form N–400. A commenter also cited Consolidated Appropriations Acts from 2012, 2017, and 2019 as evincing Congressional intention to reduce financial barriers to naturalization. The commenter also quoted a Senate Committee report from 2015 and House Committee report from 2020 to the same effect. Another commenter provided two House of Representatives reports from 2018 and 2019, also writing that the proposal contravenes Congressional intent.

Multiple commenters stated that the proposal ''undermin[es] the special consideration that obtaining U.S. citizenship deserves.'' A commenter wrote that USCIS irrationally dismissed Congressional instructions to remove barriers to naturalization by relying on a principle of ''self-sufficiency'' that USCIS asserts without support. Another commenter stated that USCIS acknowledged its departure from Congressional intent, and that its stated justification—a ''hypothetical concern'' that waivers could disrupt services—is insufficient. A commenter stated that, while reducing the subsidy provided by other immigration fees to naturalization may be appropriate, it is cynical of USCIS to use naturalization fees to fund ICE while making no commitment to reducing the months-or-years-long wait times for citizenship interviews. A commenter provided a citation to a USCIS statement reaffirming the special consideration given for naturalization in making fee determinations.

A commenter stated that increasing naturalization fees would impact families and that DHS must therefore perform a ''family policymaking assessment,'' citing a 1998 Omnibus Appropriations Act. The commenter wrote that N–400s are the forms most likely to impact immigrant families.

A commenter wrote that the Northern District of California issued a nationwide preliminary injunction, effective December 2, 2019, barring USCIS from limiting access to naturalization for LPRs.

Two commenters cited the United Nations Declaration of Human Rights' statement that the right to a nationality also includes the right to ''change [one's] nationality,'' and therefore there should be no arbitrary barriers that prevent naturalization.

One commenter cited a 2012 Migration Policy Institute study which found that the United States lags behind other English-speaking countries in naturalization rates, writing that these countries have made active attempts to encourage naturalization. A few commenters emphasized the role of naturalization in providing personal security for immigrants, particularly those who are in danger of worker exploitation without the full legal rights of citizenship. A commenter requested that DHS more thoroughly analyze the costs of impeding access to naturalization, which include long-term reduced economic and social mobility for impacted populations.

Response: DHS recognizes the importance of naturalization to individual beneficiaries and American society as a whole. However, there are no specific provisions in the law (including the INA or the United Nations Declaration of Human Rights) that require USCIS to set fees to encourage individuals to obtain U.S. citizenship.

In response to comments, DHS provides that the fee for Form N–400 will remain fee waivable for VAWA self-

[90] The longstanding interpretation of DHS is that the ''including'' clause in section 286(m) does not constrain DHS's fee authority under the statute. The ''including'' clause offers only a non-exhaustive list of some of the costs that DHS may consider part of the full costs of providing adjudication and naturalization services. *See* 8 U.S.C. 1356(m); 84 FR 23930, 23932 n.1 (May 23, 2019); 81 FR 26903, 26906 n.10 (May 4, 2016).

petitioners T and U nonimmigrants, SIJ petitioners and recipients who have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency, and Special Immigrant Afghan and Iraqi translators. DHS is aware of the United Nations' Universal Declaration of Human Rights, and we agree with the declaration's article 15 which provides that everyone has the right to a nationality and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.[91] Congress has authorized DHS to fund USCIS naturalization services from fees, and does not fund USCIS through appropriations. *See* INA section 286(m), 8 U.S.C. 1356(m). Our fees are set using notice and comment rulemaking as permitted by law and we provide a robust explanation of the need for the fees and respond to public comments. Furthermore, the fee for an application for naturalization will be $1,170 and fee waivers will be available to VAWA, T, U, SIJ and Afghan/Iraqi SIV applicants. *See* new 8 CFR 106.2(b)(3) and 106.3(a)(3). DHS recognizes that some applicants would need to pay for the fees absent a fee waiver but does not believe the increase will prevent people from filing for naturalization. As previously indicated, USCIS monitors the proportion of lawful permanent residents who naturalize over time and this tracking has a high degree of accuracy and the most recent published analysis shows that the proportion of LPRs naturalizing increased over time from the 1970s to 2004, despite the increase in the naturalization fee over that time period.

Comment: An individual commenter stated that the rule's justification—that fee increases are needed to cover costs—does not support the Form N–400, Application for Naturalization, fee increase. The commenter wrote that USCIS' projected cost increases are only 13 or 20 percent and the proposal would raise fees by 60 percent.

Response: DHS acknowledges that the fee for Form N–400, Application for Naturalization, is increasing by a greater percentage than the total increase in USCIS costs and the average increase in fees generally. DHS is raising the fee for Form N–400 from $640, plus the $85 biometric services fee, if applicable, to a total fee including biometric services fee of $1,160 if filed online or $1,170 if filed on a paper application. The estimated average fee of $1,165 is $445, or 61.4 percent, above the previous combined cost of Form N–400 and the biometric services fee.

The fee for this form is increasing more than for most other forms because DHS has historically held the fee for Form N–400 below the estimated cost to USCIS of adjudicating the form in recognition of the social value of citizenship. However, in this final rule DHS is emphasizing the beneficiary-pays principle for establishing user fees. This means that the fee for Form N–400 will now represent the estimated full cost to USCIS of adjudicating the form, plus a proportional share of overhead costs and the costs of providing similar services at a reduced or no charge to asylum applicants and other immigrants. In other words, the fee for Form N–400 will now be determined in the same manner as most other USCIS fees. Because DHS has held the fee for Form N–400 below full cost in the past, adjusting to full cost requires an increase in excess of the volume-weighted average increase of 20 percent. If DHS did not increase the fee for Form N–400 this amount, other fees would need to increase further to generate the revenue necessary to recover full cost, including the costs of Form N–400 not covered by its fee. Thus, DHS believes the increase in the fee for Form N–400 is fully justified.

Comment: Many commenters opposed the proposed fee increase by comparing its 60 percent increase against the 4 percent inflation rate over the same period. A commenter recommended that DHS raise the fee for Form N–400 to $737.70, to account for inflation. A commenter wrote that DHS should base naturalization fee increases on inflation only. Another commenter stated that, adjusted for inflation since its original price in 1985, the citizenship application should cost $85, rather than the $725 it currently is or the proposed $1,170. Likewise, another commenter cited a Stanford News article in commenting that the inflated price of naturalization applications should only be $80.25. Another commenter stated that, if inflated since 1994, the current naturalization fee would be $95. Another commenter recommended that naturalization fees be set at a percentage of the taxable income reported by applicants over the past 2 years. A commenter stated that the proposed naturalization fee increases should be phased in over a number of years in order to reduce its burden on applicants.

Response: DHS appreciates the recommendations but neither adjusting the fee for Form N–400 by inflation nor phasing the fee increase in gradually over time would result in sufficient revenue to recover the cost of adjudicating and processing Form N–400. DHS is increasing the fee for Form N–400, Application for Naturalization, to recover the full cost of adjudication. The revenue generated by the previous fee is insufficient to recover the full cost of adjudication. DHS held the current N–400 fee at less than the cost of adjudication when it last adjusted the fee on December 23, 2016. *See* 81 FR 73307. In this final rule, DHS emphasizes the beneficiary-pays principle of user fees so that applicants will be primarily responsible for covering the cost of adjudicating their applications. This requires an increase in the fee for Form N–400 to $1,160 for online filing or $1,170 for paper filing. Phasing in the increase over multiple years would require increasing other fees by greater amounts to generate the revenue necessary to cover the costs not recovered due to the lower Form N–400 fee. Therefore, DHS declines to adopt the commenters' suggestions.

Comment: A commenter stated that the fees for Forms N–400 and N–600 should not be more than $500, and indicated that DHS should decrease the fees so that more immigrants can afford to apply without relying on a fee waiver. The commenter stated that the fee increase is a hardship and referenced refugees, Special Immigrant Visas, and Afghan/Iraqi interpreters should pay lower fees for humanitarian reasons.

Response: Charging a limited fee shifts the cost of processing and adjudicating those benefits to other applicants and petitioners, which is not equitable given the significant increase in Form N–400 filings in recent years.[92] The new fees for Forms N–600 and N–400 implement the beneficiary-pays principle, which ensures that those individuals who receive a benefit pay for the processing of the relevant application, petition, or request. The N–400 fees of $1,160 if filed online and $1,170 if filed on paper are set to recover the full cost of adjudicating the Form N–400.[93] In addition, DHS has provided in the final rule that certain Afghan/Iraqi interpreters are eligible for N–400 fee waivers, provided that they file Form I–912, Request for Fee Waiver, and meet the fee waiver eligibility requirements. *See* 8 CFR 106.3.

[91] *See* Universal Declaration of Human Rights, Available at *https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf* (last viewed March 16, 2020).

[92] Based on filing volume trends in recent years, USCIS forecasts an increase of 82,827 Form N–400 applications, nearly a 10 percent increase from the FY 2016/2017 fee rule forecast. *See* NPRM Table 4: Workload Volume Comparison.

[93] For more information, see Appendix VII: Final Fees by Immigration Benefit Request that accompanies this final rule.

Comment: An individual commenter stated that the rule's justification—that fee increases are needed to cover costs—does not support the naturalization fee increase. The commenter wrote that USCIS' projected cost increases are only 20 percent and the proposal would raise fees by 60 percent.

Response: As stated in the NPRM, in crafting prior fee rules, DHS reasoned that setting the Form N–400 fee at an amount less than its estimated costs and shifting those costs to other fee payers was appropriate in order to promote naturalization and immigrant integration.[94] DHS now believes that shifting costs to other applicants in this manner is not equitable given the significant increase in Form N–400 filings in recent years.[95] Therefore, DHS proposes to no longer limit the Form N–400 fee to a level below the cost of adjudication, thereby mitigating the fee increase of other immigration benefit requests and implementing the beneficiary-pays principle. In this final rule, DHS institutes a $1,160 fee for Form N–400 if filed online and a fee of $1,170 if filed on paper to recover the full cost of adjudicating the Form N–400, as well as the cost of similar service provided without charge to asylum applicants and other immigrants.[96]

DHS acknowledges that the fee for Form N–400, Application for Naturalization, is increasing by a greater percentage than the total increase in USCIS costs and the average increase in fees generally. DHS is raising the fee for Form N–400, Application for Naturalization, from $640, plus the $85 biometric services fee, if applicable, to a fee of $1,160 if filed online or $1,170 if filed on a paper application. The estimated average fee of $1,165 is $445, or 61.4 percent, above the previous combined cost of Form N–400 and the biometric services fee.

Comment: Multiple commenters requested that USCIS ensure that naturalization remain affordable. A commenter stated that the cost and fees are a significant amount and discourages immigrants from applying to become US citizens. The commenter cited to a 2015 Pew Research Center asked Mexican green-card holders additional 13 percent of Mexican and 19 percent of non-Mexican lawful immigrants identified financial and administrative barriers, mainly the cost of naturalization. Two commenters said that barriers to naturalization disproportionately endanger Mexican workers, who are more likely to experience worker exploitation and four times more likely to die in the workplace than U.S.-born workers. Another commenter indicated that the naturalization fee amounted to a month's gross income for an immigrant and therefore would make it too difficult to afford citizenship applications. Another commenter indicated that the naturalization fee represents 50 to 100 percent of a foreign resident's monthly income. A commenter questioned the naturalization application fee increased based on 2 hours of work and asked about the hourly wage or a week's salary for a typical American household. Another commenter opposed USCIS' rationale, writing that while it may receive more naturalization applications, naturalization adjudication levels remain flat despite receipt increases. An individual commented that the proposed naturalization fee increase would prevent residents from seeking citizenship, citing data on financial and administrative barriers as bars to naturalization. Another individual described the extent of the fee's burden by comparing it against the average income of immigrants.

A commenter wrote that the proposal would act as a barrier to immigrants with middle or lower class income and cited an analysis from the Pew Research Center that found immigrants age 16 and over who arrived in the U.S. in the past five years had median annual earnings of $24,000, and those who arrived in the U.S. in the last ten years had median annual earnings of $32,000. The commenter cited another analysis from the same organization showing the U.S. foreign-born population was 44.4 million in 2017, and that 800,000 immigrants applied for naturalization in 2018. One commenter provided citations to various sources detailing the widespread lack of adequate savings among many Americans, particularly black and Latino households, and that the proposal would deprive families of the ability to work and pursue opportunities. The commenter said the proposal would cause ''irreparable harm'' to families forced out of the legal immigration system by unaffordable fees.

Response: DHS understands that the increase for the naturalization application may affect those applying. As explained in the NPRM, in crafting prior fee rules, DHS reasoned that setting the Form N–400 fee at an amount less than its estimated cost and shifting those costs to other fee payers was appropriate in order to promote naturalization and immigrant integration.[97] DHS now believes that shifting costs to other applicants in this manner is not equitable given the significant increase in Form N–400 filings in recent years.[98] Therefore, DHS will no longer limit the Form N–400 fee, thereby mitigating the fee increase of other immigration benefit requests and implementing the beneficiary-pays principle. In this final rule, DHS institutes a fee of $1,160 for Form N–400 if filed online and a fee of $1,170 if filed on a paper form to recover the full cost of adjudicating the Form N–400.[99]

Comment: A commenter faulted USCIS' economic model for the Form N–400 fee increases. The commenter wrote that USCIS increased the activity-based cost (ABC) model baseline with no explanation, failed to account for fee waivers, increased the model output for Form N–400 by 18 percent, and failed to account for the cost-savings of online Form N–400 filings. A commenter stated that the proposal belies its ''beneficiary-pays'' principle by charging naturalization applicants a higher amount than the cost of processing of their own applications, subsidizing other immigration-related expenditures. Likewise, another commenter wrote that the proposal arbitrarily departs from past practice of capping the ''model output'' increase to 5 percent, setting the new level at 18–19 percent. A commenter wrote that the proposed naturalization fee increase could actually be detrimental to USCIS finances, as fewer immigrants would apply. The commenter faulted USCIS' rationale as failing to discuss operational effectiveness despite increasing fees beyond projected processing volume increases and failing to justify a $745-per-hour processing cost for naturalization applications—a cost exceeding that charged by private lawyers to corporate clients. The commenter also cited Government Finance Officers Association guidelines in writing that high-demand benefits are made affordable by government entities.

[94] *See, e.g.,* 75 FR 33461; 81 FR 26916.

[95] Based on filing volume trends in recent years, USCIS forecasts an increase of 82,827 Form N–400 applications, nearly a 10 percent increase from the FY 2016/2017 fee rule forecast. *See* Table 4: Workload Volume Comparison.

[96] For more information, see Appendix VII: Final Fees by Immigration Benefit Request of the supporting documentation that accompanies this final rule.

[97] *See, e.g.,* 75 FR 33461; 81 FR 26916.

[98] Based on filing volume trends in recent years, USCIS forecasts an increase of 82,827 Form N–400 applications, nearly a 10 percent increase from the FY 2016/2017 fee rule forecast. *See* NPRM Table 4: Workload Volume Comparison.

[99] For more information, see Appendix VII: Final Fees by Immigration Benefit Request of the supporting documentation that accompanies this final rule.

Response: DHS understands the commenter's concerns regarding the effect the fee increase on USCIS' financial well-being. DHS recognizes that, if the increase in fee for Form N–400 discouraged significant numbers of individuals from naturalizing, USCIS could realize less revenue than with a lower fee for Form N–400. However, DHS believes that most individuals will continue to value American citizenship, even if it is more expensive to naturalize. In the wake of past increases in the fee for Form N–400, USCIS has not experienced a decline in application volumes. DHS does not anticipate that Form N–400 application volumes will decrease following the fee increase in this final rule.

DHS notes that the critiques of its ABC model misunderstand what model outputs represent, how they incorporate fee waivers, and how they translate into final fees. DHS never limits the model output for any form type. The model output represents the estimated fee-paying unit cost for a given form. Meaning, the model output would recover the full cost of adjudicating that form type, given the anticipated fee-paying rate for that form. However, given that DHS determined to limit the fee increase for certain form types, USCIS must reallocate costs that will not be recovered by the lower, limited fees to other form types. Thus, the fees for most form types are greater than the calculated model outputs in order to generate revenue sufficient to cover the cost of adjudicating form types with fees held below the model output and ensure that USCIS achieve full cost recovery overall. DHS acknowledges that, in past fee rules, DHS has limited the increase in the fee for Form N–400 below the model output for that form. This choice forced other fee-paying applicants to pay higher fees and bear the cost of generating the revenue that was not recovered from the Form N–400 fees because of the lower fee. In the NPRM, DHS noted that it no longer believes this approach to setting the fee for Form N–400 is equitable, given high volumes of Form N–400 filings, the significant amount of costs other fee-paying applicants would have to bear if DHS limited the increase in fee for Form N–400, and its emphasis on the beneficiary-pays principle of user fees. Therefore, DHS disagrees that this change in practice is arbitrary.

The commenter is mistaken in calculating the cost per hour to process Form N–400 as $745. As with all USCIS fees, the fee for Form N–400 reflects not only the direct costs of processing an individual Form N–400 filing but also the cost of providing similar services at no or reduced charge to asylum applicants and other immigrants. Furthermore, each fee incorporates costs related to USCIS overheads and general administrative costs. In this final rule, DHS establishes a fee of $1,160 for Form N–400 if filed online and a fee of $1,170 if filed on paper to reflect the full cost to USCIS of processing these filings. DHS believes it has fully justified these fees.

Comment: Another commenter faulted DHS' abandonment of the ''ability-to-pay'' principle, asking for more transparency as to the changes in N–400 trends and how other applicants subsidized naturalization. The commenter also stated that DHS' assumption that applicants will continue to submit applications regardless of their eligibility for a fee waiver is unfounded. The commenter provided another citation to the proposal where DHS appears to recognize that removing fee waivers would impact application decisions, and then states that it cannot predict the proposal's impact on applications. A different commenter stated that, in a footnote, USCIS indicates that the true intent of the proposal is to impose a ''self-sufficiency'' principle and impose barriers to naturalization contrary to Congressional intent. A commenter also stated that when President Johnson signed the Immigration and Naturalization Act of 1965 into law, it ushered in our modern era with a more equitable system.

Response: The quote of President Johnson cited by the commenter referred to the elimination of the previous quota system that had severely restricted the number of people from outside Western Europe who were allowed to immigrate to the United States. The 1965 Act did not discuss the fees for naturalization. The 1965 Act did not provide for specific fee exemptions or waivers. DHS considered the self-sufficiency principles as established by Congress along with other provision of the law and the added cost to other fee-paying applicants and petitioners. DHS believes that it is neither equitable nor in accordance with the principle of self-sufficiency that Congress has frequently emphasized, to continue to force certain other applicants to subsidize fee-waived and reduced-fee applications for naturalization applicants who are unable to pay the full cost fee.

Comment: A commenter contrasted the proposed rule against a speech from Vice President Pence where he stated, ''America has the most generous system of legal immigration in the history of the world,'' writing that the proposal would be inconsistent with this statement. The commenter also provided statistics of the number of immigrants who naturalize in the United States against higher figures from Australia, Canada, and the United Kingdom.

Response: DHS does not agree that this final rule is inconsistent with the Vice-President's statement.[100] The statement did not include any references to fee or fee waivers or exemptions, instead the statement references the ability of different people with different backgrounds to be able to naturalize. The rate of naturalization has increased over the years and DHS does not believe that this final rule would have a significant effect on the number of people filing Form N–400.

Comment: A commenter claimed that USCIS has failed to provide the evidence necessary for the agency to save money by no longer providing printed N–400 forms for people with low technology literacy, requiring them to access the forms at public libraries and community organizations. The commenter wrote that USCIS has failed to account for the impact those savings had on the agency's budget, as well as on the ability of LPRs to submit their naturalization applications.

Response: As the commenter points out, DHS is encouraging applicants to file online when they can, moving toward modernizing all of our services, minimizing the use of paper, and increasing agency efficiency through technology. It requires 10 days to receive forms after ordering them from the phone and mail service, as opposed to immediate access via the website. All USCIS forms are easily accessible by visiting the USCIS website, and applicants may either file electronically or download the form and submit it in paper format according to the form instructions. If an individual visits a USCIS office, we will direct them to digital tools and USCIS Contact Center phone number. Understanding some individuals may not have access to the digital tools, our staff will make them aware of resources, such as libraries that offer free computer online services, including many that offer a Citizenship Corner. USCIS works closely with accredited community-based organizations and local libraries to provide access to information and computers. Public libraries can be a resource for immigration information, and many have a Citizenship Corner where the public can visit and learn more about the citizenship process

[100] Remarks by Vice President Pence at a Naturalization Ceremony, July 4, 2019, available at *https://www.whitehouse.gov/briefings-statements/remarks-vice-president-pence-naturalization-ceremony* (last visited March 9, 2020).

libraries may also have computers that the public may use to access forms, complete, and print them. USCIS has enjoyed a costs savings from reducing the storage and mailing of paper forms, as well as destroying unused stocks of paper forms when versions changed, but not enough of a savings to have an appreciable effect on the new fees in this final rule.

Comment: A commenter recommended several alternatives to the proposed fee increases, including bundling fees for Forms I–90 and N–400, offering premium processing at a fee, offering tiered pricing for Form N–400, and offering fee reductions based on applicant's income taxes. A commenter suggested that USCIS adopt a sliding scale application fee for naturalization based on income. Another commenter suggested a payment installment plan for immigrants who cannot pay the full amount at once, as well as micro-loans. The commenter also suggested the creation of a citizenship foundation similar to that which funds the National Park Service.

Response: As previously indicated, DHS recognizes that filing fees are a burden for some people of limited financial means. Creating and maintaining a new system of tiered pricing, family caps, installments plans, or micro-loans would be administratively complex and would require even higher costs than in the NPRM. Such payment systems would require staff dedicated to payment verification and necessitate significant information system changes to accommodate multiple fee scenarios for every form. The costs and administrative burden associated with implementing such a system would require additional overall fee revenue. However, as previously stated, the cost of fee waivers and reduced fees are borne by all other fee payers because they must be transferred to those who pay a full fee to ensure full cost recovery. DHS believes that it is more equitable to align with the beneficiary-pays principle. Thus, USCIS takes a relatively careful position with respect to transferring costs from one applicant to another through the expansion of fee waiver eligibility and discounting fees. To set fees at various levels based on income, as suggested by the commenter, would require deviation from the underlying fee-setting methodology and require some of the costs for those applications to be reassigned to other benefit requests. Therefore, DHS did not incorporate a reduced fee, sliding scale, or family cap in this final rule or the other suggestions provided by commenters.

Comment: One commenter took issue with the use of terms like ''moral turpitude'' and ''good moral character'' since these terms lack a legal definition. The commenter said the proposed fee increases would prevent many LPRs from pursuing citizenship, and that the lack of a legal definition for certain terms would increase the amount of time individuals are at risk of losing legal status.

Response: DHS did not propose a change to the eligibility provisions for benefit requests such as adjustment of status to lawful permanent resident or naturalization, for which a ''crime involving moral turpitude'' and ''good moral character'' may be relevant statutory terms. Therefore, we are not including changes to those terms in the final rule.

b. Effect on Naturalization Applicants

Comment: Many comments offered various comments on the effects of the proposed naturalization fee increase on naturalization applicants. Commenters wrote that the new fees:

- Would prevent residents from seeking citizenship, citing data on financial and administrative barriers as bars to naturalization.
- Will not just delay, but ultimately prevent low income and poor immigrants from naturalizing, and the U.S. is engaging in implicit racism, citing the U.S.'s history of denying citizenship based on race.
- The proposal would punish immigrants who did their utmost to obey immigration laws.
- The proposal would harm the Latino community—more than half of the immigrants currently eligible to naturalize are Latino while 71 percent of the population that face the greatest barriers to naturalization are Latino.
- Naturalization fees are a significant bar to Mexican immigrants becoming U.S. citizens with 13 percent of Mexican and 19 percent of non-Mexican lawful immigrants identifying financial and administrative barriers, mainly the cost of naturalization, as a reason preventing their naturalization.
- 2.1 million immigrants are eligible for naturalization in the state of California, and the new fee would severely affect 1 million Californians including 768,024 that live in Los Angeles County.
- The proposal would increase immigrants' dependence on predatory financing in order to support their naturalization applications.
- Would harm eligible parents of U.S. children who will either have to pay a higher fee or forgo naturalization, subjecting themselves and their children to the stresses of uncertain status.
- The mental health problems and traumas faced by children of undocumented parents would be exacerbated.
- The increase is harmful—the United States Census Bureau reported that between 1970 and 2010 the percentage of foreign-born populations who naturalized decreased from 64 percent to 44 percent, A 20 percent decrease in 40 years is a drastic drop and one reason for this is due to the increased in prices for naturalization applications.
- Naturalization provides personal security for immigrants, particularly those who are in danger of worker exploitation without the full legal rights of citizenship.
- Citizenship helps members of immigrant communities to feel secure enough to report crime, which improves neighborhood safety.
- Limiting working class immigration would be contrary to the interests of the U.S. society and economy.
- Naturalization boosts American democracy, economy, and diversity.
- Everyone benefits from residents naturalizing, citing a study showing that naturalization increases net taxable income and GDP.
- Naturalization increases individual earnings. A San Francisco Pathways to Citizenship Initiative study program's participants used financial assistance to afford the naturalization application fee. The funds provided by the city to support such fees ''would be depleted almost immediately'' if the proposed rule goes into effect.
- Citizenship promotes social benefits, such as English proficiency, quality of employment, and buy-in to U.S. democratic principles.
- Naturalization improves immigrant language skills.
- If half of LPRs naturalized, GDP would increase between $37 and $52 billion annually.
- LPRs must navigate many hurdles to naturalize, and that at a certain point, the United States misses out on the benefits of high naturalization rates because of these hurdles. Naturalization boosts American democracy, economy, and diversity, citing a Catholic Immigration Network study.
- Naturalization increases civic engagement, naming many naturalized citizens who have gone on to hold elected office.
- A 2015 Urban Institute study shows that naturalization increased individual earnings by 8.9 percent, employment rates by 2.2 percent, and

homeownership by 6.3 percent, with the earnings and employment improvements resulting in $5.7 billion of additional income in the 21 cities studied and increases home ownership and incomes.

- If eligible immigrants naturalized, federal, state, and city revenues would increase by $20 billion while New York City government benefit expenditures would decrease by $34 million.
- A 2015 Urban Institute study demonstrates that if just half of eligible immigrants in the United States naturalize, it would increase GDP by $37–52 billion, annually, and if all eligible immigrants in 21 U.S. cities naturalized, home ownership would increase by more than 45,000 people and an additional $2 billion in tax revenue would be recognized.
- A 2002 Bratsberg et al. study showed that naturalization led to wage increases as observed in the same individuals over time.
- A 2012 Migration Policy Institute study shows naturalization contributes to increased economic growth through consumer spending.
- Several show the current application fee discourages naturalization, and that naturalization positively impacts wages, the economy, and immigrants' integration into society.
- A 2019 Migration Policy Institute study shows that naturalized citizens over the age of 25 have similar levels of post-secondary education to U.S.-born citizens and that, through naturalization, these immigrants can better integrate into and contribute to their local communities. The naturalization fee increases have caused the number of immigrants eligible to naturalize but not doing so to 9 million, and the proposal would diminish U.S.-specific human capital.
- A 2019 Center for Migration Studies paper shows the impact of naturalization on college degree attainment, English-language skills, employment in skilled occupations, healthcare, poverty level, and home ownership.

Response: DHS appreciates and acknowledges all of the positive aspects of naturalization. DHS does not intend for the new fees to prevent individuals from applying for naturalization, that they require applicants to depend on predatory financing to pay naturalization application fees, and we do not believe the rule will have those effects. Therefore, DHS declines to make any changes in this final rule on these bases.

USCIS monitors the proportion of lawful permanent residents who naturalize over time. This analysis has a high degree of accuracy because it uses administrative data rather than survey data (as the Census does) to assess changes in naturalization patterns. The most recent published analysis shows that the proportion of LPRs naturalizing increased over time from the 1970s to 2004, despite the increase in the naturalization fee over that time period.[101] DHS does not have any data that indicates that this trend would change.

Comment: A commenter stated that all asylees rely on naturalization for the right to petition for certain family members. The commenter stated that with the additional financial burden of naturalization fees, family reunification for asylees will be delayed or prevented.

Response: DHS recognizes that asylees may petition for family members after completing the naturalization process. DHS wants every person eligible to apply for naturalization to submit an application. Likewise, we encourage anyone eligible to petition for the immigration of qualifying family members. DHS does not believe that asylees would be unduly burdened by naturalization fees and does not agree that naturalization fees would prevent or delay family reunification for asylees. DHS is also unaware of any specific statutory provision requiring DHS to provide naturalization applications to asylees with limited fees. DHS declines to make any changes in this final rule in response to this comment.

Comment: Another commenter stated that the NPRM would further disadvantage people with disabilities and chronic mental health conditions, contrary to Congressional intent to make immigration benefits available to eligible noncitizens regardless of disability. The commenter wrote that, in addition to the increased naturalization fees, people with disabilities and chronic mental health conditions often must pay to appeal erroneous findings by USCIS officers who conduct naturalization interviews with no medical training and make assumptions regarding their clients' disabilities.

Response: DHS is adjusting its fees in this final rule to recover the estimated full cost of providing adjudication and naturalization services. As the commenter suggests, DHS is applying the fees in this final rule to all applicants regardless of their having a disability or not. The comment seems to equate physical disability and mental health conditions with poor financial condition, but DHS does not know that to generally be the case, and DHS is not basing fee policies on that assumption but rather emphasizing the beneficiary-pays principle. Further, USCIS monitors the proportion of lawful permanent residents who naturalize over time. This analysis has a high degree of accuracy because it uses administrative data rather than survey data (as Census does) to assess changes in naturalization patterns. The most recent published analysis shows that the proportion of LPRs naturalizing increased over time from the 1970s to 2004, despite the increase in the naturalization fee over that time period.[102] DHS declines to make changes in this final rule in response to the comment.

c. N–400 Reduced Fee

Comment: Commenters stated that the fee waiver and partial fee waiver would be eliminated for families with income between 150 percent and 200 percent of the poverty level and almost eliminated for everyone else. A commenter indicating the eliminating the reduced fee for people with incomes from 150 to 200 percent of the FPG would make it too difficult for immigrants to afford citizenship. An individual commenter mentioned the fee waiver and partial fee waiver system strengthened by the Obama administration, and stated that this rule would eliminate these options for families with income between 150 percent and 200 percent of the poverty level and almost eliminate waivers for everyone else.

Response: DHS acknowledges that eliminating the reduced fee for the naturalization application will limit the number of people who receive a reduced fee and slightly increase the number of people who are required to pay the full fee. However, few applicants have requested the reduced fee since its creation and significantly fewer applicants than predicted took advantage of the reduced fee option. In other words, the reduced fee option was not widely received, and DHS does not believe its elimination will significantly hinder the number of people who cannot pay the full fee established in this final rule.

The estimated total number of approved reduced fee requests in fiscal year 2017 was 3,624 (0.83 percent). The total number of denied reduced fee requests was 733. In total, DHS estimates the annual number of requests for a reduced Form N–400 fee that

[101] *See* USCIS, Trends in Naturalization Rates: FY 2014 Update (November 2016), available at *https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports/Trends-in-Naturalization-Rates-FY14-Update.pdf.*

[102] *See* USCIS Trends in Naturalization Rates: FY 2014 (November 2016) Update, available at *https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports/Trends-in-Naturalization-Rates-FY14-Update.pdf.*

would be filed absent the proposed change is 4,357 (0.6 percent). For comparison, the total number of Form N–400 filed in fiscal year 2017 was 581,998. *See* Table 38 in the RIA.

DHS proposes to eliminate the reduced fee in order to recover the estimated full cost for naturalization services. In addition, eliminating the Form I–942 will reduce the administrative burden on the agency to process the Form I–942. USCIS would recover the cost of adjudicating Form N–400 and not transfer Form N–400 costs to other form fees.

d. Case Processing

Comment: A commenter wrote that the proposed naturalization fee increase is not supported by any improvement in quality of services. It added that, in 1998, INS announced a fee increase but claimed that it would only follow a reduction in the backlog and acceleration of processing speeds. The commenter contrasted this statement against the current backlog of 700,000, cited from a 2019 Colorado State Advisory Committee paper. The commenter also provided a lengthy quotation from a 2017 OIG report stating that USCIS has introduced operational inefficiencies as processing times doubled and naturalization interviews were cancelled. The commenter mentioned the suspension of InfoPass services specifically as an example of diminished customer service.

A commenter wrote that the proposal would compound policies made at the local level which are already increasing barriers to naturalization, such as the USCIS field office in Seattle's 2019 decision to shift caseloads to offices more than 142 or 174 miles away.

A commenter provided figures of the LPRs eligible to naturalize and the backlogs in Denver and that the fee increase will further deter eligible adults from naturalizing.

A commenter claimed that without increasing fees, with automation and management reforms, the Form N–400 processing period in their region has decreased to an average of less than 12 months, undermining the necessity of a fee increase.

Response: DHS does not believe the rule changes will delay processing or deny access. USCIS will adapt and change its process as necessary to avoid or minimize any delays in case processing. Nevertheless, by enabling USCIS to hire more employees to process requests, including requests on hand, USCIS also believes the new fees will help reduce backlogs.

25. Other Naturalization and Citizenship Forms

Comment: A commenter opposed the Form N–600 fee increase, writing that USCIS would receive more revenue and avoid administrative difficulties if the fee were reasonable. A commenter opposed the fee increase for Forms N–600 and N–535 [sic], stating that no explanation has been provided to explain why those increases are necessary.

Response: DHS disagrees with this comment. DHS calculated the estimated cost to USCIS of adjudicating Form N–600. This change aligns more closely with the beneficiary-pays principle to ensure that individuals who receive an immigration benefit or service from USCIS bear the cost of providing that benefit or service. Therefore, DHS believes the fee as established is reasonable based on USCIS costs.

Comment: A commenter stated that the Form N–600 fee is especially cruel as it has been inflated for years, ''not getting their certificate of citizenship limits their college options, and most families have more than one child.''

Response: DHS disagrees that the fees for Forms N–600 and N–600K were inflated for years. As noted in the FY 2016/2017 fee rule, the current fees for Forms N–600 and N–600K assumed that approximately one third of applicants would receive a fee waiver. *See* 81 FR 73928. To recover full cost, DHS set the fees for Forms N–600 and N–600K at a level for fee-paying applicants to cover the cost of fee-waived work. *Id.*

In this fee rule, the fees for Forms N–600 and N–600K are decreasing mainly because of the proposed limitation of fee waivers, which will enable greater cost recovery for several form types and limit the need for cost reallocation to fee-paying applicants. The proposed fees provide for the full recovery of costs associated with adjudicating the forms. In addition, DHS is providing fee waivers for the humanitarian categories for Forms N–400, N–600, and N–600K.

In addition, not obtaining a certificate of citizenship does not limit a person's college options because there are other means to establish citizenship. Upon meeting the requirements of INA 320, children of U.S. citizens automatically acquire U.S. citizenship. Applying for a certificate of citizenship is only one means to acquire proof of such citizenship. Applicants who acquired U.S. citizenship may also obtain a passport to establish proof of citizenship. Further, some colleges permit nonimmigrants and lawful permanent residents to attend college.

Comment: Commenters opposed the proposed fees for the following naturalization and related forms:

- N–300, Application to File Declaration of Intention;
- N–336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA); and
- N–470, Application to Preserve Residence for Naturalization Purposes.

These commenters stated that immigrants who need to file these special forms would face additional barriers to naturalization.

Commenters indicated that some immigrants use Form N–300 in order to work in certain states. The proposed rule would increase this fee by 389 percent, to $1,320 or five weeks of minimum wage take-home pay.

Some immigrants use Form N–336 to file an appeal if their naturalization application is denied by USCIS. The proposed rule would increase this fee by 151 percent, to $1,755 or seven weeks of minimum wage take-home pay. The commenter stated that USCIS provided no justification for its Form N–336 fee increase and that the increase would especially affect the most vulnerable populations by charging a total of $2,925 to navigate a faulty system.

Some immigrants use Form N–470 if they plan to work abroad for a U.S. company, university, or government agency before applying for U.S. citizenship. The proposed rule would increase this fee by 351 percent, to $1,600 or six weeks of minimum wage take-home pay.

The comment stated that in all of these cases, immigrants living in the United States could be prevented from increasing their income, obtaining the right to vote, and reuniting with family members abroad because they are unable to afford the proposed naturalization fees.

Response: Consistent with full cost recovery and the beneficiary-pays principle emphasized throughout this final rule, the new fees represents USCIS' estimated full cost of adjudicating the forms at the time of USCIS' FY 2019/2020 fee review. USCIS used all available data at the time it conducted its fee review to estimate the full cost of adjudication for benefit requests. DHS does not believe that the changes in the fees will limit the ability of noncitizens to obtain the required documentation to be eligible to work if qualified.

H. Comments on Changes to Form I–129, Petition for a Nonimmigrant Worker

Comment: Multiple commenters objected to the increase in fees for

petitions requesting O and P nonimmigrant status. Commenters highlighted the increased costs and burdens to U.S.-based petitioners, including non-profit organizations, small entities, and cultural institutions. Some commenters objected to treating petitions for O and P visa classifications differently, as DHS proposed to create Form I–129O for entities to petition for O visa classification and Form I–129MISC to petition for P visa classification and other categories of nonimmigrant visas. A commenter wrote that the proposed Form I–129MISC would only further delay P-visa classification processing, especially as P, Q, R, and H–3 visa classifications are vastly different. Another commenter said the I–129MISC classifications are so vastly different that there is a higher risk that an officer will apply certain criteria to the P visa classification that is only applicable to another classification. A few commenters stated Form I–129MISC is an inappropriate option for P visa classification and instead suggest combining P visa classification form with Form I–129O or creating a separate P visa classification form to replicate I–129O with minor modifications.

Response: DHS acknowledges similarities between the uses of O and P nonimmigrant visa classifications. However, USCIS currently records time per adjudication (*i.e.,* completion rates) for Form I–129 petitions requesting O visa classification discretely so we are able to calculate a separate fee for the O nonimmigrant classification. Time spent adjudicating petitions requesting P visa classification are aggregated with the time spent adjudicating all of the nonimmigrant classifications requested using the new Form I–129MISC. Thus, USCIS is unable to distinguish the time spent adjudicating petitions requesting P nonimmigrant workers from the time spent on adjudicating requests for the other types of workers included in Form I–129MISC, and therefore we have not calculated a separate fee for the P classification. Therefore, DHS declines commenters' suggestions to charge the same amount for petitions requesting O nonimmigrant classification and P nonimmigrant classification and implements fees based on data that show adjudications of O nonimmigrant petitions require more staff, and are therefore more costly, than adjudications of petitions for nonimmigrant classifications that may be requested using Form I–129MISC. DHS will revisit the fees for all of the new Forms I–129 that are created in this rule in the next biennial fee review.

Comment: Commenters on the effect of the religious worker program stated:

- That the proposed changes to Form I–129 unduly burden religious organizations because religious workers have limited means to petition for R nonimmigrants, hindering their ability to provide pastoral care while respecting vows of poverty.
- Petitioners requesting R nonimmigrant workers currently pay a $460 fee for Form I–129. Under the proposal, the fee would be $705, a $245 or 53 percent increase.
- The steep fee increases would have a chilling effect on U.S. religious workers and would burden religious orders and their vital work in American communities.
- International religious workers provide critical pastoral care and social services for American parishioners and communities.
- These fees would disproportionately affect small religious organizations that serve a charitable function in our society.

Response: In this final rule, DHS adjusts the fees for all types of Form I–129 to reflect the estimated full cost of adjudication. DHS does not believe that the fee increases implemented in this final rule will impose unreasonable burdens on petitioners, churches, religious organizations, or small entities who wish to petition for a nonimmigrant religious worker. DHS realizes that many religious workers have limited means and some take a vow of poverty, but the R–1 religious worker does not petition for his or her own employment and is not responsible for paying the Form I–129 fee, because the organization is required to submit Form I–129 and pay the fee. DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter noted that the changes to the way USCIS reviews and adjudicates H–1B petitions have resulted in slower processing times, shifting standards for approval of petitions, and an increase in Requests for Evidence (RFEs).

Response: DHS is unsure how the commenter thinks changes in H–1B nonimmigrant adjudications impact this rulemaking. DHS is breaking the Form I–129 into several forms that will focus the information collected and instructions on the nonimmigrant category. DHS anticipates that this will result in more efficient completion and adjudication of the forms and declines to make changes in this final rule in response to the comment.

Comment: Many commenters called the 25-person limit for Form I–129 petition for H–2A, O, or P performers ''arbitrary.'' A few commenters stated that USCIS fails to provide any information or data supporting the 25-person limit or increased fees. One commenter questioned how USCIS determined their per worker/petition cost because it would cost the same to have a petitioner with one beneficiary as it would to have a petitioner with 25 beneficiaries. A few commenters suggested that the proposed 25-beneficiary cap as applied to arts ensembles would multiply costs for arts organizations and would preclude them from considering larger performing groups. The commenters also said the 25-beneficiary cap would create ''new risks for USCIS confusion'' and unnecessary processing delays. A commenter suggested that O- and P-nonimmigrant classifications also limit the numbers of beneficiaries on a single petition, reasoning that USCIS should not apply the same fee for cases with fewer beneficiaries. Some commenter's stated that the separating of I–129 will create confusion and delays.

Response: DHS disagrees with commenters that the separating of Form I–129 will create confusion and delays. USCIS is limiting the number of named beneficiaries to 25 that may be included on a single petition for H–2A, H–2B, H–3, O,[103] P, Q, E, and TN workers. As previously discussed in section I of the preamble of the NPRM, limiting the number of named beneficiaries simplifies and optimizes the adjudication of these petitions, which can lead to reduced average processing times for a petition. Because USCIS completes a background check for each named beneficiary, petitions with more named beneficiaries require more time and resources to adjudicate than petitions with fewer named beneficiaries. This means the cost to adjudicate a petition increases with each additional named beneficiary. Thus, limiting the number of named beneficiaries may ameliorate the inequity of petitioners filing petitions with low beneficiary counts who effectively subsidize the cost of petitioners filing petitions with high beneficiary counts.

DHS acknowledges similarities between the uses of O and P nonimmigrant classifications. Annual receipt data for each nonimmigrant classification petitioned for on Form I–129 can be found in the Regulatory Impact Analysis throughout Section (K) and more specifically Table 7. However,

[103] While O–1 petitions are limited to a single named beneficiary, a petition for O–2 nonimmigrant workers may include multiple named beneficiaries in certain instances. *See* 8 CFR 214.2(o)(2)(iii)(F).

USCIS currently records time per adjudication (*i.e.* completion rates) for Form I–129 petitions requesting O nonimmigrants discretely, but records time spent adjudicating petitions requesting P nonimmigrants aggregated form such that it is combined with the time spent adjudicating all classes of nonimmigrant classifications that may be requested using the new Form I–129MISC. Thus, USCIS is unable to distinguish the time spent adjudicating petitions requesting P nonimmigrants from the time spent on adjudicating requests for the other types of visas included in Form I–129MISC. Therefore, DHS cannot charge a separate fee for P nonimmigrants or charge the same amount for petitions requesting O and P nonimmigrants. DHS implements fees based on data that show adjudications of O nonimmigrant petitions require more staff, and are therefore more costly, than adjudications of petitions for nonimmigrant workers that may be requested using Form I–129MISC. The evidence suggests that the additional fee in this final rule does not represent a significant economic impact on these entities.

Comment: A few commenters wrote that applicants with one or two beneficiaries are subsidizing applications with multiple beneficiaries, which could further diminish, if not eliminate, farmers' margins. A few commenters indicated that limiting petitions to 25 named beneficiaries and requiring farmers to file separate petitions would create an immense paperwork burden; multiplying the costs to access the H–2A program; and increasing the workload for USCIS as well as for farmers who produce labor intensive agricultural commodities.

Response: DHS agrees that petitions with one or two named beneficiaries subsidize petitions with greater numbers of named beneficiaries, because petitions with fewer named workers require less time to process but pay the same fee. In this final rule, DHS adjusts the fees for all types of Form I–129 to reflect the estimated average cost of adjudication for the relevant form. Setting the fee at the level of the average cost necessarily entails some cross-subsidization between petitions that are less costly to adjudicate and those that are more costly to adjudicate.

DHS data indicates that the limit of 25 named beneficiaries per petition established in this final rule will significantly limit the amount of cross-subsidization between petitions with few named workers and many named workers. Previously a single petition might contain a single named worker or hundreds of named workers, implying a high level of cross-subsidization, given the disparity between the cost of adjudicating a petition with a single named worker and the cost of adjudicating a petition with hundreds of named workers. Limiting the number of named beneficiaries per petition to 25 effectively limits the amount of cross-subsidization per petition, because it limits the maximum disparity in the number of background checks to 24 $(25 - 1)$ and overall cost of adjudications between petitions.

DHS declines to make changes in this final rule in response to these comments.

Comment: A few commenters suggested a flat application fee with an add-on fee per beneficiary.

Response: DHS considered and rejected the approach suggested by the commenter. Past experience has demonstrated to DHS the complexity of administering sliding scale fees. DHS believes that the system implemented in this final rule of limiting an individual petition to a maximum of 25 named beneficiaries minimizes the administrative complexity, while also clearly delineating the cost for individual petitioners. DHS acknowledges that this system continues cross-subsidization between petitions that include few named beneficiaries and those that include 25 named beneficiaries, but DHS determined that 25 was a logical number because USCIS immigration services officers could generally adjudicate a petition with 1–25 named workers in 2 hours. 84 FR 62309. DHS believes that the administrative simplicity of this system outweighs concerns about cross-subsidization.

Comment: Some commenters generally opposed limiting the number of H–2A beneficiaries and increasing fees. One commenter opposed the fee changes for named and unnamed beneficiaries. The commenter stated DHS lacks a large amount of data, including the amount of time and effort required to process these petitions. Several commenters expressed support for USCIS lowering the fees for unnamed I–129 petitions, but opposed increasing the fees for a Form I–129 with named beneficiaries. One commenter stated that USCIS' justification for separating fees for named and unnamed petitions are valid, but due to the significantly higher filing fee for petitions filled with a named worker, petitioners will be incentivized to file unnamed worker petitions and require significantly more resources to be expended by the State Department in order for workers to obtain their visas. A commenter stated that the department failed to explain why it does not discuss an option of using improved technology to reduce processing time for named beneficiary petitions.

Response: In this final rule, DHS establishes the fee for each Form I–129 subtype at the estimated average cost of adjudication. DHS used all available data at the time it conducted its fee review to estimate the cost of adjudication for Form I–129 subtype. DHS disagrees with the commenter who wrote that USCIS did not have sufficient data.

DHS acknowledges that some petitioners may choose to file petitions for unnamed workers with a lower fee than petitions for named workers with a higher fee. However, choosing to petition for unnamed workers also incurs additional costs associated with consular processing. Furthermore, in some instances, petitioners may need to submit petitions for named workers. Thus, DHS does not believe its changes to the fee structure for petitions with named and unnamed beneficiaries will substantially change petitioner behavior.

DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter stated that members of its trade association would face a 529 percent increase in filing costs because of the proposed Form I–129H2A changes. The commenter stated that this change is contrary to Congressional intent and that USCIS' justification relies on it performing duplicative background checks on workers who have already been vetted by the Department of State. A few commenters doubted that USCIS could use background checks to determine whether workers have left the country for 3 months after 3 years, reasoning that CBP officials do not record land-based departures from the country. One commenter suggested USCIS develop an entry and exit system to help track the amount of time a worker has spent in and out of the country and having an online system should expedite the process and allow USCIS and the petitioner to get an approval at a more efficient speed. Another commenter said that forgoing the full background check and instead just doing a shorter update background check on petitions for workers who already possess a visa and who are already in the United States could save extraordinary amounts of time, money, and effort.

Response: USCIS must conduct full background checks on named workers and does not merely check to determine how much time the worker has spent

outside of the United States. In this final rule, DHS establishes the fee for Form I–129H2A at the level estimated to represent the full cost of adjudication. DHS declines to make changes in this final rule in response to these comments.

Comment: Many commenters generally opposed the changes to the Form I–129 and its fees as it applies to the arts, writing that artists should be treated better and the arts should be promoted. A commenter stated that the proposal would diminish the quality of arts in the United States, as artists would be unable to afford to tour and make a living from their craft. Commenters indicated that the proposal would harm local communities, small businesses, and non-profits, as artists would be unable to afford to perform here. A commenter wrote that artists' contribution to the U.S. market is greater than what they actually ''earn,'' mentioning that artists help draw in international demand. Commenters also stated that international artists provide a vital service in promoting cultural exchange and U.S. soft diplomacy. A commenter wrote that its art school teaches Scottish music, and hindering the school's ability to procure Scottish talent would operate to the detriment of the school, its students, and the community it serves. One commenter stated their organization already navigates significant uncertainty in gaining approval for petitions, due to lengthy processing times, uneven application of statutes and policies, and extensive and even unwarranted requests for further evidence to support petitions. The commenter stated that the proposed fees would only exacerbate these issues for performers. A few commenters said this NPRM would make it harder for their businesses to hire foreign musicians. Some commenters said the proposal would create financial barriers that will harm U.S. arts organizations and the local economies these organizations support. The commenters stated that if artists are unable to come to the U.S., the public will be denied the opportunity to ''experience international artistry.'' One commenter that provides legal services to overseas artists and performance groups wrote that the proposal would negatively impact their business and its clients, many of whom are small businesses.

Response: DHS agrees with the commenters' views of the arts a vitally important and beneficial. Nevertheless, the fees DHS establishes in this final rule are intended to recover the estimated full cost to USCIS of providing immigration adjudication and naturalization services. DHS does not intend to deter or unduly burden petitioners requesting workers in the arts, but any preferential treatment provided to petitioners for performers and musicians is borne by other petitioners, applicants, and requestors. DHS declines to require other applicants and petitioners subsidize the cost of petitioning for workers in the arts.

Comment: Some commenters discussed the rule's impact on farmers and the H–2A program. Several commenters said their use of H–2A workers allows them to have trained and trusted labor that has been properly vetted through the USCIS system. Likewise, several commenters said the proposed increase of H–2A filing fees would be especially harmful considering the difficulty farmers have obtaining enough and dependable domestic workers. A commenter stated that the proposed increase of H–2A filing fees would contravene the Executive Order on Buy American and Hire American. In contrast, one commenter expressed support for increased fees and rationalized that fees would improve their ability to compete with farms that spend less on labor and make it more appealing for farms to consider hiring citizens.

Response: In this final rule DHS adjusts the fees for all types of Form I–129 to reflect the estimated full cost of adjudication. DHS declines to make changes in this final rule in response to these comments.

Comment: Multiple commenters referenced an OIG report titled ''H–2 Petition Fee Structure Is Inequitable and Contributes to Processing Errors.'' A few commenters said USCIS uses this report as justification for their proposed changes, but they claimed the audit separates filings into small (1–10), medium (11–40) and large (more than 40) and does not suggest limiting the number of beneficiaries to specifically 25. One commenter said the report explicitly refrains from recommending a change in fees, noting that collecting more detailed cost data will be critical for USCIS to ''inform its H–2 petition fee setting activities.'' Another commenter quoted the report saying that a ''flat fee is not consistent with Federal guidelines that beneficiaries pay for the full (or actual) cost of services provided or that established user fees be based on costs and benefits.''

Response: DHS appreciates commenters' references to the report by the DHS Office of the Inspector General. As stated in the NPRM, DHS establishes separate fees of forms for different types of Form I–129 filings to distinguish the different cost of adjudicating different kinds of petitions. DHS believes that the changes implemented in this final rule, including establishing a maximum limit of 25 named beneficiaries per petition, and differentiated fees based on whether a petition requests named or unnamed workers, are consistent with and responsive to the recommendation of the DHS OIG report.

Consistent with the recommendations highlighted by commenters, DHS used detailed cost data to distinguish between the average cost of adjudicating petitions with named and unnamed beneficiaries where applicable. In establishing different fees that distinguish the differences in the average cost of adjudication, DHS addresses concerns that the previous flat fees were not consistent with the beneficiary-pays principle of user fees.

DHS declines to make changes in this final rule in response to these comments.

Comment: A few commenters stated that USCIS does not provide any data, evidence, or information in its proposed rule regarding the costs associated with conducting site visits through the Administrative Site Visit and Verification Program (ASVVP). The commenters added that USCIS has failed to articulate how these site visit costs are not already covered by the $500 Fraud Prevention and Detection Fee and other related fees submitted by petitioners for certain categories of nonimmigrant workers, such as for certain H–1B and L workers. One commenter concluded that USCIS must disclose this data so that the public can fully evaluate whether the increased fees that USCIS is proposing accurately encompass the ASVVP costs associated with adjudicating certain categories of nonimmigrant workers.

Response: DHS disagrees with the commenter's assertion that DHS failed to provide any data related to the costs of the ASVVP program. In the supporting documentation published on November 14, 2019 to accompany the NPRM, DHS identified $5.4 million in payroll and travel costs of the ASVVP program. As DHS described in the NPRM, USCIS attributed these costs to the relevant form types in proportion to their share of the total ASVVP costs of $5.4 million. Form I–129H1 received $3.6 million of these costs while Form I–129L received $0.6 million, Form I–129MISC received $1.0 million, and Form I–360 received $0.1 million. These figures do not sum to $5.4 million due to rounding.

USCIS cannot use revenue from the statutory Fraud Prevention and Detection Fee to cover the costs of the ASVVP program. USCIS scopes all

activities funded by the Fraud Detection and Prevention Fee outside of its fee reviews, because DHS is unable to adjust the fee by rulemaking. Furthermore, USCIS, by statute, does not retain the entirety of the Fraud Detection and Prevention Fee. As explained in the NPRM, the USCIS FY 2019/2020 fee review, like previous fee reviews, estimates the costs to be recovered by fees deposited into the Immigration Examinations Fee Account. Unlike the fees addressed in this rulemaking, the Fraud Detection and Prevention Fee is not deposited into the IEFA. Instead, that revenue is deposited into the Fraud Detection and Prevention Account and is used for different purposes beyond the scope of this final rule. DHS declines to make changes in this final rule in response to the comment.

Comment: A commenter opposed the increased L–1 application fees and took issue with USCIS' rationale that the fee is based on ''the completion rate for the average of L–1 petitions.'' The commenter stated that if USCIS diverted resources away from adjudicating L–1 petitions, imposing adjudicatory criteria unauthorized by INA or USCIS regulations, and issuing unnecessary, duplicative RFEs, the completion rate for L–1 nonimmigrants would return to its historical norm.

Response: USCIS used the most recent data available at the time it conducted the FY 2019/2020 fee review. Contemplating alternatives suggested by the commenter are beyond the scope of this rulemaking. DHS declines to make changes in this final rule in response to the comment.

Comment: A few commenters wrote to oppose the fee increases for transitional workers in the Commonwealth of the Northern Mariana Islands (CNMI). These commenters stated the proposed fees would put a financial burden on businesses and the economic development of CNMI. A commenter wrote that the CNMI was still recovering from recent disasters and noted that the economy had barely stabilized after Super Typhoon Yutu hit in October of 2018. The commenter referred to a U.S. Department of the Interior report that documented the shortage of U.S.-eligible workers affecting businesses in the Commonwealth and said the proposed fee increase of 53 percent for Petitions for a CNMI-only Nonimmigrant Transitional Worker would place a financial burden on businesses still recovering from disasters. The commenter requested that the increase for this petition be tabled, citing the provisions of U.S. Public Law 110–229 that detailed Congress' intent to grant the Commonwealth as much flexibility as possible in maintaining existing businesses and other revenue sources.

Response: In this final rule, DHS establishes fees that reflect the average cost of adjudication. DHS declines to make other applicants and petitioners subsidize petitions for transitional workers in the CNMI and does not make changes in response to these comments.

I. Premium Processing

Comment: Multiple commenters opposed the proposal to lengthen the timeframe for USCIS to take an adjudicative action on petitions filed with a request for premium processing from 15 calendar days to 15 business days. Commenters stated that the proposed change would reduce the level of service that USCIS provides to petitioning entities and delay the arrival of greatly needed workers, thereby imposing an economic cost on petitioners. Multiple commenters said the relaxation of the premium processing deadline would result in slower adjudications, higher prices, and slowed hiring.

Response: DHS acknowledges that some petitioners may wait up to four or more days longer for USCIS to take an adjudicative action on a petition for which a petitioner has requested premium processing service. DHS further acknowledges that this may result in slightly longer waits for workers for petitioning entities. However, DHS disagrees that adjusting the timeframe for adjudicative action on a petition for which premium processing service has been requested from 15 calendar days to 15 business days would meaningfully harm petitioning entities. DHS was not able to quantify the estimated cost to petitioning entities of these additional delays.

DHS is adjusting the timeframe for premium processing for multiple reasons. The current timeframe does not consider the days on which USCIS staff are unavailable to adjudicate cases, such as when there is a federal holiday or inclement weather preventing employees from coming to work. Therefore, a surge in applications may coincide with a period when USCIS staff have substantially less than 15 working days to receipt and adjudicate a petition with premium processing. In the past, there have been instances when USCIS was unable to adjudicate all of the petitions for which petitioners requested premium processing within the 15-calendar day timeframe. This led USCIS to refund the premium processing fee for petitions that were not adjudicated within 15 calendar days and to temporarily suspend premium processing service. DHS believes that extending the premium processing timeframe from 15 calendar days to 15 business days will allow USCIS adequate time to take adjudicative action on petitions and will provide petitioners with a consistent and predictable experience. Therefore, DHS declines to adopt the commenters' suggestions.

Comment: Multiple commenters said that the premium processing delay would harm American businesses that face workforce gaps and that the cost of premium processing service reduces arts organizations' budgets for other activities. The commenters wrote that the change to the premium processing timeline would exacerbate these inefficiencies and increase uncertainty. Additionally, it would only further lower USCIS' accountability standards. A commenter similarly stated that increasing the premium processing timeframe would adversely impact businesses that pay premium processing fees because of their urgent workforce needs, and they suggested that further delays to the processing timeline would have a ''chilling effect'' on the overall process. One comment stated that changing the premium processing time will deter businesses from doing business in the United States. Another commenter added that in many cases, the issuance of an RFE is a stalling technique and that if DHS premium processing regulations to be 15 business days instead to calendar days that senseless and unnecessary RFEs will not continue.

Response: DHS understands that sometimes a petitioning employer needs USCIS to take quick adjudicative action. However, as stated in the NPRM, DHS believes that changing from calendar days to business days may reduce the need for USCIS to suspend premium processing for petitions during peak seasons. This may permit USCIS to offer premium processing to more petitioning businesses each year. DHS believes the possibility that a petitioner requesting premium processing service may need to wait a few additional days for adjudicative action is a small cost to impose for being able to expand premium processing to more requests and reduce the likelihood for future suspensions of premium processing service. DHS does not think additional days will reduce the desire of businesses to request premium processing. DHS also disagrees with the assertion that USCIS issues RFEs as a stalling tactic. USCIS officers issue RFEs, in their discretion, to provide the petitioner an opportunity to supplement

the record when eligibility has not been established. USCIS officers do not send RFEs just because they are near the 15-day maximum time for action.

Comment: Commenters requested that USCIS reinstate the ''traditional expedite'' option for non-profits that seek to enhance the cultural and social interest in the United States.

Response: USCIS has implemented an expedite policy for certain petitions in the past. Whether a petitioner seeks to enhance the cultural and social interest in the United States may have been considered when USCIS decided to favorably exercise its discretion when considering expedite requests. However, expedited processing is a policy that is implemented using guidance and not governed by regulations. DHS is amending USCIS' fees and fee-related regulations in this final rule that require notice and comment rulemaking to effectuate. Petitioners do not pay a fee when submitting an expedite request, and the decision to grant or deny an expedite request does not affect the fees required for the underlying petition. Thus, expedite policy is outside the scope of this rulemaking. DHS may consider whether to provide expedited processing for certain petitions based on its workload in other areas and ability to meet promised deadlines. Also, depending on the immigrant or nonimmigrant classification sought, the petitioner may request premium processing service by filing Form I–907 and paying the associated fee. This final rule, though, makes no changes in response to this comment.

Comment: A commenter asked if DHS would consider the additional revenue received by USCIS from higher premium processing fees as another revenue stream.

Response: DHS understands that the commenter is suggesting that USCIS consider additional revenue from higher premium processing fees. The INA permits DHS to charge and collect a premium processing fee for employment-based petitions and applications. The fee revenue must be used to provide certain premium-processing services to business petitioners and to make infrastructure improvements in the adjudications and customer service processes. By statute, the premium processing fee must be paid in addition to any applicable petition/application fee. The statute provides that DHS may adjust this fee according to the Consumer Price Index. *See* INA section 286(u), 8 U.S.C. 1356(u); Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000). DHS increased the USCIS premium processing fee in both 2018 and 2019. *See* 83 FR 44449 (Aug 31, 2018) (increasing the fee to reflect inflation from $1,225 to $1,410); 84 FR 58303 (Oct. 31, 2019) (increasing the fee from $1,410 to $1,440).

DHS regularly considers if USCIS' premium processing fee should be adjusted considering the rate of inflation, cost, and revenue needs. DHS prefers to adjust the premium processing fee outside of rules, like this one, that adjust fees comprehensively based on USCIS' full costs recovery model. The primary reason is because the premium processing fee may be adjusted by inflation; notice and comment rulemaking is not required. *See* 84 FR 58304. In addition, USCIS regularly analyzes whether to remove eligible categories based on its ability to meet demand or designate new benefit requests as eligible for premium processing in accordance with previous 8 CFR 103.7(e); new 8 CFR 106.4. For example, DHS recently determined that a few categories of employment authorization documents qualify as employment-based petitions and applications for business customers under INA section 286(u), 8 U.S.C. 1356(u). Thus, USCIS is considering permitting premium processing requests for qualifying categories of employment authorization that may be requested on USCIS Form I–765. When and if USCIS decides to provide premium processing for additional requests, USCIS will announce on its website, those requests for which premium processing may be requested, the dates upon which such availability commences and ends, and any conditions that may apply. New 8 CFR 106.4(e). This final rule, though, makes no changes in response to this comment and adjusts only USCIS' non-statutory, non-premium processing fees that DHS has the authority to adjust for full cost recovery via public notice and comment rulemaking.

J. 9–11 Response and Biometric Entry-Exit Fee for H–1B and L–1 Nonimmigrant Workers (Pub. L. 114–113 Fees)

Comment: DHS received many comments on the change in how DHS interprets the statutory language in Public Law 114–113 to change the benefit requests to which the fee would apply. The comments are summarized as follows:

- USCIS lacks the authority to create such a fee increase and that only Congress has this authority.
- USCIS lacks the authority to reinterpret language from Public Laws 111–230 (2010) and 114–113 (2015) and that the proposal invents ambiguity that does not exist with respect to the extension of the $4,000 or $4,500 fee to extension petitions.
- Extending the Public Law 114–113 fee for qualifying H–1B and L–1 petitions is contrary to Congressional intent and represents an effort to deter legal immigration from certain countries. DHS's interpretation of Public Law 114–113 is inconsistent with the agency's historical regulatory interpretation.
- Congress set the amounts and parameters for the fees and Public Law 111–230 (2010) and Public Law 114–113 (2015) do not support the revisions.
- Congress' consistent reenactment of the statute without changing the statute's meaning with respect to when the fee is required suggests Congressional intent that the scope of the 9–11 Response fee continue.
- Examples of Congress' use of the language in Public Law 114–113 demonstrate that the DHS interpretation is not consistent with the intent of Congress.
- Congress provided clear and unambiguous language instructing DHS that the additional fee be combined with the fraud prevention and detection fee and the proposed change is an effort to thwart the plain instruction of Public Law 114–113.
- Language from Public Laws 111–230 and 114–113 support that the current statutory language was not ambiguous and the addition of the word combined in 2015 in Public Law 114–113 was not merely a clarifying edit as stated in the NPRM and Congress' actions over the past decade make it clear that the filing fee does not apply to extension petitions.
- Federal courts would not grant *Chevron* deference to the agency's effort to reinterpret the word combined because it is a non-complex, nontechnical word in common public usage and the agency does not have special expertise in determining the definition of combined.
- This interpretation is not only correct, it is mandated by the statutory language.
- Congress limited the circumstances requiring the 9–11 Response fee to only those for an application for admission and this language does not naturally apply to applicants for extension of time, for an amendment to terms, or for a change in status.
- The fees would negatively affect employers because it would require them to pay the fee multiple times for the same employee because the duration of an approval may be less than one year.
- Companies that hire from countries like India, where beneficiaries may wait

for an immigrant visa number for decades, would have to file extensions until the worker becomes a permanent resident.

• Because USCIS routinely limits the expiration date of Form I–797 approval notices to the end date of the specific contract, resulting in short approval periods, employers will be forced to file extension petitions once the Statement of Work is renewed, incurring new filing and legal fees. The fee would result in employers opting not to hire or extend nonimmigrant employees which would have negative impacts on workers, companies, and the overall economy. H–1B and L–1 workers benefit the economy by increasing business efficiency, reducing costs for specialized work, and filling workforce gaps.

Response: DHS disagrees with the commenters' assertions that the statutory language is unambiguous or that DHS does not have the authority to interpret the statutory language. The statutory text refers to, among other things, an increase to H–1B and L–1 filing and fraud prevention and detection fees. Such fees are typically collected by DHS, either by USCIS upon the filing of an H–1B or L–1 petition or by CBP for certain visa-exempt L–1 nonimmigrants. The statutory text clearly shows that Congress intended DHS, in addition to the U.S. Department of State, to administer Public Law 114–113 and collect the associated fees. Such authority is also consistent with the general authority provided to DHS under INA section 214(a) and (c)(1), 8 U.S.C. 1184(a) and (c)(1), as well as, by incorporation, the specific authority provided in INA section 214(c)(12), 8 U.S.C. 1184(c)(12). DHS also explained in the NPRM how the statutory text is ambiguous, and that explanation remains unchanged.

DHS understands that it must provide a valid explanation of its changed position and provide a reasoned explanation for disregarding facts that underlay the prior policy. *See Encino Motorcars, LLC,* v. *Navarro,* 136 S.Ct. 2117, 2125 (2016). DHS acknowledges the commenters' concerns about the effect of our change in interpretation on petitioning employers, and that the statute is open to different interpretations. However, DHS is providing considerable advance notice of this change to those affected by it, and the fee will only apply to future petitioners after the effective date of this final rule. DHS may change its initial interpretation when engaging in rulemaking and consider different interpretations when deciding to continue with a current policy. *See, Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.* 467 U.S. 837, 863 (1984). As we stated in the NPRM, DHS believes that the Public Law 114–113 fee should apply to all extension of stay petitions because that interpretation gives meaning to all of the statutory text. That interpretation is also the most consistent with the goal of the statute to ensure employers that overly rely on H–1B or L nonimmigrant workers' pay an additional fee by making the fee applicable to petitions, including extensions of H–1B or L status, filed by employers that meet the statute's 50 employee/50 percent test, regardless of whether or not the fraud fee also applies. 84 FR 62322. In other words, the fee should apply to all H–1B or L–1 petitions, whether for new employment or an extension of stay. Consequently, DHS makes no changes in response to these comments.

Comment: A commenter requested that USCIS reinstate policy memoranda related to deference, such as the 2004 USCIS Memorandum, The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity. The commenter also requested that USCIS enforce 8 CFR 214.2(1)(14)(i) to provide appropriate deference to officers' prior decisions regarding L–1. The commenter wrote that this would mitigate the need for fee increases for L1-nonimmigrant petition filings.

Response: DHS has no intent to reinstate the 2004 memo in this fee rule. This final rule is focused on establishing appropriate fees for different nonimmigrant worker classifications and not altering existing evidentiary requirements, such as those found at 8 CFR 214.2(l)(14)(i). Consequently, the changes suggested by this commenter were not mentioned or proposed in the NPRM and are outside the scope of this final rule.

K. Comments on Other General Feedback

Comment: Commenters wrote that fees should be raised based on inflation or social security cost of living increases, and that fee increases would be unnecessary if USCIS trained its officers.

Response: As explained in the NPRM and this final rule, DHS adjusts USCIS' fee schedule to ensure full cost recovery. DHS cannot guarantee that future inflation rates or social security cost of living adjustments applied to fees will yield sufficient revenue to ensure full cost recovery. In other words, adjusting fees by inflation or social security cost of living adjustments may be insufficient to recover the full cost of providing adjudication and naturalization services. As a result, DHS rejects the notion that fees should be raised based on inflation or social security cost of living increases and will continue to comply with the CFO Act by evaluating fees on a biennial basis and recommending adjustments to USCIS' fee schedule, as necessary.

Comment: A commenter opposed scenario A and stated that it would be unreasonable for the agency to compel the public to evaluate six different scenarios. The commenter added that, in order for the final rule to be valid, it must include only the fee schedule that the public was given adequate time to evaluate, and the agency may not use the final rule to codify a ''suite of alternative fee schedules'' that it can switch between at will without public comment.

Response: DHS stated in the NPRM that subject to certain limitations, the proposed fees may change in the final rule based on policy decisions, in response to public comments, intervening legislation, and other changes. 84 FR 62327. To reduce the uncertainty that such conditions present to the affected public, USCIS proposed six fee scenarios that lay out what the fees would be if certain conditions materialize and present a range of fees. *Id.* DHS disagrees that the public is incapable of reviewing and commenting on multiple proposed fee scenarios. The fee schedule adopted in this final rule falls within the range of the six scenarios. The policies implemented in this final rule are the same, or are logical outgrowths of, those contained in the NPRM.

The intent of the comment period provided under the APA is to allow agencies to consider public feedback on proposed rules and make changes as appropriate. Because a single change made in response to public comments may affect multiple fees, it is impossible to provide a final set of fees in a NPRM unless it were to be adopted without any modification, thereby negating the value of public feedback. DHS declines to make any adjustments in the final rule in response to these comments.

Comment: A commenter said the severability provision suffers from ''logical outgrowth'' concerns, stating that it would do nothing to protect a final rule if key provisions of the proposed rule changed so much in the final rule that the public was not given fair notice. In contrast, a commenter stated they ''wholly'' agreed with the severability provision because the provisions each part function independent of other provisions. The commenter supported codifying the

intent that provisions be severable to protect the goals of the proposed rule.

Response: DHS is unsure of the relationship between a logical outgrowth and severability to which the commenter refers. DHS is making no changes in this final rule that the public would not view as a possibility based on the contents of the proposed rule. DHS realizes that many parts of this final rule are interrelated, but most are severable and can be implemented independently from the remainder of this final rule's provisions.

DHS declines to make any adjustments in the final rule in response to these comments.

Comment: A commenter wrote that DHS should allow applicants to elect their delivery method for their secure document, DHS failed to justify why the agency is adopting Signature Confirmation Restricted Delivery (SCRD) to deliver secure documents, and DHS should publish a notice in the **Federal Register** each time USCIS proposes to add SCRD to any additional document beyond Permanent Resident Cards, Employment Authorization Cards, and Travel Booklets. One commenter supported SCRD as the sole method of delivery for secure documents. Another commenter wrote that it is an unnecessary burden to place on low-income or rural residents to travel to the post office or arrange to hold a secure document for pick-up.

Response: USCIS may use the United States Postal Service (USPS) Secure Confirmation Restricted Delivery (SCRD) service for delivery of all USCIS secure identification documents: Permanent Resident Card, Employment Authorization Document, and Travel Document Booklets once this final rule is effective. New 8 CFR 103.2(b)(19)(iii)(A). USCIS already uses SCRD when documents are returned by USPS as undeliverable after being sent by Priority Mail with Delivery Confirmation. USCIS plans to use only USPS initially for SCRD when appropriate because only the USPS can deliver to post office boxes and military addresses (*i.e.,* APO addresses). Other delivery services like FedEx or UPS would just leave the package on the doorstep, require a signature, or require it to be picked up. In addition, the current application process does not support choosing a different delivery method, although DHS is exploring more delivery methods as a future capability.

USPS's Signature Confirmation Restricted Delivery (SCRD) product requires the addressee to provide proof of identification and sign for delivery of their secure document. Applicants may also designate an agent to sign on their behalf, by notifying USPS and completing PS Form 3801, Standing Delivery Order, or PS Form 3801–A, Agreement by a Hotel, Apartment House, or similar. SCRD permits USCIS and applicants to track their document utilizing the USPS website up to when the document is delivered. The authority for USCIS to use the SCRD process will improve tracking and accuracy of delivery and will improve resolution of questions from applicants. Recipients will also have the ability to change their delivery location by going to the USPS website and selecting ''hold for pickup'' to arrange for pickup at a post office at a date and time that suits them. It is not unnecessarily cumbersome or unreasonable to expect document recipients to undertake the time and expense to ensure that documents as important as those issued by USCIS get into the right people's hands.

L. Cost Analysis and DHS Rationale for Fee Adjustments

Comment: Many commenters stated that USCIS proposed a 21 percent fee increase without evidence that it will improve immigration benefit services. Some commenters suggested that USCIS should find ways to revise the NPRM and include data that would make the connection between fee and efficiency increases in the adjudication process, as currently there is no evidence linking the two. Other commenters wrote that USCIS should rescind inefficient policies rather than increase fees to subsidize them, higher fees pass the costs of USCIS inefficiency to the public, fee hikes are not justified because USCIS has record long processing times, and needs to revert to its prior procedures for processing cases before increasing fees.

Response: As explained in the NPRM, USCIS considered all cost and operational data that was available at the time it conducted the FY 2019/2020 fee review, including data related to potential cost-saving measures. It does not account for recent cost-saving initiatives for which data was not yet available at that time. However, USCIS will evaluate and incorporate any relevant cost-savings data into its next biennial fee review. To the extent that potential process efficiencies are recognized in the next biennial fee review, cost-savings may lessen the impact of future fee adjustments.

Similarly, DHS recognizes that certain USCIS policies may increase the cost of completing its work. USCIS accounted for those cost increases where it had data available at the time it conducted the FY 2019/2020 fee review. It does not account for recent policy initiatives that may increase costs for which data were not available at the time of the FY 2019/2020 fee review. In its next biennial fee review, USCIS will continue the practice of using all available data to determine total costs and appropriate fees to recover those costs.

DHS believes that USCIS policies are necessary for the agency to effectively achieve its mission and fulfil statutory mandates. USCIS faithfully adheres to immigration law and carefully considers the pros, cons, costs, and ramifications of all policy initiatives it undertakes. In its FY 2019/2020 fee review, USCIS estimated total costs to the agency of providing immigration adjudication and naturalization services. In the NPRM and this final rule, DHS has fully explained and justified the cost increases that necessitate USCIS fee adjustments.

Comment: Another commenter criticized USCIS' use of the ABC model to predict the cost of adjudicating forms. The commenter wrote that the model predicts different costs in 2019 compared to 2016 with no explanation, USCIS increased the ABC model baseline with no explanation and USCIS' explanation for ''low volume reallocation'' is used as a pretext for the Department's policy priorities.

Response: USCIS' cost projections for the FY 2019/2020 biennial period have increased relative to the FY 2016/2017 biennial period. However, DHS disagrees with the commenter's assertion that it provided no explanation of the change in USCIS' costs between 2016 and 2019. The NPRM provides USCIS' FY 2018 AOP amount used as a baseline to inform FY 2019/2020 cost projections. It also explains projected cost increases over the FY 2019/2020 biennial period from that FY 2018 baseline, including the need for additional staff, pay adjustments for existing staff, and other net additional costs. *See* 84 FR 62286 (Nov. 14, 2019). Additionally, DHS clarifies that USCIS' ABC model does not predict costs. Instead, it assigns cost projections to operational activities and then to immigration benefit requests as explained in the supporting documentation that accompanies this final rule.

DHS categorically denies that ''low volume reallocation'' or ''cost reallocation'' is a pretext with any intent other than to exercise its discretion to limit the fee for certain applications and petitions in recognition that fees set at the ABC model output for these forms would be overly burdensome and possibly unaffordable for the affected

applicants, petitioners, and requestors.[104] In its discretion, DHS determined that it would be appropriate to limit the fee increase for the following forms, while also rounding to the nearest $5 increment:

- Form I–290B, Notice of Appeal or Motion,
- Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant,
- Form I–600, Petition to Classify Orphan as an Immediate Relative,
- Form I–600A, Application for Advance Processing of an Orphan Petition,
- Form I–600A/I–600, Supplement 3, Request for Action on Approved Form I–600A/I–600,
- Form I–800, Petition to Classify Convention Adoptee as an Immediate Relative,
- Form I–800A, Application for Determination of Suitability To Adopt a Child From a Convention Country, and
- Form I–800A, Supplement 3, Request for Action on Approved Form I–800A.

In the NPRM, DHS explained that limiting the fee increase for these forms requires DHS to shift the costs to other fee-paying applicants, petitioners, and requestors via increased fees for other forms. If USCIS did not perform cost reallocation, then fees for other applications and petitions would be lower than those implemented in this final rule, and USCIS would not recover its estimated full cost of providing immigration adjudication and naturalization services. As explained in the NPRM, DHS determined that it would deviate from previous fee rules by not limiting the fee increase for the following forms:

- Form I–601A, Provisional Unlawful Presence Waiver,
- Form I–765, Application for Employment Authorization,
- Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant,
- Form N–300, Application to File Declaration of Intention,
- Form N–336, Request for a Hearing on a Decision in Naturalization Proceedings,
- Form N–400, Application for Naturalization, and
- Form N–470, Application to Preserve Residence for Naturalization Purposes.

DHS outlined in its NPRM that other fees would be lower in recognition of additional revenue anticipated from the fee increases for these forms. The primary objective of not limiting the fee increase for these forms is to reduce the cost burden placed upon other fee-paying applicants, petitioners, and requestors.

DHS declines to make changes in this final rule in response to the comment.

Comment: Commenters attended a February 3, 2020 meeting with USCIS to observe the ABC cost modeling software. In follow-up comments, the attendees said that many questions remain outstanding about how USCIS developed its proposal. Many of their follow-up comments were the same as those made by other commenters, which are responded to in other sections of this preamble. Some of their comments were unique due to observations of the software, including:

- Why have the costs for Form N–400s risen so dramatically,
- Can USCIS explain the 900 line items in the budget,
- Scenario modeling other than references to the six Scenarios A–F as described in the proposed rule, and
- USCIS explained that cost reallocation takes place outside of the ABC model but did not show the spreadsheet.

Response: In its NPRM, DHS provided the public with an opportunity to request an appointment to view the ABC software that USCIS uses to help calculate immigration benefit fees. *See* 84 FR 62281. The purpose of the February 3, 2020 meeting was to provide an overview of the software and demonstrate how it works. In other words, USCIS allowed these public commenters (who requested an appointment) to view the software and showed them how it leverages operational data inputs (*i.e.,* FY 2019/2020 cost baseline, receipt volume projections, and completion rates) to determine the activity costs and fee-paying unit costs that inform proposed fees. A discussion regarding cost increases associated with Form N–400 and a detailed explanation of each USCIS budget line item was outside the scope of this meeting, which was focused on the ABC software. USCIS officials did not provide deliberative materials or supplemental information to these public commenters that is not in the record for the NPRM and in the docket. Although briefly discussed, the public commenters did not specifically ask USCIS officials during the meeting to view the separate spreadsheet used to calculate cost reallocation. However, as explained in the supporting documentation that accompanies this final rule, cost reallocation is simply the process USCIS uses to reassign costs to each form fee to ensure full cost recovery. Total reassigned costs are the sum of the products of the fee-paying volume and model output for those forms with fees held below the model output, less the sum of the products of the fee-paying volume and the final fees for those same forms. Explained another way, a spreadsheet assigns the cost of limited fee increases or workload without fees to the fees that DHS does not limit for various policy reasons. We call this process cost reallocation. USCIS multiplies the fee-paying receipt forecast by the model output for each form. This calculates a total cost for that form. For the fees that DHS does not limit, we use the total cost for each form to reallocate the cost of limited fee increases or workload without fees. As a result, forms with the highest cost receive a larger share of cost reallocation. While terminology may have been different,[105] this is the same process that DHS used in the previous three fee rules. *See* 84 FR 62294. DHS believes that assigning more costs to forms with the highest cost is in line with the beneficiary pays principal emphasized throughout this rule.

DHS declines to make changes in this final rule in response to these comments.

Comment: Another commenter discussed information needed, but not provided at the meeting (even upon request in some cases) in order to understand how the software works. Because USCIS has failed to provide stakeholders with the opportunity to analyze the entire set of relevant information that USCIS has used to calculate the proposed new fees, the commenter opposed the entire new rule and requested that USCIS continue using the current fee schedule until USCIS provides access to the ''FULL SET'' of information it used and enough organized time to submit comments.

Response: The purpose of the February 3, 2020 meeting was to provide an overview and demonstration of the ABC software that USCIS uses to calculate immigration benefit fees. As was offered in the NPRM, USCIS officials provided the attendees with complete information on the inputs for the fee calculations and explained how the software works. An attendee posed several questions that would have

[104] DHS may reasonably adjust fees based on value judgments and public policy reasons where a rational basis for the methodology is propounded in the rulemaking. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983).

[105] Previous proposed IEFA fee schedules referred to limited fee increases as ''low volume reallocation'' or ''cost reallocation.'' The FY 2016/2017 proposed fee schedule used both phrases. *See* 81 FR 26915. The FY 2010/2011 and FY 2008/2009 proposed fee schedules used the phrase ''low volume reallocation.'' *See* 75 FR 33461 and 72 FR 4910, respectively.

required USCIS to provide deliberative information, granular assumptions underlying all aspects of the USCIS budget, an in-depth explanation of particular fee adjustments, and policy rationale associated with the Form N–400 fee (in excess of what is in the NPRM and supporting documentation). The questions asked went beyond the software demonstration, would have expanded the meeting considerably, and would have provided the attendee additional information that was not relevant. DHS believes that all relevant information is readily available in the NPRM and supporting documentation.

DHS declines to make changes in this final rule as a result of the comment.

1. Workload Projections

Comment: Multiple commenters stated that USCIS used unreasonable workload receipt projections in its cost model. One commenter cited figures in Table 5 of the NPRM detailing the average annual fee-paying receipts projection and said that they do not reflect the stated subtotals and grand totals. Similarly, another commenter said USCIS has not explained the source for its data on volume projections entered into the ABC model. Commenters also highlighted concerns with projected workload and fee-paying receipts for certain individual form types such as Form I–526.

Response: DHS acknowledges that workload receipt volume projections used in the FY 2019/2020 fee review did not materialize in FY 2019 exactly as forecasted. USCIS' Volume Projection Committee (VPC) developed workload volume projections for the FY 2019/2020 fee review in FY 2017. The VPC considers all available data at the time it finalizes projections, including statistical forecasts for each form, analysis of recent trends, and consideration of future policy initiatives that are known at that time. The VPC integrates this information with subject matter expertise and judgement to provide unified receipt volume projections by form type for use in the biennial fee review and other operational planning purposes.

Certain filing trends have changed since USCIS forecasted the FY 2019/2020 fee review workload and fee-paying receipt volumes. USCIS simply cannot predict all filing changes that will affect actual receipt volumes. USCIS used the best information available at the time it conducted the FY 2019/2020 fee review to develop workload and fee-paying receipt volume forecasts.

DHS declines to make changes in this final rule in response to these comments.

Comment: Some commenters stated that USCIS based its workload receipt forecasts on limited and unrepresentative data, using data only from June 2016 to May 2017. Commenters stated that USCIS did not explain why it chose this period. A commenter also said that USCIS' fee-paying volume assumptions reflect ''filing trends and anticipated policy changes,'' but it is not clear how USCIS accounted for these factors. Another commenter said that projected volumes do not account for current processing times. Estimates used FY 2016–2017 data, but processing times have increased since then.

Response: The commenters are generally mistaken. DHS did not use a single 12-month period of data to project anticipated workloads for the FY 2019/2020 biennial period. To establish workload projections, USCIS' VPC always evaluates the best available information, including historical application volumes and trends, including data that extend far beyond a single 12-month period. For example, USCIS used 10 years of data to estimate Form I–90 renewals. In accordance with this procedure, USCIS evaluated all available information at the time it conducted the FY 2019/2020 fee review to establish its workload projections for the biennial period. *See* 84 FR 62289. Therefore, DHS rejects the claims that its volume forecasts are unsubstantiated.

USCIS did use data from the June 2016 to May 2017 period to estimate a proportion of individuals who pay the filing fee by form type. In its NPRM, DHS referred to this proportion as ''fee-paying percentage.'' *See* 84 FR 62290. DHS used this data to calculate fee-paying volumes for each form type under current policy and to estimate the effects of policy changes in the NPRM. DHS used data from the June 2016 to May 2017 period because it was the most current data available at the time USCIS conducted the FY 2019/2020 fee review and using a full year of data can smooth out fluctuations that may occur from month to month. DHS believes that use of this data is correct and appropriate and declines to make changes in this final rule in response to these comments.

Comment: A commenter wrote that the NPRM does not make clear whether projected receipts only include new applications anticipated in 2020, or also includes applications in the backlog.

Response: DHS reiterates that all workload figures in this final rule are projected volumes and do not include existing pending caseload. 84 FR 62288 (stating that revenue estimates were based on *projected* volumes).

Comment: A commenter who attended the February 3, 2020 software review meeting at USCIS stated that evidence does not support the projected figure for future Form N–400 filings. The commenter stated that receipts may decrease because of the fee increase and elimination of fee waivers. The NPRM says USCIS adjudicated 830,673 Forms N–400 in FY 2016/2017 and expects to adjudicate 913,500 in the FY 2020–21 biennium. The commenter understood from the meeting that USCIS ''surveyed its staff,'' but said it does not know how staff came up with the application volume data to arrive at their volume projections. The commenter questioned USCIS' assertion that they will receive more N–400s than in the previous year given the drastic fee increases the agency seeks.

Response: DHS used the best information available at the time USCIS conducted the FY 2019/2020 fee review to develop receipt volume projections. The VPC considered all relevant statistical forecasts, recent trend analysis, and subject matter expertise. It also considered the potential effects of future policy changes. The VPC does not survey staff generally. Instead, the VPC considers input of subject matter experts in conjunction with statistical forecasts to determine a final volume forecast.

2. Completion Rates

Comment: A commenter wrote that USCIS should use completion rates to estimate all activity costs as was done in the previous USCIS fee rulemaking. A commenter wrote that the NPRM provides only some completion rates, but the information by itself is not useful in assessing justifications for proposed fee increases. A commenter wrote that Table 6 in the NPRM demonstrates that completion rates for most forms are as low as 1–2 hours, indicating that most forms include fees at a cost of hundreds of dollars an hour. A commenter wrote that the completion rates for Form N–400 with a filing fee of $1,170 come out to a cost of $745.22 an hour, whereas an EB–5 form for a wealthy investor includes a filing fee of $4,015 at a rate of $464 an hour. The commenter asked why it costs USCIS so much less to work on Form I–526, which is a much more complicated and time consuming petition requiring very specialized and more experienced officers, than that required to adjudicate Form N–400. Other commenters also mentioned the disparate hourly rates between Form N–400 and EB–5 workload, stating that the proposed fees

are not supported by the costs of completion and that the cost per completion rate for these forms shows the fees are a wealth test.

Response: It is not accurate to say that USCIS used completion rates to estimate all activity costs in the previous rulemaking. In the last three fee rules, USCIS used completion rates to assign costs from the Make Determination activity to individual cost objects (*i.e.,* forms). USCIS continued this approach in the FY 2019/2020 fee review. The fees DHS enacts in this final rule are based on the same methodology that was used in previous fee rules.

DHS understands the skepticism induced by simply dividing a form's proposed fee by the completion rate in an attempt to estimate the hourly processing cost. However, the calculation performed by the commenter does not accurately represent the per hour cost of adjudicating a particular form. Such a calculation presumes that all costs are associated with the Make Determination activity and ignores the costs associated with other activities, such as the Issue Document activity, that are not based on completion rates. In addition, all fees greater than the model output (*i.e.,* receive cost reallocation) represent the full amount of both the estimated cost of adjudicating the form and other costs associated with providing similar services at no or reduced charge to asylum applicants and other immigrants. USCIS' fees must recover estimated full costs, not just the direct costs to adjudicate forms.[106]

DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter criticized USCIS for not disclosing actual case completion per hour statistics in the NPRM or supporting documentation.

Response: DHS provided completion rates (hours per completion) in Table 6 of the NPRM. *See* 84 FR 62292. Appendix Table 10 of the supporting documentation that accompanies this final rule also includes them.

Comment: A commenter wrote that USCIS does not explain whether prior year expenses used in calculations for immigration application fees under Section IV(B) include activities that courts later enjoined, or whether the calculation included legal costs related to litigating the issues in court. If so, the commenter asked that USCIS recalculate expense and completion rates.

Response: As explained in the NPRM, proposed fees are informed by cost projections for the FY 2019/2020 biennial period. *See* 84 FR 62888. DHS does not use prior year expenses to calculate immigration benefit request fees. Additionally, as stated in the supporting documentation that accompanies this final rule, USCIS does not track actual costs by immigration benefit request. Therefore, DHS does not believe that an additional explanation is necessary and declines to make changes in this final rule in response to the comment.

3. USCIS Staffing

Comment: Multiple commenters wrote that the NPRM seeks to justify fee increases by a need for more staffing, yet USCIS has employees performing enforcement work for ICE and CBP. Other commenters supported the addition of employees to improve USCIS case processing times.

Response: In response to the migration crisis at the United States southern border, USCIS did provide staff on detail to ICE for clerical assistance in the creation and management of immigration case files. USCIS detailed the staff to ICE without reimbursement as provided in law. *See* Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019, Public Law 116–26, tit. III (Jul. 1, 2019). This temporary support to ICE represented a miniscule proportion of total USCIS staff. Marginal costs associated with this effort are not in this final rule, as USCIS did not assume an additional staffing requirement for this workload in the FY 2019/2020 fee review. Additionally, DHS does not assign USCIS employees to perform enforcement work for ICE and CBP.

DHS proposed to hire additional USCIS employees for the reasons stated in the NPRM. USCIS estimates that it must add an additional 1,960 positions in FY 2019/2020 (relative to FY 2018 authorized staffing levels) to address incoming workload.[107] However, the fee schedule that has been in place since December 23, 2016 is insufficient to fund this additional staffing requirement. The total estimated staffing requirement of 20,820 in this final rule represents an increase of 6,277 or 43 percent from the FY 2016/2017 fee rule (14,543). DHS believes that this estimate is lawful and fully justified based on the best information available to USCIS at the time it conducted the FY 2019/2020 fee review.

Comment: Another commenter said USCIS indicates that it uses a staffing model to predict needs based on workload receipts and target processing times, but USCIS has not identified target processing times or described its method for calculating workload receipts, other than to explain that a committee looked at trends and models. Further, the commenter said it is not clear what outputs that staffing model generated.

Response: DHS uses multiple, different techniques to forecast USCIS' workloads. Ultimately, the VPC reviews, deliberates, and reaches a final consensus on every forecast, as described in the NPRM and elsewhere in this final rule. DHS uses these workload forecasts as inputs to Staffing Allocation Models, which determine the estimated staffing requirements for USCIS. DHS outlines USCIS' total estimated IEFA authorized staffing requirement by directorate in Appendix Table 7 of the supporting documentation that is in the docket for this final rule. *See* 84 FR 62281. DHS declines to make changes in this final rule as a result of the comment.

Comment: A commenter said USCIS needs to fill important open positions in order to address significant backlogs, citing a 2019 USCIS report to Congress.

Response: DHS concurs with this commenter's statement. This is one reason why DHS is adjusting USCIS' fees in this final rule. DHS believes that the final fees will yield additional revenue that USCIS can use to hire and fill additional positions necessary for adjudicating incoming workload. The ability to adjudicate incoming workload may help USCIS mitigate future backlog growth.

Comment: A commenter wrote that USCIS does not explain why the NPRM includes funding for a 44 percent increase in staffing levels from FY 2016/2017, or why this increase was not anticipated in the 2016 fee rule just 3 years earlier. The same commenter stated that USCIS should at the very least provide the public with a version of fee review supporting documentation Appendix Table 6 that goes back 10 years, broken down by directorate, and actual staffing numbers for each fiscal year. Similarly, another commenter said USCIS fails to explain why the increase of 5,000 in staff from 2018 to 2019 is merited.

[106] *See* FY 2019/2020 Immigration Examinations Fee Account Fee Review Supporting Documentation with Addendum, which is part of the docket for this final rule. It provides more information on how USCIS conducted the fee review and defines the activities in it.

[107] This represents 138 fewer positions than reflected in the NPRM due to the removal of estimated additional staff associated with DACA. See the Form I–821D, DACA Renewal Fee section for additional information regarding why DHS is not implementing a fee for Form I–821D in this final rule.

Response: DHS articulated in the NPRM that, ''This additional staffing requirement reflects the fact that it takes USCIS longer to adjudicate many workloads than was planned for in the FY 2016/2017 fee rule and that workload volumes, particularly for work types that do not currently generate fee revenue, have grown.'' *See* 84 FR 62286. Although USCIS used all available data at the time it conducted the FY 2016/2017 fee review, it necessarily used historical data and trends to inform its projections. USCIS was unable to foresee these additional staffing needs at the time it implemented the FY 2016/2017 fee rule because of nearly unprecedented growth in workloads such as credible fear and affirmative asylum. Furthermore, USCIS could not perfectly anticipate all policy and operational changes that influence adjudication times.

USCIS cannot afford the estimated staffing requirement necessary to address its incoming workload under the previous fee structure. If USCIS maintains current staffing levels, DHS believes that backlogs would grow. Therefore, DHS adjusts USCIS' fees in this final rule to generate additional revenue that may be used to fund staff that will adjudicate incoming workload and potentially mitigate or stabilize future backlog growth.

DHS declines to make changes in this final rule in response to these comments.

4. Cost Baseline

Comment: Multiple commenters claimed that DHS did not adequately explain the growth in USCIS costs from the FY 2016/2017 fee rule and that DHS failed to provide justifications for 57 percent of the increase in costs from the previous fee rule. A commenter stated that USCIS dismisses the option of reducing projected costs with a single sentence and is a ''fatal defect'' in the NPRM. Other commenters said that in overstating workload volumes, DHS overestimated the costs to be recovered by USCIS' fee schedule.

Response: In its NPRM, DHS highlighted changes from USCIS' FY 2018 Annual Operating Plan (AOP) to the FY 2019/2020 cost baseline. *See* 84 FR 62286. The authorized staffing levels and FY 2018 AOP costs are higher than FY 2016/2017 fee rule projections. After the FY 2016/2017 fee rule became effective on December 23, 2016, USCIS funded additional staff and other agency initiatives through a combination of additional revenue resulting from higher fees and available carryover funds. Per Figure 4 of the supporting documentation that accompanies this final rule, USCIS expected to draw down its carryover funds in FY 2019 and FY 2020 because base operating costs were projected to exceed incoming revenue. In other words, USCIS forecasted an annual operating deficit in both years. DHS determined that USCIS cannot sustain recurring annual operating deficits of this magnitude and continue to fund itself in this manner, necessitating an adjustment to the fee schedule based on the results of the FY 2019/2020 fee review.

As detailed in the NPRM, a primary driver of cost growth from the FY 2018 AOP to the FY 2019/2020 cost baseline is payroll for on-board and new staff. *See* 84 FR 62286. This staff is necessary to process the projected workload receipt volume, which exceeds USCIS' current workload capacity. Strategic investments in staffing may help USCIS mitigate or stabilize future backlog growth. Furthermore, net additional costs include non-pay general expense enhancements for requirements such as secure mail shipping for permanent resident cards and other secure documents ($27 million), USCIS headquarters consolidation ($32 million), increased background checks ($18 million), IT modernization efforts ($32 million), customer engagement center ($23 million), and inflationary increases for contracts. This final rule does not transfer funds to ICE or implement new DACA fees. Therefore, DHS removed $207.6 million for ICE and $18.7 million of DACA costs in this final rule. Table 6 is a revised crosswalk summary from the FY 2018 AOP to the FY 2019/2020 cost baseline used to inform the fee schedule in this final rule.

TABLE 6—REVISED COST BASELINE PROJECTIONS

[FY 2019/2020 fee review IEFA non-premium budget (in millions)]

Total Base FY 2018 IEFA Non-Premium Budget	$3,585.6
Plus: Net Spending Adjustments	217.2
Total Adjusted FY 2018 IEFA Non-Premium Budget	3,802.8
Plus: Transfer to ICE	
Plus: Pay Inflation and Promotions/Within Grade Increases	280.2
Plus: Net Additional Costs	249.0
Total Adjusted FY 2019 IEFA Non-Premium Budget	4,332.0
Plus: Pay Inflation and Promotions/Within Grade Increases	218.6
Plus: Net Additional Costs	5.8
Total Adjusted FY 2020 IEFA Non-Premium Budget	4,556.4

DHS did not overstate its projected costs for recovery via USCIS' fee schedule. Generally, whenever an overestimate of workload and/or fee-paying receipts materialize, proposed fees are often understated. For example, assume there is a total cost estimate of $100.00 for an agency to recover via one user fee. If there were 100 projected fee-paying applicants to assign a total cost estimate of $100.00 to, then the proposed fee would be $1.00. However, if the actual fee-paying receipt volume materialized at half or 50, then the proposed fee should have been double or $2.00 to recover full cost because there were fewer fee-paying applicants to absorb the $100.00. Using this same example, even if the $100.00 was high due to an overestimate of volume projections and it should have been only $80.00 (to account for a notional marginal cost change), the proposed fee would remain $2.00 ($80.00/50 = $1.60 or $2.00 when rounded to the nearest whole dollar).[108] As previously explained, USCIS uses the best information available at the time it conducts biennial fee reviews.[109]

[108] In reality, a lower receipt volume often does not produce a cost reduction within the span of a two-year period due to fixed costs associated with facilities, staff, and other overhead.

[109] OMB Circular A–25 clarifies that ''full cost shall be determined or estimated from the best available records of the agency, and new cost

Forecasts may not materialize exactly as initially projected due to many factors. Consequently, USCIS reevaluates its fees on a biennial basis and makes adjustments, if necessary.

DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter stated that USCIS rests the proposed new fees on the outcome of a budget model but gives little indication of how it derived the budget in the first place. For example, USCIS states that the budget is derived from the FY 2018 AOP, but it is not clear from the proposal and supplemental material what estimates, assumptions, or operating practices this plan embodies or why this plan is relevant (instead of a more recent plan or actual operating figures). In addition, the commenter said USCIS states that its budget reflects an ''adequate level of operations,'' plus ''funding for [certain] enhancements,'' but does not explain either concept. The commenter also said the proposal does not give commenters a full understanding of other aspects of the budget, including the ICE funds transfer, staff salaries and benefits, what assumptions are driving the estimates of budget growth, how much carryover USCIS is budgeting for or how that affects the proposed fees, and how USCIS plans to use premium processing revenue or why such revenue does not offset any of the fees that USCIS proposes based on its non-premium budget.

Response: As explained in the supporting documentation that accompanies this final rule, USCIS establishes an AOP (detailed budget execution plan) at the beginning of each fiscal year that is consistent with the annual spending authority enacted by Congress. The FY 2018 AOP is USCIS' basis for the FY 2019/2020 cost baseline, which informs proposed fees in the NPRM and final fees in this final rule. DHS clarifies that USCIS considers an ''enhancement'' to be additional funding in excess of the base annual operating plan. This estimated additional funding (*i.e.,* cost projections) are outlined in both the NPRM and Cost Baseline section of this final rule.

Information and assumptions about USCIS' carryover are located in the IEFA Non-Premium Carryover Projections section of the supporting documentation that accompanies this final rule. Additionally, premium processing revenue, as explained in the Premium Processing section of this final rule, may only be used for limited purposes as provided by law.

DHS declines to make changes in this final rule in response to the comment.

Comment: Commenters identified differences between their estimate of USCIS' expenditures in FY 2018–2019 and DHS' cost estimates for those years in the NPRM. The commenters contended that DHS appears to have substantially overstated USCIS' FY 2018–2020 costs. Additionally, commenters noted that USCIS' FY 2019–2021 congressional justifications convey lower amounts than DHS' cost estimates in the NPRM.

Response: The commenters' conclusion that USCIS' FY 2018–2019 actual expenditures are less than its cost estimates for those years in the NPRM is correct. Furthermore, the commenters' observation that USCIS' FY 2019–2021 congressional justifications requested less budgetary authority than the cost estimates for those years in the NPRM is also correct. However, contrary to the commenters' assertions, this does not mean that DHS overstated USCIS' costs or that USCIS does not need to collect the amount of revenue it identified in the NPRM.

DHS developed cost estimates for addressing projected incoming workloads during the FY 2019/2020 period. As identified in the NPRM, USCIS is unable to fully fund its estimated budgetary requirements (*i.e.,* FY 2019/2020 cost baseline or cost projections) via the existing fee schedule, thereby necessitating fee adjustments in this final rule. Thus, USCIS expended less in FY 2018–2019 than its cost projections for addressing incoming workloads precisely because it did not have sufficient available resources to meet its estimated budgetary requirements. Similarly, the congressional justifications cited by the commenters reflect USCIS' estimates, at different points in time, of the funds it would be able to execute based on anticipated resources available to the agency under current policy and fees, rather than the cost projections of addressing incoming workloads forecasted during the FY 2019/2020 fee review. Therefore, DHS's NPRM cost projections differ from actual expenditures and congressional justifications because they reflect USCIS' estimated budgetary requirements to fully address projected incoming workloads as of a particular point in time.

Given that USCIS did not have available resources equivalent to its estimated budgetary needs in FY 2018 and 2019, it was not able to hire the number of staff estimated by its Staffing Allocation Models. The underfunding of USCIS' requirements increased processing times and backlogs. USCIS' fee schedule must recover the estimated costs of addressing incoming workloads to ensure that it has sufficient resources to operate and limit the future growth of processing times and backlogs.

DHS declines to make adjustments in this final rule in response to these comments.

Comment: Similarly, a commenter stated that the NPRM uses opaque and invalid budget assumptions and neither the proposed rule nor the commenter's meeting with USCIS have provided any way for the public to adequately understand, much less analyze, future costs and revenue estimates. The commenter said cost and revenue baselines are not aligned, as USCIS is using two completely different time periods to inform its proposed fee rule: A relatively antiquated time period (June 2016 to May 2017) as the baseline for revenues, and a relatively recent time period (FY 2018) as the baseline for costs. The commenter characterized this as ''perplexing'' given that USCIS surely knows its actual costs and revenues for any prior fiscal year. The commenter also detailed their analysis that concluded that projected costs and revenues do not match actual costs and revenues, which the commenter said raises several issues that USCIS must explain to the public.

Response: DHS disagrees with the commenter's contention that USCIS' budget assumptions are opaque and invalid. The commenter is incorrect in stating that USCIS used two different time periods to determine revenue and cost projections for the FY 2019/2020 fee review and that the revenue and cost baseline are not aligned. USCIS used data from June 2016 to May 2017 to determine one data element, fee-paying percentages, that informed its FY 2019 and FY 2020 revenue forecasts. This is only one data input among several that USCIS considers in forecasting revenue. DHS maintains that its use is appropriate. Furthermore, USCIS used the same data to inform the FY 2018 AOP, insofar as it was also an input into the FY 2018 USCIS revenue forecast.

DHS declines to make changes in this final rule in response to the comment.

Comment: A commenter wrote that there is an especially great burden on USCIS to disclose a full and transparent accounting for why it requires an average annual budget of $4.67 billion, as the role of the agency's cost-modeling software is simply to accept this number ''as a received truth'' and allocate it among all of the various form types. This commenter said USCIS provides

accounting systems need not be established solely for this purpose.''

almost no explanation for why it is projecting such high costs, especially when the agency's actual costs in FY 2018, 2019, and 2020 were so much lower than its own projections.

Response: DHS acknowledges that USCIS' actual expenditures in FY 2019 were less than the projected costs in this final fee rule. Furthermore, the commenter is correct in stating that the FY 2019 and FY 2020 cost projections in the NPRM exceed the total budget authority requested for USCIS in the Congressional Justifications that accompany the President's annual budget proposal for those years. This reflects the fact that the revenue generated under the previous USCIS fee schedule was insufficient to adequately fund the agency's needs. The President's budget proposal did not request authority for USCIS to spend money that it was not expecting to have. The difference between the cost projections and actual USCIS expenditures across this time manifested in backlog growth and unmet operational needs. It does not reflect inaccurate projections of the cost to USCIS of fully funding its operational requirements.

DHS has fully explained and justified USCIS' projected costs to meet its operational requirements and address its projected workload. Therefore, DHS declines to make changes in this final rule in response to the comment.

Comment: Commenters stated that, during a meeting with USCIS Office of the Chief Financial Officer, the group discussed the timing and availability of information in the FY 2019/2020 fee review. A commenter stated that the cost-modeling software uses information from 2017, which precedes most of the notable USCIS policy changes of the past 3 years. The commenter stated that USCIS apparently attempts to predict how costs for a given form type will change in the future, but there has been no comprehensive modeling of the many recent developments that would tend to reduce agency costs and put downward pressure on user fees.

The commenter stated that USCIS does not appear to have accounted for many recent policy changes because data was not available ''at the time it conducted this fee review.'' The commenters wrote that more recent data could change the number of people applying for immigration benefits, and thus USCIS' budget estimates and fee calculations. Another commenter stated that the rule does not suggest that USCIS has estimated and accounted for the combined effect of these multiple initiatives, nor could it have done so comprehensively as the Administration's adoption of new initiatives that could affect the number of people seeking immigration benefits has continued even since April 2019 when USCIS completed its fee review and November 2019 when DHS published the NPRM. The commenter said this also raises serious questions about whether the fee review complies with the statutory requirement for USCIS to conduct such a review and make recommendations based on the relevant ''costs incurred.'' The commenter said the proposal's reliance on 2018 cost projections is unreasonable. The commenter said more recent data and projections were available or could have been if USCIS had waited just a bit longer, and USCIS provides no reason that 2018 figures are more relevant. The same commenter said the proposal is additionally unreasonable because it is based on projections for FY 2019 and FY 2020, a period that has nearly passed. The commenter said USCIS should have based its modeling on more recent data and projected results for the time period when any new fee rule would be in effect.

A commenter wrote that USCIS excludes savings and benefits already realized such as efficiencies gained through investments in information technology, closures of international offices, and lower refugee intake. Similarly, a commenter wrote that the RIA fails to present data and evidence on a number of recent changes designed to reduce costs, including limiting the availability of printed study materials, no longer providing printed Forms N–400, centralizing all customer inquiries and complaints on a call center, and introducing electronic filing for many benefits.

Response: DHS acknowledges that it did not incorporate cost increases or savings from policy initiatives for which data was not available at the time USCIS conducted the FY 2019/2020 fee review. DHS rejects the implication that it inappropriately failed to account for future policy initiatives. DHS must adjust USCIS fees through notice and comment rulemaking which, especially for a rule with a billion-dollar impact, is a lengthy process that requires policy planning, analysis, a proposed rule, reading and responding to comments, and a final rule. DHS must publish a final rule that only makes changes that are a logical outgrowth from the proposed rule, and a totally new budget with minor changes in costs or savings cannot be substituted between the proposed and final rules, although we adjust for substantial sums based on intervening legislation as we did for appropriated funds for ICE and the Citizenship and Integration Grant Program discussed elsewhere. The immigration policy environment changes so frequently that if USCIS were to delay finalizing a fee review until cost data was available for all future policy initiatives, DHS would be unable to adjust fees timely, thereby posing a fiscal risk to USCIS. Biennial fee reviews must reflect USCIS' cost projections as of a particular point in time as best can be determined. The same logic applies to other operational metrics including completion rates, revenue forecasts, and workload projections. USCIS always leverages the best information available at the time it conducts a biennial fee review, but it necessarily results in some costs or savings realized or to be realized not being incorporated in the final fees simply due to the passage of time for rule development and finalization.

In recognition of the constantly evolving immigration policy environment and its obligations under the INA and the CFO Act, USCIS regularly conducts biennial fee reviews. The two-year review mandate in the CFO Act forces fee setting agencies to address the effects of just these sorts of policy and practice changes on their fees; otherwise, bureaucratic inertia could cause an agency to not address the soundness of their fees versus costs and services. As it is, the two-year period provides agencies with a reasonable period within which to regularly address such issues, subject to the time constraints of notice and comment rulemaking previously mentioned. To the extent that the recent policy initiatives identified by the commenters affect USCIS' costs, those effects will be captured in USCIS' next biennial fee review. If the totality of new initiatives reduces USCIS' costs, it may result in lower fees in the future for applicants and petitioners.

DHS declines to make changes in this final rule in response to the comments.

Comment: A commenter wrote that their own estimates suggest USCIS is attempting to increase revenue by around 49 percent over current revenue projections based on estimated growth in applications. The commenter said this is an extraordinary amount of revenue extracted from its most vulnerable users.

Response: DHS is unable to replicate the commenter's estimate and does not know the source or validity of these calculations. Regardless, as explained in the NPRM and this final rule, DHS must adjust USCIS' fees to recover the estimated full cost of providing adjudication and naturalization services. DHS declines to make changes

in this final rule in response to this comment.

Comment: A commenter said that USCIS states that it recognizes revenue when work is completed, asserting that the implications of this accounting principle on USCIS' budget and fee modeling is not clear but could be quite significant. For example, the commenter said it is unclear whether revenue estimates are based on actual cash flow or the amount of revenue that is recognized in a current year or if USCIS' budget is inflated with the costs of processing applications for which USCIS received a fee in a prior year.

Response: DHS clarifies that all figures in the USCIS fee review, NPRM, and this final rule reflect projected costs, workload and associated revenue for the FY 2019/2020 biennial period. DHS did not overstate or inflate the USCIS' cost baseline because it does not include workload for which USCIS received a fee in a prior year.

DHS declines to make changes in this final rule in response to the comment.

5. Alternative Funding Sources

Comment: Commenters wrote that funding for USCIS should come from another source. Multiple commenters indicated that Congress should provide appropriations to USCIS to decrease the burden on immigrants. Some commenters also indicated that USCIS did not consider the $10 million appropriation for citizenship grants in setting its fees.

Response: As stated in the NPRM, fees have funded USCIS since its inception. Approximately 97 percent of USCIS' annual funding comes from fees. USCIS must rely on fees until the law changes or Congress appropriates funding. For FY 2019 and FY 2020, Congress appropriated $10 million for the Citizenship and Integration Grant Program. *See* Consolidated Appropriations Act, 2019, Public Law 116–6, div. A, tit. IV (Feb. 15, 2019) and Consolidated Appropriations Act, 2020, Public Law 116–93, div. D, tit. IV (Dec. 20, 2020). At the time USCIS conducted the FY 2019/2020 fee review, Congress had not appropriated $10 million for the Citizenship and Integration Grant Program. As a result, USCIS did not expect to receive the appropriations in FY 2019 or FY 2020. Therefore, USCIS' FY 2018 AOP and FY 2019/2020 fee review cost baseline accounted for these funds in the IEFA non-premium budget. In this final rule, DHS clarifies that $10 million (IEFA non-premium funds; not appropriated funds) remains in the cost baseline for other agency initiatives. However, USCIS does not assign $10 million to only naturalization-related forms (*i.e.,* N–336, N–400, N–565, N–600, and N–600K) in its final ABC model because Congress appropriated funds for the Citizenship and Integration Grant Program. Instead, USCIS reassigns $10 million of non-premium funds to other fee-paying forms, thereby reducing the costs assigned to and final fees for naturalization-related forms.

DHS declines to make any changes in this final rule in response to these comments.

M. ICE Transfer

Comment: Many commenters wrote that they disagree with the proposed transfer of USCIS IEFA funds to ICE. They provided a number of reasons for their objections. Another commenter concluded that eliminating the revenue transfer to ICE enforcement would reduce USCIS' claimed need to eliminate ability-to-pay waivers.

Response: DHS removed the transfer of IEFA funds to ICE from this final rule because Congress appropriated $207.6 million to ICE in FY 2020. *See* Consolidated Appropriations Act, 2020, Public Law 116–93, div. D, tit. IV (Dec. 20, 2019). DHS may fund activities conducted by any component of the department that constitute immigration adjudication and naturalization services using the IEFA. *See* INA section 286(m), (n), 8 U.S.C. 1356(m), (n). Nevertheless, the fees established by this final rule are not calculated to provide funds to ICE.

Comment: A commenter suggested that USCIS use the money currently spent on detention by ICE to instead streamline and simplify the application process.

Response: Congress appropriates funds for ICE Enforcement and Removal Operations. Those funds are not available for use by USCIS. DHS declines to make changes in this final rule in response to this comment.

Comment: A commenter wrote that recent legislative action suggested USCIS would abandon the plan to transfer funds to ICE, so the commenter asked that USCIS confirm in its final rule that it does not have the authority to transfer IEFA funds to ICE collected.

Response: DHS may fund activities conducted by any component of the department that constitute immigration adjudication and naturalization services using the IEFA. *See* INA section 286(m), (n), 8 U.S.C. 1356(m), (n). DHS removed the transfer of IEFA funds to ICE from this final rule because Congress appropriated $207.6 million to ICE in FY 2020. *See* Consolidated Appropriations Act, 2020, Public Law 116–93, div. D, tit. IV (Dec. 20, 2019). The fees established in this final rule are not calculated to provide funds to ICE.

N. Processing Times and Backlogs

Comment: A commenter wrote that USCIS should focus on the processing times and becoming more efficient. The commenter also suggested that USCIS could benefit from a more streamlined electronic process. One commenter wrote that electronic filing glitches, lost documents, erroneous rejections, and lengthy holds should be addressed before fees are raised. One commenter said USCIS should increase filing technology and training of Service Officers to ensure they have the legal knowledge of the regulations and have the platform to adjudicate cases efficiently. The commenter said technology allocations should specifically focus on electronic filing systems that can reduce processing times and make document and forms submission from U.S. employers seamless.

Response: DHS strives to save money, be efficient, and process all requests in a timely manner while maintaining the integrity of the United States immigration system. USCIS agrees with commenters that electronic filing, processing, and record keeping for immigration benefit requests is likely to provide operational efficiencies that could aid USCIS in better using its existing resources and potentially reduce processing times and backlogs. Although USCIS is aggressively moving to expand e-processing to more form types, its current operational needs dictate that it must increase fees to cover projected costs. If USCIS realizes operational efficiencies through the expansion of electronic benefit request filing and processing, those cost savings will be reflected in upcoming fee reviews and may result in future fees that are lower than they would have been in the absence of such efficiencies. Training, software, and equipment costs are part the IEFA budget. USCIS encourages its employee to discuss with their supervisor if they believe that they lack the resources necessary to do their jobs.

DHS declines to make changes in this final rule in response to these comments.

Comment: Many commenters who opposed the NPRM noted that immigration benefit request backlogs and processing times have increased under the current administration despite a fee increase in December 2016. Many commenters stated that since 2010, USCIS increased filing fees by weighted averages of 10 percent and 21 percent but has not achieved any

associated improvement in processing times, backlogs, or customer service. Commenters cited reports stating that during that same period USCIS' backlog has increased by more than 6,000 percent and that the overall average case processing time increased 91 percent between 2014 and 2018. Commenters wrote that fees should not increase until USCIS improves its efficiency and management. Commenters wrote that an increase in fees must be accompanied by improvement in processing times, reduced backlogs, improved customer service, and services that do not discriminate against the working class, low-income applicants, and others who face financial hardships.

Response: DHS recognizes the continued growth of USCIS case processing backlogs since it last adjusted the USCIS fee schedule on December 23, 2016. *See* 81 FR 73292 (Oct. 24, 2016). The fees established at that time proved insufficient to fund USCIS at the level necessary to prevent growth in case processing backlogs. USCIS' costs grew more than expected at that time because of disproportionate growth in humanitarian workloads that did not generate revenue, increased adjudicative time requirements per case for many different workloads (*i.e.,* increased completion rates), additional staff, and other factors.

DHS is adjusting fees in this final rule because they are insufficient to generate the revenue necessary to fund USCIS at levels adequate to meet its processing time goals. Adjustments to USCIS' fee schedule will generate more revenue to fund the operational requirements necessary to meet projected incoming workloads and prevent further deterioration in processing times. The new fees will allow USCIS to hire more people to adjudicate cases and possibly prevent the growth of backlogs. USCIS will continue to explore possibilities for business process efficiencies. Future fee adjustments will reflect any efficiencies realized by USCIS.

DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter suggested that USCIS should internally review its processes and determine how they might be streamlined before increasing fees. A few commenters stated that increased RFEs and mandatory in-person interviews, among other policies, are labor intensive and should be addressed to decrease the backlog before fees are increased.

Response: USCIS continually evaluates its processes and pursues efficiencies to the greatest extent possible. As explained in the NPRM, USCIS considered all cost and operational data that was available at the time it conducted the FY 2019/2020 fee review, including potential process efficiencies. It does not account for recent process efficiencies for which data was not yet available at the time. However, USCIS will evaluate and capture any relevant cost-savings data for process efficiencies during its next biennial fee review. To the extent that potential process efficiencies are recognized in the next biennial fee review, cost-savings may lessen the impact of future fee adjustments.

DHS declines to make changes in this final rule in response to the comment.

Comment: A commenter said an increase in fees would only further burden those who seek services and are repeatedly met with inefficiency, long wait times, and the inability to get answers. This commenter said USCIS has taken away services, such as the ability to make InfoPass appointments online, and rerouted those inquiries to Customer Service Center where wait times to receive calls back make emergency situations that require an InfoPass appointment even more frustrating. Another commenter also mentioned the difficulty in making InfoPass appointments as an example of how USCIS services have declined in recent years due to mismanagement. Commenters said USCIS should end policies and practices that raise fees to support the continued administration of backlog-expanding policies and practices.

Response: USCIS continually evaluates potential operational efficiencies. Reductions in the use of in-person appointments through InfoMod enable USCIS to redirect resources to adjudication, potentially improving overall customer service. USCIS evaluates and incorporates all available information on both cost-savings and cost increases as part of its biennial fee reviews, including the effects of policy changes and their impact on operational processes. This final rule adjusts USCIS' fee schedule to recover the estimated full cost of providing immigration adjudication and naturalization services; removing or reconsidering all USCIS policies and practices is beyond the scope of this rulemaking.

DHS declines to make changes in this final rule in response to these comments.

Comment: Another commenter noted that USCIS' only concrete plan was to spend money on reducing fraud, which would not efficiently reduce the backlog.

Response: DHS disagrees with the commenter's statement that its only concrete plan is to spend more money on reducing fraud. USCIS intends to use revenue from the fees to fund multiple initiatives, including increased staffing across the agency. DHS adjusts USCIS' fee schedule in this final rule to recover the estimated full cost of providing immigration adjudication and naturalization services for anticipated incoming workloads. USCIS does not incorporate the cost of addressing existing pending caseloads in its biennial fee reviews, as it would be inequitable to require new applicants and petitioners to pay for the cost addressing previously submitted applications and petitions for which USCIS already collected fees. To the extent fee adjustments result in additional revenue for USCIS, those additional resources may help limit future growth in pending caseload. DHS declines to make changes in this final rule in response to the comment.

Comment: Some commenters noted USCIS' failure to implement the recommendations of the USCIS Ombudsman's Report, which provides a number of recommendations for improving adjudication times. One of these commenters said DHS's failure to consider, address, or implement recommendations from other federal government offices is telling, asserting that these changes are simply intended to make the asylum process more challenging for asylum applicants, and to deter asylum applicants.

Response: DHS notes that one of the USCIS Ombudsman's recommendations is to address delays in processing Form I–765 by ensuring sufficient staffing resources are available to provide for timely adjudication. DHS adjusts USCIS' fee schedule in this final rule, including the fee for Form I–765, to provide for the recovery of full estimates of the costs of providing immigration adjudication and naturalization services. The Ombudsman did not recommend an increase in the Form I–765 fee; however, adjusting the fee schedule will enable USCIS to devote more resources, including staffing, to the adjudication of all applications and petitions, including Form I–765. DHS reiterates that it does not intend to make the asylum process more complicated.

DHS declines to make changes in this final rule in response to these comments.

O. Fee Payment and Receipt Requirements

Comment: Multiple commenters opposed the proposal to allow DHS to require the payment of certain fees by particular methods, as described in the relevant form instructions. Commenters

wrote that any potential future requirement to pay fees through electronic means such as *Pay.gov* would limit the ability of individuals who lack access to bank accounts or credit cards to apply for immigration benefits. Commenters also wrote that requiring payment through electronic means would restrict the availability of immigration benefits for individuals who lack computer and internet access. Commenters stated that it is important to maintain the ability to pay fees using cashier's checks and money orders, because they are available to individuals without access to other banking services, such as a credit card. Another commenter cited data from the New York City Department of Consumer and Worker Protection, which found that less than two-thirds of immigrant households in New York have access to products such as checking and savings accounts and that 11 percent are unbanked and 22 percent are underbanked. A few commenters cited Federal Deposit Insurance Corporation numbers in writing that the proposal would inhibit the immigrant portion of the ''unbanked'' and ''underbanked'' households in the United States from applying.

Multiple commenters said prohibiting cashier's checks or money orders would disproportionately affect low-income immigrants and a few commenters indicated it would impose a substantial burden on asylum seekers. One commenter said 85 percent of the immigrant clients they help need to use money orders, and this provision would negatively affect them. Commenters said the proposal would lead to wide scale confusion and inefficiency among immigrant and advocacy groups and requested that USCIS continue to accept cashier's checks and money orders.

Response: In this final rule, DHS does not restrict the method of payment for any particular immigration benefit request. This final rule clarifies the authority for DHS to prescribe certain types of payments for specific immigration benefits or methods of submission. DHS does not have data specific to USCIS benefit requestors' access to the internet and/or banking but understands that particular populations submitting requests may have attributes that make access to a bank account more or less challenging DHS acknowledges that some requestors may not use banks or use them on a limited basis for a number of reasons. However, any person who can purchase a cashier's check or money order from a retailer can just as easily purchase a pre-paid debit card that can be used to pay their benefit request fee.[110] In addition, since 2018 requesters can use a credit card to pay for a USCIS form filing fee that gets sent to and processed by one of the USCIS lockboxes, or split the fees between more than one credit card.[111] The credit card used does not have to be the applicant's; however, the person who is the owner of the credit card must authorize use of his or her credit card. Therefore, DHS believes that requiring the use of a check, credit, or debit card will not prevent applicants or petitioners from paying the required fees. In addition, resources such as libraries offer free online services, access to information and computers that the public may use to access forms, complete, print or submit them. Nevertheless, in evaluating future changes to acceptable means of payment for each immigration benefit request, DHS will consider the availability of internet access and different means of payment to the affected populations.

DHS declines to make changes in this final rule in response to these comments.

Comment: A few commenters raised concerns about nonrefundable fees and rejecting checks over 365 days old, which they said were listed in the NPRM without explanation. The commenters stated that relevant fees should be refundable in certain situations, including when an applicant's health or family conditions have changed or when an immigrant is denied on a clear USCIS error.

Response: DHS provided a complete explanation of its reasoning behind its proposed stale check or refund requirements. *See* 84 FR 62295 and 62296. In addition, DHS is continuing its policy to issue fee refunds if there is a clear USCIS error, but we will not codify that discretionary practice as a requirement on USCIS. DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter suggested that USCIS should publish any restriction of payment in the **Federal Register**. The commenter also suggested that USCIS should accept financial instruments regardless of their age and, if it does not process, give applicants 14 days to correct any payment errors. The commenter wrote that USCIS should not be rejecting applicants because of payment problems unknown to them or out of their control.

Response: DHS declines to publish any change in acceptable payment instruments in the **Federal Register**. However, where DHS limits acceptable instruments locally, nationwide, or for certain USCIS benefit requests, it issues multiple communications and provides sufficient advance public notice to minimize adverse effects on any person who may have plans to pay using methods that may no longer be accepted.[112] As far as the age of payment instruments, as stated in the NPRM, USCIS generally accepts and deposits payments dated up to one-year before they are received although 6 months old is a general standard often followed in the financial services industry. *See* 84 FR 62295. Because of the large volume of payments that USCIS receives on a daily basis, handling dishonored payments adds unnecessary administrative burden to its intake process. Assigning employees to handle defective payments and, as suggested by the commenter, holding filings and billing for fees that were not properly submitted, is an opportunity cost to USCIS because those employees could otherwise adjudicate immigration benefit requests. DHS believes that it is the responsibility of the remitter to submit proper fees. USCIS will take ameliorative action if a payment error is caused by the agency. However, USCIS has no obligation to insulate filers from a payment problem caused by the requester's financial institution, agent, lawyer, third party check validation service, or similar parties. DHS makes no changes in response to these comments.

P. Fees Shared by CBP and USCIS

Comment: One commenter suggested that previous fee reviews failed to account for the actual adjudication costs of these forms. They questioned if CBP costs were accounted for in previous fee reviews.

Response: DHS acknowledges that previous adjustments to the USCIS fee schedule did not account for CBP costs for instances where CBP uses the same form as USCIS. DHS set those fees using USCIS costs and CBP collected the fee that was established. This final rule refines the fee calculation by considering CBP costs and workload volumes in establishing the fees for shared forms. However, CBP workload volumes and associated revenue are backed out from the fee schedule shown in the NPRM and this final rule because

[110] See, *e.g.,* Visa Prepaid Cards, at *https://usa.visa.com/pay-with-visa/cards/prepaid-cards.html* (last viewed 2/24/20).

[111] *See* USCIS Expands Credit Card Payment Option for Fees *https://www.uscis.gov/news/news-releases/uscis-expands-credit-card-payment-option-fees.*

[112] *See, e.g.,* USCIS Updates Fee Payment System Used in Field Offices, available at *https://www.uscis.gov/news/news-releases/uscis-updates-fee-payment-system-used-field-offices* (Last Reviewed/Updated: 3/07/2019).

that revenue is not available to USCIS for the purposes of funding its immigration adjudication and naturalization services. This ensures that USCIS' projected revenue matches its estimated costs of adjudication.

Comment: A commenter said that the hike in fees shared by CBP and USCIS are drastic and unjustified because the cost to legalize status will rise to thousands of dollars per person.

Response: DHS recognizes that adjustments to the fees for forms shared by USCIS and CBP represent a sizeable increase in the cost of those forms. However, the fees adopted in this final rule represent the estimated full cost of adjudication. DHS declines to make changes to the final fee schedule on the basis of this comment.

Comment: Another commenter questioned why the NPRM did not include more recent information regarding CBP costs and suggested that if CBP needs the revenue, they should have their own higher fees or fund their operations through annual appropriations.

Response: DHS used the most recent CBP data available at the time USCIS conducted the FY 2019/2020 fee review. It includes cost and workload volume information from FY 2017 as the basis for FY 2019/2020 projections. This is consistent with the data used to develop all other workload and cost projections represented in the fee schedule. The fees set in this final rule that affect CBP are only those forms that USCIS prescribes, but CBP shares for certain functions. DHS has determined that it is appropriate to set the fees for these forms at a level sufficient to ensure that both USCIS and CBP recover the estimated full cost of adjudication, including the cost of providing similar services at no charge to other immigrants. Therefore, DHS makes no changes in this final rule in response to the comment.

Q. Paperwork Reduction Act (PRA) Comment Responses

Comment: Multiple commenters noted that the increased requirements and additional evidence required for filing the Form I–912, Request for Fee Waiver should increase the time burden to applicants. This includes one commenter who noted that the submitted ''Instructions for request for fee waiver'' states that the form will take 1 hour and 10 minutes per response, but the currently approved form states it would take 2 hours and 20 minutes. The commenter said USCIS did not provide rationale on why the newly revised form would take half the time when it has not been simplified. A commenter stated that the proposed changes to Form I–912 would present burdens to applicants with increased evidence requirements and repetitious and extraneous information collection. The commenter recommended that USCIS revert and retain the previous version of Form I–912.

Response: DHS agrees that it used an outdated burden estimate in the NPRM. In this final rule, DHS has updated the estimated time burden for Form I–912 from 1 hour and 10 minutes to the currently approved 2 hours and 20 minutes.

Comment: One commenter noted that using the Paperwork Reduction Act to introduce a revised fee waiver form, with new requirements, in October 2019 in lieu of using a NPRM and then eliminating fee waivers in this rule, was a waste of the public's time to review both documents. A few commenters stated that eligibility based on receipt of a means-tested benefit was due to be eliminated, but the case *City of Seattle,* a court placed a nation-wide injunction on that action, thereby affecting USCIS' plans to constrict eligibility standards for fee waivers. USCIS has already eliminated the means-tested benefit criteria for fee waivers, which drastically limited access to immigration benefits. The proposed rule narrows the criteria for fee waivers even further and eliminates the financial hardship criteria entirely which means 400,666 individuals annually, about the population of Tampa, FL, would be detrimentally impacted. Another commenter stated that the fee increases are an attempt to get around the currently enjoined 2019 fee waiver rules because it eliminates fee waivers for most applicants. The commenter stated that the proposal seeks to restrict legal immigration and naturalization for ''poor and non-white people.'' Another commenter recommended that while the Form I–912 revision is enjoined by the U.S. District Court for the Northern District of California that USCIS request public comment on a new proposed Form I–912 that maintains options to demonstrate qualification through receipt of means-tested benefits, financial hardship, or income of up to 150 percent of the federal poverty level. The commenter wrote that USCIS is required by the injunction to restart the information collection request clearance process anew for a revised I–912 form that conforms to the Court's decision. The commenter wrote that because the version of the Form I–912 published as supporting material to USCIS's November 14, 2019 NPRM, for which comment periods with a cumulative total length of slightly more than 60 days are now ending, does not meet the Court's specifications, USCIS may not move forward with implementation of this revised I–912 based on the present notice-and-comment process.''

Response: The comment refers to the effort by USCIS to revise the USCIS policy guidance on fee waivers. On September 28, 2018, USCIS published a 60-day notice in the **Federal Register** requesting comments on the revised Form I–912 and instructions and posted the documents for review in docket USCIS–2010–0008 at *www.regulations.gov.* 83 FR 49120 (Sept. 28, 2018). The revisions to the fee waiver form revised the evidence USCIS would consider in evaluating inability to pay, required federal income tax transcripts to demonstrate income, and required use of the Form I–912 for fee waiver requests. USCIS complied with the Paperwork Reduction Act and the Office of Information and Regulatory Affairs, OMB (OIRA) approved the form changes on October 24, 2019.[113] On October 25, 2019, USCIS published the revised Form I–912 and instructions, along with corresponding revisions to the USCIS Policy Manual and a Policy Alert. The revised form and manual took effect on December 2, 2019.

DHS did not consider this rulemaking's impact on that policy change because DHS was proposing comprehensive reforms to fee waivers which were not certain to occur, and the rulemaking was separate and independent of the October 25, 2019, form and policy change. USCIS was losing hundreds of millions of dollars each year to fee waivers and it decided not to wait for the comprehensive DHS fee rulemaking while it continued to ''forgo increasing amounts of revenue as more fees are waived.'' 84 FR 26138 (June 5, 2019). Nonetheless, on December 11, 2019, the revised Form I–912 was preliminarily enjoined, nationwide, by the U.S. District Court for the Northern District of California. *See* Order Granting Pls.' Mot. for Nationwide Prelim. Inj., *City of Seattle* v. *DHS,* 3:19–cv–7151–MMC (N.D. Cal., Dec. 11, 2019). By stipulation of the parties and as agreed to by the court, that injunction will remain pending publication of this final rule. The injunction does not require that USCIS may only revise the Form I–912 in a way that conforms to the Court's decision. Nonetheless, while this final rule is not affected by *City of Seattle,* the decision in that case only requires that the October 25, 2019 fee waiver policy

[113] The approved package is available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201910-1615-006#* (last visited Feb. 17, 2020).

changes required notice and comment rulemaking to effectuate. DHS is conducting notice and comment rulemaking with this final rule and the *City of Seattle* injunction does not prevent USCIS from moving forward with implementation of the Form I–912 revision in accordance with this rulemaking.

Comment: Several commenters stated that the proposed rule also fails to comply with a federal agency's requirements under the Paperwork Reduction Act by failing to provide the public with a 60-day opportunity to comment on the collection of information under the proposal. One commenter states that ''when proposed rule was initially published on November 14, 2019, it provided 60 days for the public to submit comments on draft forms and instructions. USCIS then posted no fewer than 145 such documents on *regulations.gov* for public review. Then, on December 9, 2019, published another proposed rule that reduced the period for public comments on draft forms and instructions to only 45 days. This clear breach of the Paperwork Reduction Act (PRA) leaves insufficient time for the public to adequately comment on the massive volume of form changes proposed by the agency. USCIS must therefore extend the comment period for PRA review by at least another 30 days.'' Another commenter stated that ''while the extension notice of December 9, 2019 extends the public comment period, it simultaneously shortens it for the related forms, in violation of the Paperwork Reduction Act.[114] The extension notice states: DHS also notes and clarifies the comment period for the information collection requests (forms) that the proposed rule would revise in accordance with the Paperwork Reduction Act. The comment period for the NPRM will end on December 30, 2019, including comments on the forms DHS must submit to OMB for review and approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–12. The NPRM contained erroneous references to comments being accepted for 60 days from the publication date of the proposed rule. The commenter requests that the public comment period be open for 60 days.

Response: DHS regrets any erroneous references in the NPRM. Nevertheless, as the commenters have indicated, DHS published the proposed revisions to the information collection requirements for public comment for a cumulative period of more than 60 days. Thus, DHS has complied with the public comment period requirements of 5 CFR 1320.11 for the information revisions associated with this rule.

Comment: A commenter wrote that the collection of a valid domestic address for named workers in a Form I–129 petition is duplicative given that USCIS conducts a background check for named beneficiaries listed on Form I–129. The commenter also wrote that USCIS ''failed to articulate in its proposed rule why this new question is necessary.''

Response: DHS disagrees with the comment that this question is duplicative. Providing a valid domestic address for the beneficiary helps USCIS to conduct the background check and otherwise ensure the integrity of the information provided on the Form I–129. In addition, USCIS will use a beneficiary's U.S. address to notify them if USCIS denies a request to change status or extend stay.

Comment: A commenter wrote that, ''USCIS [should] adopt a timeline that allows for a sufficient grace period and does not conflict with high-volume filing seasons'' when implementing the new forms and recommended a six-month grace period. The commenter wrote that USCIS should consider high-volume filing seasons, for which petitioners prepare months in advance, noting that ''refusing to accept a prior version of a form during that time could cause undue burden on the public.''

Response: DHS will not adopt the recommendation to provide a minimum six-month grace period before the new forms are mandatory for submission. DHS does not believe that requiring use of the new forms immediately will cause undue burden on the public. The proposed forms essentially incorporate the same information as the previous forms, but the new forms are shorter because they are focused on the specific nonimmigrant classification. In addition, DHS believes the public has had sufficient notice of the proposed forms. DHS first published the NPRM on November 14, 2019, subsequently extended the comment period on December 9, 2019, and the rule is not effective until 60-days after publication. USCIS will consider high-volume filing seasons when establishing the implementation process for these new forms.

Comment: A commenter wrote, ''about the inclusion of E-Verify questions on each of the new [Forms I–129], even when participation in E-Verify is not mandated for participation in nonimmigrant program *(sic),* as it could be used inappropriately to target employers for enforcement action.'' The commenter recommended that USCIS either remove the E-Verify questions from forms where it is not mandated, or add language to the form instructions to say that ''. . . these questions are optional and are not outcome determinative, such that if a petitioner leaves the information blank it will not result in a rejection.'' The commenter also pointed out a typographical error.

Response: USCIS does not accept the recommendation to remove E-Verify-related questions on Forms I–129 where participation is not mandated. Petitioners who choose not to participate in E-Verify are not required to enroll in the system; only those who are already enrolled will need to provide E-Verify information. Requiring the petitioner's name as listed in E-Verify, as well as their E-Verify Company Identification Number or Client Company Identification Number, if applicable, protects the interests of U.S. workers by preventing fraud and abuse of E-Verify and employment eligibility rules. Having this information on all of the I–129 versions maximizes E-Verify's reliability and integrity by confirming that certain categories of employees who are authorized for employment with a specific employer incident to status are working for the employer specified on the petition.

USCIS Form Instructions indicate that all questions should be answered fully and accurately. They also provide direction to write ''N/A'' or ''None'' when a question doesn't apply to the applicant, petitioner, requestor or beneficiary.

USCIS reviewed all of the new I–129 forms and corrected typographical errors related to the E-Verify questions.

Comment: A commenter pointed out that on Form I–129H1, ''. . . in Part 2. Information about this Petition, question 1, Item 1D repeats Item #1C. It appears it should read 'Free Trade, Chile (H–1B1).' '' The commenter also wrote that they recommended ''. . . that Part 5. Basic Information About the Proposed Employment and Employer, questions 9 and 10 be struck as they ask for information that is beyond what is required for eligibility for H–1B status.

Response: USCIS has updated Form I–129H1, Part 1., Item Number 1, Item 1D. Regarding Part 5., Item Numbers 9 and 10, these questions relate to the ''experience required for the position'' and ''special skills'' for the position, both of which are relevant to determining if the wage level selected on the Labor Condition Application (LCA) corresponds to the position as described in the petition. Per 20 CFR 655.705(b), while the U.S. Department

[114] Paperwork Reduction Act of 1995, Public Law 104–13, §451(b), 110 Stat. 163 (1995) (codified at 44 U.S.C. 3501 *et seq.*)].

of Labor ''administers the labor condition application process,'' the U.S. Department of Homeland Security (DHS) ''determines whether the petition is supported by an LCA which corresponds with the petition.''

Petitioner's responses to these questions provide USCIS with a more complete picture of the requirements for the proffered position. This may help to reduce RFEs on this topic, as USCIS officers will have additional information when initially adjudicating the case.

Comment: A commenter wrote that they appreciated that ''. . . specific program requirements have been laid out in the instructions . . .'' for the new Form I–129H2A and Form I–129H2B that ''. . . will be helpful for newer employers, agents, and attorneys.'' The commenter objected, however, to the ''. . . additional requirements for each program that have not been previously required that are either burdensome or too broad'' and that USCIS could ascertain them ''. . . through its own systems . . .'' The commenter also indicated that, ''. . . Part 6. Petitioner and Employer Obligations, question 14, which requires the H–2A petitioner and each employer to consent to ''allow Government access'' to the H–2A worksite is overly broad and goes beyond 8 CFR 214.2(h)(5)(vi) which only requires consent to ''allow access to the site by DHS officers.''

Response: The data collections included in Form I–129H2A and Form I–129H2B have a regulatory basis. While they might technically be ascertainable through USCIS systems, this would result in substantially greater operational burdens and, hence, greater expense being passed onto petitioners. It is also reasonable that petitioners should properly be on record whether the relevant requirements are met.

Regarding the Petitioner and Employer Obligations, Item Number 14, USCIS has changed the language to ''DHS access.''

Comment: A commenter wrote that the requirement on Form I–129H2B for the petitioner ''. . . to provide evidence of why substitution is necessary and that the requested number of workers has not exceeded the number of workers on the approved temporary labor certification . . .'' could be ''. . . burdensome on the petitioner and delay processing.'' The commenter also suggested that Forms I–129H2A and I–129H2B be reviewed for consistency, noting that helpful language about what evidence to provide appeared in one of these forms but not in the other.

Response: The H–2B Substitution regulation at 8 CFR 214.2(h)(6)(viii) states that to substitute beneficiaries who were previously approved for consular processing but have not been admitted with aliens who are currently in the United States, the petitioner shall file an amended petition with fees at the USCIS Service Center where the original petition was filed, with a statement explaining why the substitution is necessary and evidence that the number of beneficiaries will not exceed the number allocated on the approved temporary labor certification, such as employment records or other documentary evidence to establish that the number of visas sought in the amended petition were not already issued. Thus this requirement is clearly supported by the regulations.

USCIS has reviewed the forms for consistency and updated Form I–129H2B to include the appropriate note under Part 3., Item Number 24.

Comment: A commenter wrote that proposed Form I–129MISC ''. . . would make applications for R nonimmigrant workers less efficient and more confusing.'' The commenter stated that, ''The current version of the form is organized and follows a clear structure . . .'' but that ''. . . the proposed revised Form I–129 moves from one topic to another, not following a logical progression.'' The commenter also wrote that, ''. . . certain questions are redundant and . . . broaden the scope of the question needlessly.''

Response: The comment does not specify how the organization fails to follow the progression of the regulation. Notably, the new Form I–129MISC structure contains much of the eligibility information in the main petition. The R Supplement is limited to questions about the beneficiary's family, the relationship between the foreign and U.S. organizations, and the attestation, including attestation regarding secular employment, as required by R–1 regulations. 8 CFR 214.2(r)(8). Plus, petitioners no longer must search through lengthy instructions that do not apply to their petition.

Comment: One commenter wrote that on Form I–129MISC, ''Part 1, Question #10 does not include an option to select ''Not Applicable'' if a Social Security number is not available.''

Response: USCIS has added an ''(as applicable)'' parenthetical to the U.S. Social Security Number field on the form. Per USCIS Form Instructions, all questions should be answered fully and accurately. Any questions that do not pertain to the applicant, petitioner, requestor or beneficiary should be answered with ''N/A'' or ''None,'' according to the instructions.

Comment: A commenter noted that, ''Part 2, Question #3 requests that a petitioner for amended status provide the receipt number of the petition they seek to amend. However, in Part 3, Question #17, the petitioner would have to enter the receipt number again. This is repetitive. There are several bases for classification in which a previous receipt number would be necessary for adjudication.'' The commenter ''. . . recommend[ed] that USCIS consolidate and only request a receipt number once for any basis that would be applicable.

Response: On Form I–129MISC, Part 2 relates to information about the basis for the filing (new employment, continued employment, change of status, or amended petition), and, if an amended petition, asks for the receipt number of the petition being amended. Part 3, on the other hand, seeks information about the beneficiary, requesting the most recent petition or application number for the beneficiary. These requests are not necessarily duplicative as a previous receipt number does not always mean the filing is an amended petition. Eliminating the question about the receipt number of the petition to be amended in Part 2 would make matching the amended petition with the original petition more burdensome.

Comment: A commenter wrote that, ''Part 4, Questions #9 and #10 ask if the beneficiary has ever been granted or denied the classification requested. The current version of the form limits the scope of these questions to the last 7 years. By removing the time limitation on this question, USCIS is requesting information that may be overly burdensome for petitioners and beneficiaries to provide, if the information has been lost over time. Information beyond 7 years is also unnecessary for USCIS' adjudication, as that time period would necessarily encompass enough time to demonstrate that a beneficiary who had spent the maximum 5 years in a previous R–1 status had spent the requisite one year outside the United States to be eligible for readmission.''

Response: USCIS notes that P–1A individual athletes have a 10-year admission period when your account for their initial and extension period of stay while other P categories may have their period of stay extended in one-year increments. 8 CFR 214.2(p)(14). While the R–1 classification does have a 5-year limit, USCIS will count only time spent physically in the United States in valid R–1 status toward the 5-year maximum period of stay, and an R–1 may be able to ''recapture'' time when he or she has resided abroad and has been physically present outside the United States for the immediate prior year. 8 CFR

214.2(r)(6).[115] Thus the time the beneficiary may have been in R–1 status in the United States may be longer than the immediately preceding 7 years in some scenarios. USCIS does not believe the questions to be overly burdensome since we are not initially requiring supporting evidence.

Comment: A commenter pointed out a typographical error in Part 5., Question #6 of Form I–129MISC. ''‘If the answered ‘No’ . . .’ should be ‘If you answered ‘No’.''

Response: USCIS has corrected this typographical error.

Comment: A commenter wrote that, ''R–1 Classification Supplement Section 1, Question #18 has been revised to provide less context and detail for this request for information about secular employment. Specifically, the phrase ‘[i]f the position is not a religious vocation . . . has been removed, making the question much broader than the previous version. This broad question is more difficult for petitioners to answer and could result in answers that create more confusion for adjudicators.''

Response: In the R–1 Classification Supplement, Section 1, Item Number 18, removal of the phrase ''[i]f the position is not a religious vocation . . .'' aligns the question to the relevant regulatory text. Specifically, the regulation at 8 CFR 214.2(r)(8)(xi) requires the prospective employer to attest ''[t]hat the alien will not be engaged in secular employment,'' without regard to the type of religious worker position that the beneficiary will hold. As to the commenter's concern that the revised wording creates a ''much broader'' question that is more difficult to answer, we note that it remains a yes or no question, requiring further explanation only if the prospective employer answers ''no'' to the required statement.

R. Statutory and Regulatory Responses

1. General Comments on the Regulatory Impact Analysis

Comment: One commenter cited the APA and Supreme Court precedent, stating that the asylum fee is such a departure from prior policy that the agency must provide a ''reasoned analysis for the change.'' The commenter wrote that the agency provided no evidence, analysis, or discussion to support its conclusions, and that under the APA and Executive Orders 12866 and 13563, USCIS failed to identify and evaluate all potential economic and non-economic costs and ensure that those costs are outweighed by benefits and that the regulations impose the least burden to society. The commenter wrote that E.O. 12866 requires agencies to assess all costs and benefits and should select those approaches that maximize benefits (including potential economic, environment, public health and safety), and other disadvantages; distributive impacts, and equity.

Response: DHS has identified and evaluated potential economic and non-economic costs as summarized in table 7 of the Executive Orders 12866 and 13563 sections of this rule, table 1 of the Regulatory Impact Analysis, and in the Small Entity Analysis document. As stated in multiple places in this final rule, DHS is changing USCIS fees to recover the costs of administering its adjudication and naturalization services. DHS is not changing USCIS fees with the intent to deter requests from low-income immigrants seeking family unity or deterring requests from any immigrants based on their financial or family situation. DHS will continue to explore efficiencies that improve USCIS services and may incorporate corresponding cost savings into future biennial fee reviews and rulemakings accordingly.

Comment: Multiple commenters generally stated that the RIA does not accurately analyze the impact of reduced economic activity generated by immigrants as a result of more arduous immigrant requirements under this rule. Some commenters requested that USCIS analyze whether reduced administrative costs as a result of increased fees would be offset by a reduction in the economic value generated by immigrants due to more costly fees. Similarly, a commenter wrote that the proposed rule does not account for the harm posed by increased naturalization fees such as reduced wages, broken families, and increased vulnerability to domestic violence.

Response: DHS notes that previous fee increases in 2007, 2010 and 2016 have had no discernible effect on the number of filings that USCIS received.[116]

DHS recognizes the contributions that naturalized citizens make to American society. However, USCIS must fund itself through fees. DHS does not have any data to establish that these fees, though required, are a significant impediment to naturalization or economic and social mobility. As stated in the proposed rule and elsewhere in this final rule, DHS performs a biennial review of the fees collected by USCIS and may recommend changes to future fees. DHS reviewed research cited by commenters as evidence that the cost increases discussed in the rule would be a barrier to immigration and found no evidence to support the conclusion that the fee changes would have a quantifiable causal effect on wages, family cohesion or domestic violence. DHS declines to conduct further analysis on this issue or make changes in this final rule in response to this comment.

DHS recognizes the economic and societal value of nonimmigrants, immigration, and naturalization. DHS agrees that new citizens and naturalization are of tremendous economic and societal value and generally agrees with the points made by, and the studies cited by, commenters. DHS is not adjusting the USCIS fee schedule to impede, reduce, limit, or preclude naturalization and did not propose to adjust the USCIS fee schedule to reduce, limit, or preclude immigration in any way for any specific immigration benefit request, population, industry or group, including members of the working class.

DHS acknowledges that some individuals will need to save, borrow, or use a credit card in order to pay fees because they may not receive a fee waiver. DHS does not know the price elasticity of demand for immigration benefits, nor does DHS know the level at which the fee increases become too high for applicants/petitioners to apply. However, DHS disagrees that the fees will result in the negative effects the commenters' suggested. DHS believes that immigration to the United States remains attractive to millions of individuals around the world and that its benefits continue to outweigh the costs noted by the commenters. DHS also does not believe that the NPRM is in any way discriminatory in its application and effect. DHS did not target any particular group or class of individuals. Therefore, DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter wrote that the RIA does not consider the costs to the families and communities of asylum seekers who will need to help cover fees for indigent individuals.

Response: DHS did not consider the costs to the families and communities of asylum seekers, who will need assistance with fees for indigent individuals who are more likely to be asylum seekers. DHS expects that charging this fee will generate some revenue to offset adjudication costs but is not aligning with the beneficiary-pays

[115] *See* Procedures for Calculating the Maximum Period of Stay for R–1 Nonimmigrants, available at *https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2012/March/R-1_Recapture_%20AFM_Update_3-8-12.pdf.*

[116] *See* RIA, Section M: Fee Waivers.

principle, as the estimated cost of adjudicating Form I–589 exceeds $50. DHS recognizes that these families and communities will have to find a way to pay, whether through their communities, friends, loans, or credit cards. DHS discusses the impact of the asylum fee and determines that some applicants may no longer apply for asylum in Section P, Charge a Fee for Form I–589 Application for Asylum and for Withholding, of the final RIA. DHS notes that some applicants would be able to find other means to pay for this application fee, such as borrowing money or using a credit card. DHS is not able to estimate the effect of the new $50 fee on asylum applicants who may not be able to afford the new fee and cannot accurately or reliably predict how many applicants would no longer apply for asylum as result of the $50 fee.

Comment: Multiple commenters wrote that USCIS failed to sufficiently analyze the price elasticity or price sensitivity of naturalization applications, and as a result total agency revenue could actually decrease due to reduced naturalization applications from higher fees under the proposed rule. One commenter cited research demonstrating that subsidizing naturalization fees for low income individuals increased applications by 41 percent. A commenter wrote that USCIS argues that the lack of a fee waiver will not affect the number of requests filed, however research shows that fee waiver standardization increased applications for low income immigrants. A commenter wrote that USCIS fails to produce an incremental analysis considering the difference in money flow between the original situation and the proposed changes.

Response: DHS acknowledges that one randomized control trial mentioned by the commenter observed a 41 percent increase in applications for naturalization amongst immigrants randomly selected to have their filing fees paid by an outside party. Commenters cited another study's findings that standardization of the fee waiver process, and incorporation of the FPG for determining eligibility resulted in the largest increases in naturalization rates for low-income immigrants. While DHS acknowledges immigrants facing financial challenges encounter added difficulty paying filing fees, these studies highlight the impact of removing fees entirely on many immigrants who would not have naturalized without full subsidization or waiver, thus these effects are not informative of price sensitivity in the context of this rule.

DHS has not omitted data describing the price sensitivity to fees, rather, the agency has no data describing the myriad complex and changing unobservable factors that may affect each immigrant's unique decision to file for a particular immigration benefit. DHS notes that previous fee increases in 2007, 2010 and 2016 have had no discernible effect on the number of filings that USCIS received.[117]

Comment: A commenter wrote that USCIS failed to present an accurate analysis of increased administrative processing costs under the proposed rule, wherein ''hundreds of thousands'' of means-tested applicants will begin submitting fee waiver requests under the household income basis.

Response: Based on the OIDP survey, as described in the RIA, approximately 16.36 percent of all fee waiver applications become ineligible by lowering the income criteria from 150 percent to 125 percent of the FPG. As a result, DHS estimates about 22,940 fewer fee waiver applications will be eligible for a fee waiver according to the approval eligibility criterion to limit fee waivers to households with income at or below 125 percent of FPG. *See* 8 CFR 106.3. Therefore, DHS disagrees that USCIS failed to present an accurate analysis of increased administrative processing costs under the proposed rule.

Comment: A commenter wrote that the RIA suggests that USCIS cannot reliably predict the number of asylum applicants who would be deterred by the proposed rule's $50 fee, but then argues it would be a smaller number without providing any data to back the claim.

Response: As stated in the NPRM RIA and in this Final Rule RIA (Section P), DHS agrees with the commenter that USCIS cannot reliably estimate the numbers of asylum applications who may not be able to afford the $50 fee for Form I–589. DHS does not believe that the new fee will deter asylum applications, and the commenter provides no data to support its claim that it will.

2. Methodology Issues

Comment: Some commenters had issue with the timelines used in the RIA. A commenter wrote that the proposed rule covers a 10-year implementation period, but USCIS' calculations do not show the impact of fees on workload over a 10 year period. A commenter wrote that the RIA uses receipts from June 2016 to May 2017 to make revenue projections for FY 2019/2020, however USCIS does not explain why this time frame is used or why it doesn't align with the Federal government's fiscal quarters.

Response: The calculations in this rule's RIA estimate the annual amounts of each proposed change in Table 1. In further detail of each proposed change, transfers, costs, or cost savings are displayed in relation to the affected population. USCIS then shows the total costs over 10-years discounted at 3 percent and 7 percent (*see* RIA Section 2—Total Estimated Transfers and Costs of Regulatory Changes) as suggested by regulatory in guidance. *See* Circular A–4, (Sept. 17, 2003).[118] The preamble of this rule bases receipt and revenue projection data covering two years due to the biennial fee study. This study is repeated and analyzed every two years. However, USCIS does not choose to alter its fee schedule through regulation every two years. Therefore, the impacts in the RIA cover a longer timeline to estimate the perpetual impacts of this rule.

Comment: A commenter provided the following criticism of the methodologies and data used by USCIS in developing the RIA:

- USCIS estimates 1 hour and 10 minutes to complete Form I–912 when the actual OMB approved burden is 2 hours and 20 minutes.
- USCIS states that data on fee waiver requests were not available due to limitations, but the agency does not explain what their limitations are.
- USCIS used fee waiver data from lockbox facilities in October 2017 but does not report any data related to the surveys and provides no insight into why data for just one month was appropriate for cost projections.

Response: DHS agrees with the commenter that the time burden estimate utilized in the proposed rule was incorrect. For this final rule, USCIS has accounted for the new burden places on applicants as the current time burden for Form I–912 of 1 hour and 10 minutes to 2 hours and 20 minutes under this rule. The cost calculations for the final rule have been updated accordingly. DHS used data that was collected from a statistically valid random sample from October 2, 2017 to October 27, 2017 on approved fee waivers. Using a standard statistical formula based on the average annual fee waiver population, DHS determined that a random sample size of 384 applications was necessary to yield statistically significant results with a 95 percent confidence level and a 5 percent confidence interval. USCIS analyzed

[117] *See* RIA, Section M: Fee Waivers

[118] Available at: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.* (Sept. 17, 2003) (last viewed April 2, 2020).

data on 4,431 approved fee waiver requests, which exceeded the necessary sample size of 384 for statistical significance. The study of statistics allows us to apply the results from this statistically valid random sample to the population of fee waivers resulting in the same results 95 percent of the time. This data from the survey is in Section (E) of the Regulatory Impact Analysis and Table 10 of the RIA displays the overall approvals, denials, and foregone revenue estimates of a 5-year average. Additionally, DHS has included the raw data of the survey questions and results in the appendix Office of Intake Production (OIDP) Fee Waiver Results from October 2, 2017 to October 27, 2017 stand-alone RIA found in the docket of this final rulemaking.

Comment: Similarly, another commenter provided the following critiques of the methodologies and data used by USCIS in developing the RIA:

- USCIS underestimates the need and subsequent costs that a number of applicants will have for legal representation in completing new form requirements as well as opportunity costs of time for HR specialists and attorneys used in the economic analysis.
- The economic analysis showed that services previously provided without user fees are a transfer from the Federal government to the applicant, however this is not accurate as tax revenues do not support the functions of USCIS.

Response: While DHS acknowledges that some attorneys charge higher fees than those used in the economic analysis, the agency continues the standard practice of using BLS average occupational earnings estimates. Similarly, it is acknowledged that some petitioners may incur additional legal fees. The economic analysis does not describe every immigrants' situation, rather, DHS presents our best estimates of the impact of the rule. In addition, form fees that required no change in time burden, documentation, or biographical information will be a transfer from current fee-paying applicants and/or petitioners to those filing for a particular immigration benefit using a form with a revised form fee. The RIA calculates the new costs and/or cost savings to applicants/petitioners, from the impact of each policy decision. In this final rule, each policy justification is included in the RIA summary table, with the estimated benefits of the provision. Cost savings and benefits are displayed for both the applicant(s)/petitioner(s) and the DHS. Once the new fees are established, DHS calculates the opportunity costs of the time burden required for completing the applicable impacted forms. If the only change in the rule to a specific benefit request is to increase the fee, the RIA does not specifically calculate the total amount of new fees per year that will be paid for all filings of that particular benefit because those amounts and the new fee times projected volume are already included in the tables and text describing the fee calculation model. Finally, DHS does not include the costs for applicants to hire legal representation in completing forms because DHS does not require that applicants hire anyone to assist them in preparing USCIS benefit requests.

Comment: A commenter wrote that USCIS excludes savings and benefits already realized such as efficiencies gained through investments in IT, closure of international offices, and lower refugee intake. A commenter wrote that the RIA fails to present data and evidence on a number of recent changes designed to reduce costs including limiting the availability of printed study materials, no longer providing printed N–400 forms, centralizing all customer inquiries and complaints on a call center, and introducing electronic filing for many benefits.

Response: DHS acknowledges that there are these costs savings. The RIA calculates cost savings and efficiencies to applicants/petitioners that are built into the ABC model. Despite the money saved it still leads USCIS to these fee changes. In this final rule, each policy justification is included in the RIA summary table, with the estimated benefits of the provision. Cost savings and benefits are displayed for both the applicant(s)/petitioner(s) and the DHS. Once the new fees are established, DHS calculates the opportunity costs of the time burden required for completing the applicable impacted forms. If the only change in the rule to a specific benefit request is to increase the fee, the RIA does not specifically calculate the total amount of new fees per year that will be paid for all filings of that particular benefit because those amounts and the new fee times projected volume are already included in the tables and text describing the fee calculation model.

3. Other Comments on the Cost-Benefit Analysis

Comment: A commenter wrote that the proposed rule does not consider less costly alternatives to raising fees such as reducing operating costs, drawing on carryover funds, or seeking discretionary appropriations from Congress. The commenter also suggested that USCIS should analyze the impacts of slowly increasing the proposed fees on a year by year basis until reaching the desired level in order to avoid disruption. Another commenter also said USCIS fails to consider less burdensome alternatives.

Response: As mentioned in response to a previous comment, for FY 2019 and FY 2020, Congress appropriated $10 million for the Citizenship and Integration Grant Program. *See* Consolidated Appropriations Act, 2019, Public Law 116–6, div. A, tit. IV (Feb. 15, 2019) and Consolidated Appropriations Act, 2020, Public Law 116–93, div. D, tit. IV (Dec. 20, 2020). Other than that, USCIS receives no appropriations to offset the cost of adjudicating immigration benefit requests.[119] As a consequence of this funding structure, taxpayers do not bear any costs related to the IEFA and bear only a nominal burden to fund USCIS. However, in the event appropriations that would materially change IEFA fees are provided, then DHS could pursue a rulemaking to adjust fees appropriately.

DHS considered alternatives such as using existing carryover funds instead of adjusting fees. However, DHS determined that USCIS has insufficient carryover funds to obviate the need to adjust fees. As stated in the Supporting Documentation accompanying this rule, USCIS projected that, if DHS did not adjust fees, USCIS would exhaust all of its existing carryover funds during the FY 2019/2020 biennium, reaching a carryover balance of –$1.069 billion at the end of FY 2020. USCIS cannot have a negative carryover balance, as a negative carryover balance indicates that USCIS has incurred costs greater than its available financial resources. USCIS must maintain a positive carryover balance to ensure that USCIS is able meet its financial obligations at times when USCIS operating costs temporarily exceed its revenues.

DHS does not believe that gradually adjusting the USCIS fee schedule over multiple years represents a reasonable alternative to this final rule, as such an approach would ensure that USCIS does not recover full cost and is not able to fully fund its operational requirements while the new fees are phased-in. DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter wrote that the cost analysis provided in the NPRM was ''incomplete and arbitrary'' and rejected the NPRM's ''allegation'' that the agency's operations are conducted efficiently. The commenter cited Congressional testimony and an article from the American Immigration Lawyers Association that discussed

[119] Congress provides USCIS with appropriations for the E-Verify program.

USCIS' decreased cost-effectiveness and changes to operational procedures that have increased costs without tangible improvements to adjudication quality.

Response: USCIS analyzed the impacts of this rule using the best available data at the time the analysis was written in an objective manner. USCIS's goal in the analysis was to produce an objective assessment of the cost, benefits, and transfers associated with this rule as required by Executive Orders 12866 and 13563. DHS believes these operational changes are necessary to ensure that applicants seeking immigration benefits are properly vetted and eligible for the benefit for which they have applied.

4. Impacts on Lower-Income Individuals and Families

Comment: One commenter cited research from the Kaiser Family Foundation, the Urban Institute and the Foundation for Child Development, demonstrating that even though U.S. citizen children with an immigrant parent are more likely to live in families with a full-time worker, such families still experience economic hardships that carry adverse health and developmental outcomes for children. The commenter cited research from various other sources documenting the impact of economic hardships and stated that the proposal would exacerbate such hardships. The commenter wrote that changes to the fee waiver program would discourage low-income families from applying for needed benefits and may lead to family separation, an outcome that would carry profound negative impacts on child health and well-being. The commenter also said that ''decades of research'' demonstrates that family stability supports early childhood health and development and wrote that the fee increases making naturalization less accessible for low-income immigrants would yield poor health outcomes among children. A commenter addressed the proposed rule's potential impact on health care, including forgone medical care, increased detrimental health conditions, and increased costs to the health care system. The commenter suggested there would be cost increases for State Medicaid programs and urged USCIS to fully analyze and explain such costs.

Response: DHS recognizes that the fee increases may create an economic hardship for some families. Furthermore, DHS acknowledges the studies and data cited suggesting that many families struggle to afford healthcare and connecting such financial risks to adverse health and developmental outcomes in children. However, collectively these studies suggest that the incomes of some immigrant families may result in adverse outcomes, rather than that present USCIS fees have caused such outcomes. The comments do not indicate that net costs of the final rule would be improved by shifting the costs of certain benefit requests to other requestors.

5. Impacts on Immigrant Populations in Distinct Geographic Areas

Comments:

- Citing economic conditions in the State of California, including information about earnings, the State's high poverty rate, and the increasing costs of housing, commenters underscore their opposition to all aspects of the proposed rule that would act as a barrier between low-income immigrants and benefits for which they qualify.
- One million individuals would be adversely impacted by the proposed rule in Los Angeles County. There are 1.5 million immigrants in Los Angeles and the proposed rule would impede their ability to apply for, or renew, immigration benefits allowing them to work, attend school, and access critical community services.
- The immigrant community would have to choose between using their income to provide for their families or applying for immigration benefits for which they qualify.
- The proposal would make it nearly impossible for more than 50,000 low-income non-citizens in San Francisco to seek or renew immigration benefits.
- Individuals in full-time, minimum wage jobs would need to dedicate a full month's salary towards green card applications and many immigrants earn even less and may not be able to afford immigration benefits at all.
- Alameda county is the fourth most diverse county in the nation with more than half a million immigrants, and that 90,000 adults eligible for naturalization in the county would be faced with insurmountable barriers in securing their status, keeping communities together, and participating fully in civic life. The proposal would exacerbate existing socio-economic and health disparities in San Joaquin Valley in California which suffers from socio-economic and health disparities, including the fact that over half of the area's residents are enrolled in Medicaid and nearly 20 percent use SNAP benefits and more than 40 percent of children are living with at least one foreign-born parent.
- The American Immigration Council found 357,652 Minnesota residents (or 6.6 percent of the State's total population) were U.S.-born Americans with at least one immigrant parent, and that ''nearly half'' of all the immigrants in Minnesota were naturalized citizens. The rule would have a disproportionately negative impact on low-income and vulnerable immigrants and would limit access to essential immigration benefits to the wealthy.

Response: This rule in no way is intended to reduce, limit, or preclude any specific immigration benefit request from any population, industry, or group. DHS acknowledges that individuals earning the federal minimum wage may need to use an entire paycheck to pay the filing fee for Form I–485. While studies indicate that some lawful immigrants who have not naturalized cite administrative and financial barriers as a reason for not naturalizing, this alone does not establish that previous fee levels were prohibitive. Similarly, financial support provided by communities to local immigrants does not establish that these immigrants would be unable to afford fees set by this rule. None of the studies cited by commenters conclude that the rule would explicitly preclude access to any specific immigration benefit request, population, industry, or group. USCIS must fund its operations from fees regardless of state and regional economic conditions, the costs of housing, household earnings, and poverty. This final rule provides for some fee waivers and does not preclude individuals from receiving public benefits or pursuing higher-paying opportunities for work in more affordable communities.

6. Immigrants' Access to Legal and Supportive Services

Comment: One commenter wrote that workshops run by non-profit immigration legal service providers are ''the most efficient model'' to help vulnerable populations seek immigration relief and wrote that the proposed changes to the fee waiver forms would make it harder for these providers to complete applications in the workshop setting. The commenter also said the proposed rule would ''decrease the resources practitioners can dedicate to actual legal representation'' due to the increased burden associated with generating Forms I–912 that are already denied at a high rate, and without cause, by USCIS. One commenter said their organization, and other organizations like Kids in Need of Defense, provide social services and legal assistance to unaccompanied children, and wrote that if organizations that provide such

services pro bono ''must find ways to subsidize unreasonable fees,'' they may have to reduce the number of children they serve. Another commenter that provides services to survivors of gender-based violence said if their organization must divert resources towards fundraising for application fees it may be unable to serve the same volume of clients.

Response: DHS recognizes the challenges that gender-based violence survivors face when fleeing from the violence of their abusers. In addition, there continues to be no fees for Form I–914 or I–918 for applications for T or U non-immigrant status. DHS believes that these fee exemptions and waivers mitigate concerns that other provisions of this final rule may harm victims of abuse and domestic violence. The RIA calculates the new costs and/or cost savings to applicants/petitioners from the impact of each policy decision. In this final rule, each policy justification is included in the RIA summary table, with the estimated benefits of the provision. Cost savings and benefits are displayed for both the applicant(s)/petitioner(s) and the DHS.

DHS does not include the costs for applicants to hire legal representation in completing forms because DHS does not require that applicants hire anyone to assist them in preparing USCIS benefit requests. Similarly, DHS recognizes comments concerning individuals and community organizations that choose to donate valuable assistance to applicants, but DHS finds no evidence that the rule prevents organizations from choosing to continue providing a level of assistance. DHS declines to make changes in this final rule in response to these comments.

7. Impacts on Students From Low Income Families

Comment: One commenter stated the proposed rule would have ''far-reaching effects'' on employers, international students, H–1B nonimmigrants, L–1 nonimmigrants, EB–5 investors, DACA recipients, asylum seekers, and those seeking naturalization, and provided a ''visual representation'' of the proposed fee schedule increases that shows the average increase will be ''far greater'' than the 21 percent average increase cited in the proposal.

Response: The commenter does not provide details or explanations of the far-reaching impacts that it estimates will result from an increase in USCIS immigration benefit request fees that DHS can address in this final rule short of abandoning the rule altogether. When DHS increased USCIS fees in 2007, 2010, and 2016 there were no far reaching impacts on the classifications and applicants that the comment mentions, aside from, as discussed elsewhere in this final rule, a large increase in the number of fee waivers granted to naturalization applicants since 2010. DHS is increasing the fees that USCIS charges for immigration adjudication and naturalization services to recover the costs of running its programs. DHS can readjust the fees in its next fee rulemaking that follows its next biennial fee review if necessary. Still, in this final rule, DHS is addressing the issues that the commenter touches on by expanding fee waivers and exemptions from what was proposed, not charging a DACA renewal fee, and not transferring any fee revenue to ICE.

Comment: One commenter cited research from the Community College Research Center at Columbia University demonstrating that more than a third of community college students come from families with incomes less than $20,000 per year, and research from the Migration Policy Institute showing immigrants and their children make up nearly a third of community colleges' student population. The commenter said immigrant-origin students at community colleges face unique challenges, and cited research demonstrating that such students are more likely to apply for financial aid, are typically ''debt inverse,'' and cover most of their own educational expenses. The commenter said the proposed fee increases and elimination of fee waivers will prove ''punishing'' for hard-working, low-income immigrant students by denying them opportunities to adjust their status, pursue citizenship, and apply for DACA renewal.

A commenter said more than 600 Latina girls participate in one of its programs with a 99 percent high school graduation rate and wrote that the prohibitive costs for immigration benefits would hinder this success since many of these participants work full time while attending school. Another commenter said the proposal would generate additional cost burdens for economically disadvantaged students and their families, placing ''the dream of completing a degree'' out of reach for many students. The commenter also wrote that 46 percent of the Latino population aged 18 and over in its area were born outside the United States, while only 4 percent of Latinos under age 18 were born outside the United States. The commenter stated this statistic meant that the proposal would have a strong negative effect on immigrant families already struggling to support their college-age children.

Response: DHS acknowledges the studies and statistics presented by commenters demonstrating that paying for college is a significant challenge for many students, more so for students of lower income. These studies also show that community college and student loans are among the existing market-oriented solutions available to mitigate the cost burden of pursuing higher education. DHS is changing USCIS fees to recover the costs of administering its adjudication and naturalization services. DHS is not changing USCIS fees with the intent to deter requests from low-income immigrants seeking to reunite with family or based on race, financial, or family situation.

8. Impacts on Victimized Groups and Other Vulnerable Populations

Comment: A commenter suggested that the costs associated with the proposed rule vastly outweighed any benefits of the proposed rule and said DHS had not attempted to quantify the cost associated with being unable to receive protections under a winning asylum claim. The commenter said the proposal did not offer any evidence that a $50 fee for asylum applications would deter ''frivolous filings'' and wrote that DHS' goal in promulgating the proposal was simply to reduce the number of people filing asylum claims. The commenter also said the introduction of a $490 fee for employment authorization would negatively impact asylum seekers and the ''overstretched'' organizations that assist asylum seekers.

Response: DHS does not believe that establishing an asylum application fee of $50 unduly burdens or harms any applicants. DHS carefully assessed the costs associated with the adjudication of asylum applications and other types of immigration benefits and concluded that the $50 fee for asylum applications is warranted. The approximate cost of adjudicating an asylum application is $366, and the $50 fee is well below the full cost of adjudicating the application. Moreover, the asylum application fee is in line with international treaty obligations under the 1951 Refugee Convention, as incorporated by reference in the 1967 Refugee Protocol, and domestic law.

DHS recognizes the economic challenges faced by asylum seekers. However, DHS does not believe that charging asylum seekers for a work authorization application will prevent them from obtaining legal counsel. DHS does not believe that the EAD fee is unduly burdensome for asylum seekers.

Comment: Many commenters wrote that immigrants are particularly vulnerable to violence or abuse, and cited research from the *Journal of Interpersonal Violence* demonstrating that immigrant women are more likely than U.S. born women to suffer violence or death from intimate partners. The commenters wrote that this problem was especially acute among Asian and Pacific Islander populations, citing research from the *Asian Pacific Institute on Gender-Based Violence.* The commenters wrote that the proposed fee schedule increases would reinforce abusers' ability to use immigration status and financial circumstances as tools to abuse victims, citing research from various sources documenting the tactics used and the frequency of such abuse. The commenters said it was ''crucial'' for immigrant survivors of abuse to access immigration relief in order to ensure they can ''seek and find safety.'' One commenter said the proposal would make it harder for victims of abuse to apply for immigration relief independently of their abusers and said the proposed elimination of fee waivers was ''frustrating the intent of Congress'' to enable victims to escape ''unhealthy power dynamics.'' A commenter wrote that the proposal to limit the availability of fee waivers and increase fees would negatively impact survivors of domestic violence because the changes would deprive this vulnerable population of the opportunity to pursue immigration protections that Congress specifically provided for them.

Response: In this final rule, VAWA self-petitions, applications for T nonimmigrant status application, petitions for U nonimmigrant status and applications for VAWA cancellation or suspension of deportation are fee exempt, and fee waivers will remain available for all ancillary forms associated with those categories. DHS believes that these fee exemptions and waivers mitigate concerns that other provisions of this final rule may harm victims of abuse and domestic violence. DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter wrote that the proposal would disproportionately impact women, children, and older adults because these populations often depend on means-tested public benefits or familial support due to their inability to find work. Another commenter cited research from various sources documenting the numbers of U.S. born children living with an undocumented family member and the fact that many of these children are born to DACA-eligible parents. The commenter described the consequences of children living with an undocumented parent, including the fear of being separated from their families and higher rates of post-traumatic stress disorder or similar mental health problems. The commenter cited research from several sources demonstrating how U.S. born children of undocumented parents stand to benefit when their parents achieve legal status. The commenter said the proposal would make it harder for undocumented parents to achieve adjustment of status and wrote that their children and families would be harmed by the family's reduction of disposable income due to the fee increases.

Response: DHS is changing USCIS fees to recover the costs of administering its adjudication and naturalization services. DHS is not changing USCIS fees with the intent to deter requests from low-income immigrants seeking family unity or deterring requests from any immigrants based on their race, financial, or family situation. While one commenter shared survey results indicating many undocumented immigrants are eligible to adjust their status, this alone does not suggest this rule would preclude them from doing so. DHS recognizes such individuals will consider many factors, including future earnings and costs, before deciding if, how and when to adjust their status. DHS appreciates and acknowledges all of the positive contributions of immigrants to the United States.

Comment: Some commenters cited data from a variety of sources to underscore their comment that the proposal would create barriers that disproportionately harm low-income immigrant women. The research cited by the commenters demonstrated that immigrant women are at a higher risk of economic insecurity due to pay disparities and other forms of discrimination, that domestic violence carries severe economic consequences including jeopardizing women's job prospects, that immigrant women are vulnerable to abuse from employers, and that women take on a disproportionate share of caregiving responsibilities. The commenters said these factors would make it more difficult for immigrant women to account for the ''onerous cost increases'' in the proposed rule and would be deprived of access to immigration benefits at a higher rate than males. Another commenter cited research from the National Women's Law Center demonstrating that Latinas make $0.54 cents for every dollar earned by a white, non-Hispanic male, and have less resources to spend on necessities despite the fact that Latinas are ''breadwinners'' in more than 3 million households. The commenter wrote that the proposed fee increases and elimination of fee waivers would make it less likely that Latinas could become U.S. citizens.

Response: DHS acknowledges the comments about Latina women, but DHS is not adjusting its fees with a planned effect on any particular group or class of individuals. This rule adjusts USCIS' fee schedule to recover its cost. With limited exceptions as noted in the NPRM and this final rule, DHS establishes its fees at the level estimated to represent the full cost of providing adjudication and naturalization services, including the cost of relevant overhead and similar services provided at no or reduced charge to asylum applicants or other immigrants. This is consistent with DHS's legal authorities. *See* INA section 286(m), 8 U.S.C. 1356(m).

As stated previously, the USCIS fee changes in 2007, 2010 and 2016 had no effect on the number of benefit requests received.[120] The commenters simply assert that the fees are too high for certain potential benefit request filers without providing data to support their assertions. DHS has no way to effectively determine how these new fees will affect anyone, but DHS believes that benefit request filings will not decrease substantially.

Comment: Some commenters wrote that survivors of violence may pursue immigration benefits through non-humanitarian channels and would no longer have access to fee waivers under the proposed rule. The commenters said the elimination of fee waivers, coupled with the increased fees for naturalization, would force LPR survivors to choose between providing basic necessities for their families and pursuing citizenship.[121] A commenter said the heightened standards for fee waiver eligibility, combined with increased fees for naturalization or adjustment of status, would cause irreparable harm to survivors of gender-based violence. The commenter said that access to immigration relief and regularization of immigration status increases employment opportunities and decreases vulnerability to continued abuse for survivors, and that survivors should not have to choose between pursuing citizenship and

[120] *See* RIA, Section M: Fee Waivers.

[121] National Women's Law Center; California Partnership to End Domestic Violence; Illinois Coalition Against Domestic Violence; National Partnership for New Americans; Texas RioGrande Legal Aid, Inc.

acquiring food and shelter for their families.

Response: DHS recognizes the challenges that gender-based violence survivors face when fleeing from the violence of their abusers. Victims of abuse that file a VAWA self-petition, an application T nonimmigrant status or petition for U nonimmigrant status, or an application for VAWA cancellation or suspension of deportation are fee exempt, and fee waivers remain available for filing all ancillary forms associated with those categories. DHS proposed adjustments to USCIS' fee schedule to ensure full cost recovery. DHS did not target any particular group or class of individuals. With limited exceptions as noted in the NPRM and this final rule, DHS establishes its fees at the level estimated to represent the full cost of providing adjudication and naturalization services.

Comment: Another commenter wrote that removing the financial hardship grounds for fee waivers ''overlooks'' the financial challenges survivors of violence face, including ruined credit scores, high levels of debt, relocation costs, medical bills from injuries, and attorney and court costs. The commenter also said the heightened documentation requirements, including the time-consuming process of obtaining IRS documents, would negatively impact survivors because they often need to move quickly to meet deadlines and avoid delays in filing that would harm the merits of their applications in adjudication. The commenter wrote that the proposed rule falls short of the ''any credible evidence'' standard Congress mandated for humanitarian-based benefit requests by ''impermissibly requiring specific types of evidence,'' such as IRS documentation.

Response: To obtain a fee waiver, an applicant must demonstrate that he or she is at or below 125 percent of the FPG, and submit the form along with the information and evidence available in order to establish eligibility. The applicant need only provide sufficient information to establish why the documentation is not available and not that it is unavailable directly or indirectly as a result of the victimization. The form provides space for explanations and attachments are accepted, but a separate declaration is unnecessary. Although not required by statute, USCIS has provided flexibilities in the instructions for the VAWA, T, and U populations, permitting them to submit information regarding their inability to obtain documentation on their income with their fee waiver request. DHS will presume that the inability of this group of applicants to submit certain evidence is the result of the victimization and abuse and not require proof of a nexus between victimization and the inability to pay, but the request must demonstrate inability to pay to the extent necessary for USCIS to grant a discretionary fee waiver. All applicants for a fee waiver are subject to the evidence requirements as provided in the revised form instructions, which include more flexible rules with respect to the groups these comments mention. If individuals are unable to obtain documents without risking further abuse, they can explain why they are unable to obtain such documentation and submit other evidence to demonstrate their eligibility. Obtaining information from the IRS in transcripts, a W–2, or proof of non-filing, if applicable, is sufficient documentation to establish the necessary income or no income.

Comment: Several comments were submitted about LGBTQ asylum seekers and transgender applicants. These comments are summarized as follows:

- LGBTQ people suffer significant economic hardships, have past medical conditions and traumas, language barriers that make it more difficult to find housing and employment, difficulty finding legal services, and other challenges.
- The proposal would disproportionately impact transgender people because they are more likely to be indigent and are frequently seeking asylum as they seek to escape ''extraordinary levels of violence and persecution.''
- Violence and persecution towards transgender people was well-documented in reports and analyses from the U.S. Department of State and various other sources.
- LGBTQ asylum seekers face dangers in their countries of origin which do not protect them from violence and oppression.
- According to the United Nations High Commissioner for Refugees, 88 percent of LGBTQ asylum seekers and refugees fleeing persecution from the Northern Triangle have faced sexual or gender-based violence in their home country.
- LGBTQ and HIV-positive individuals sometimes seek asylum in the United States as a result of persecution by their own families and communities and often cannot rely on family or community networks in the United States for financial support and therefore require the United States to intervene.
- A commenter that serves the LGBT community, survivors of misogyny, homophobia, transphobia, family rejection, and gang violence said the proposed fee increases would be especially burdensome for the populations it serves and increase filing fees for its clients by $22,700 annually.
- The proposal would further victimize and isolate LGBTQ refugees seeking asylum and many older LGBTQ people who have lived in the U.S. for many years.
- LGBTQ, women, and minors would be ''hardest hit'' by the proposed fee increases given the pervasive nature of gender inequity and prejudice against LGBTQ populations.

Response: DHS acknowledges that asylum applicants face challenges. DHS is not adjusting the USCIS fee schedule to reduce, limit, or preclude any individuals or groups of individuals from requesting asylum or seeking any other type of immigration benefit and does not intend to discourage meritorious asylum claims or unduly burden any applicant or group of applicants. More broadly, DHS is adjusting the USCIS fee schedule to recover the full cost of providing immigration adjudication and naturalization services (with some exceptions, as stated earlier). However, in recognition of the circumstances particular to asylum applicants, DHS is not aligning the fee with the beneficiary-pays principle and does not intend to recover the full cost of adjudicating Form I–589 asylum applications. Instead, DHS is establishing a $50 fee for Form I–589 even though the estimated adjudication costs exceed $50. DHS has determined that the only exception to the fee should apply to unaccompanied alien children in removal proceedings who file Form I–589 with USCIS. DHS does not believe that it is reasonable or appropriate to make additional exceptions to the fee, particularly on the basis of factors tied to underlying asylum claims.

DHS expects that charging a $50 fee to asylum applicants except for the narrow group of unaccompanied alien children will generate some revenue to offset adjudication costs. With respect to charging a fee to initial Form I–765 EAD applicants with pending asylum applications, DHS will be able to keep the fee for all fee-paying EAD applicants lower. Asylum applicants will pay no more and no less than any other EAD applicant (except for those who are eligible for a fee waiver) for the same service.

DHS is acting in compliance with sections 208(d)(3) of the INA, which provides that, ''[n]othing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to

asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 286(m).'' DHS believes that charging asylum applicants for asylum applications and EADs does not impose an unreasonable burden on asylum seekers.

Comment: One commenter wrote that foreign national students represent the majority of science, technology, engineering and mathematics (STEM) graduates from master's degree and Ph.D. programs, and that these students help fill the demand for ''high-level technical talent,'' permit U.S. universities to sustain competitive STEM programs, and help cement America's role as a leader in technological innovation. The commenter discussed the demand for highly skilled technical workers and cited research showing that there were 3.3 million STEM job openings in 2016, but only 568,000 students graduating with STEM degrees. The commenter said that employers of all sizes, and across industries, faced challenges in securing high-skilled, available candidates, and that issues relating to ''employment immigration'' were of utmost importance to the technology industry. The commenter expressed their support for comprehensive immigration reform that meets employers' demands in a globally competitive and digital economy. Another commenter said the proposal would accelerate the loss of U.S. information technology jobs. The commenter said access to information technology workers on H–1B nonimmigrant workers was critical for the industry and wrote that the proposal would make U.S.-based information technology projects ''less economically viable.'' The commenter said proposed fee increases would make it more difficult to create and retain information technology jobs in the U.S.

Response: DHS recognizes that immigrants and international students make significant contributions to the U.S. technology industry. The commenter's suggestion that high demand by globally competitive firms for high-skilled occupations would be affected by the fee changes is not clearly explained or supported with evidence.

9. Impacts to Industries That Use H–2A Workers

Comment: A commenter provided statistics detailing the economic condition of farmworkers in the U.S. and said many of its farmworker clients struggle to meet their families' financial needs despite working long hours. The commenter cited figures from the Department of Labor (DOL) showing that farmworkers' average household income ranged from $20,000 to $24,999 per year, and that 33 percent of farmworkers have family incomes below 100 percent of FPG. The commenter said farmworkers' wages are low ''through no fault of their own'' and wrote that farm work is seasonal by nature, a fact that causes periods of unemployment and fluctuating incomes throughout the year. The commenter drew upon its experience serving farmworker clients in remarking that low-wage farm work should not indicate an immigrant's inability to be self-sufficient. The commenter also said a majority of its clients use fee waivers or other forms of financial assistance to pay for applications and wrote that the combination of fee increases and the elimination of fee waivers would mean that its communities will be hard hit.

Response: The commenters do not offer evidence to support their claims that the new fees will result in the negative effects suggested. Seasonal farmworkers employed as H–2A workers are not required to pay any fees or expenses for recruitment, travel, or USCIS petitions, so it is assumed that the immigrant workers that the commenter is referencing immigrated to the U.S. as beneficiaries of a petition for a family member. In that case, the immigrant will be subject to an affidavit of support from a family member who must support them at an income above 125 percent of FPG. If the farmworker is a TPS registrant, then they may request a fee waiver.

DHS is changing USCIS fees to recover the costs of administering its adjudication and naturalization services. DHS is not changing USCIS fees with intent or effect of deterring requests from low-income immigrants seeking family unity or deterring requests from any immigrants based on their financial or family situation.

Comment: Some commenters opposed the proposed rule increasing burdens on employers participating in the H–2A program. One commenter wrote that farmworkers help sustain the $47 billion agriculture industry and that immigrants have supplied the industry with a needed workforce. One commenter stated its members need H–2A workers because there are no domestic workers willing to perform jobs its members need. The commenter wrote that the proposal would diminish employers' use of the H–2A program, an outcome that the commenter also wrote would lead to the elimination of jobs in certain sectors, slowed economic growth, and reduced national security due to a less secure food supply. Another commenter said the proposal would make it cost prohibitive for small farms and ranchers to remain in production and suggested that the loss of agricultural production was a national security concern. One commenter suggested that the proposal, in conjunction with Policy Memo PM–602–0176, would increase ranchers costs by 274 percent (rather than 87 percent). The commenter wrote that since agricultural producers are price takers, they are unable to pass these extra costs onto consumers and would see their margins depleted. The commenter said it would support a flat application fee with an additional add-on for each beneficiary (such as $425 per application and $10 per beneficiary). Other commenters stated that the proposed increase would hurt agriculture businesses because they cannot pass down additional costs to consumers. One commenter stated low-wage H–2A agricultural workers would have their fees increased by four times the amount of H–1B workers, who are more likely to be able to afford the proposed increased, which highlights the ''deeply flawed'' perspective that those workers that serve as the backbone of our agricultural industry are less necessary to the U.S. economy. A commenter wrote these increased fees could lead to decreased participation in the H–2A program. A commenter indicated that the proposed increase of H–2A filing fees would burden the livestock industry, substantially and disproportionately harming small businesses.

Response: DHS understands the need for nonimmigrant workers to meet seasonal demands in agriculture in the United States and is sympathetic to the costs for agricultural employers involved in doing so. With that in mind, DHS notes, preliminarily, that the current fee for Form I–129 is $460, and DHS is imposing a fee for new Forms I–129H2A of $415 for petitions for unnamed workers—an actual reduction in the filing fee from the current $460. We note that the filing fee for named H–2A workers, however, will be increasing from $460 to $850 per petition, with a maximum of 25 named workers per each H–2A petition. The change in these filing fees, as provided in this final rule, is consistent with the recommendation of the DHS Office of the Inspector General (OIG) of March 6, 2017.[122] That report reviewed whether the fee structure associated with the filing of

[122] DHS OIG, *H–2 Petition Fee Structure Is Inequitable and Contributes to Processing Errors* (Mar. 6, 2017), *available at www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-42-Mar17.pdf.*

H–2 petitions is equitable and effective, and recommended separate fees for petitions with named workers, which, due to the need to verify eligibility of individually named workers, is more costly to USCIS than the costs associated with adjudicating petitions filed on behalf of unnamed workers.[123] Consistent with the OIG's recommendation, USCIS conducted a study to address the inequities identified in the OIG report, and, based on its study, USCIS determined that the filing fees in this final rule reflect the relative costs to USCIS in processing these two different types of H–2A petitions. USCIS also notes that limiting the number of beneficiaries in an H–2A petition with named workers to a maximum of 25 is intended not only to make the processing of such petitions more efficient, but to provide better data on the actual costs of adjudicating various nonimmigrant classifications, thereby permitting USCIS to refine its fee calculations in the future to better reflect relative costs.

10. Effects on Other Federal Agencies

Many commenters wrote about their predictions of the problems that the fee rule would cause other Federal agencies and their employee. Those commenters wrote that the new USCIS fees would result in the following:

- Would place an unnecessary burden on the IRS by requiring fee waiver applicants to provide IRS documentation to demonstrate their eligibility.
- Would require IRS verification and did not consider whether the IRS was prepared to handle a substantial increase in requests for documents.
- The increases to employment authorization application fees may place vulnerable workers in exploitative arrangements which would make DOL incur increased burden for enforcing federal workplace laws.
- Increased immigrants' fear of government officials would hamper DOL workplace investigations and enforcement.
- Would cause the IRS to lose income revenue from a reduction in asylum applications and would need to dedicate more resources to investigations of tax liability for unauthorized employment.
- DOL would need to investigate more incidences of wage theft and unsafe working conditions because many asylum seekers would be forced into the unauthorized workforce due to their inability to afford work authorization fees.

Response: With regard to the documentation required from the IRS for fee waivers, all other Federal agencies, including the Department of the Treasury and Department of Labor, reviewed the NPRM through the interagency review process and provided no objections, thus DHS believes that the IRS and DOL can handle any additional workload arising from this rule.

IV. Statutory and Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

The fee schedule that went into effect on December 23, 2016 was expected to yield approximately $3.4 billion of average annual revenue during the FY 2019/2020 biennial period. This represents a $0.9 billion, or 36 percent, increase from the FY 2016/2017 fee rule projection of $2.5 billion. *See* 81 FR 26911. The projected revenue increase is due to higher fees as a result of the FY 2016/2017 fee rule and more anticipated fee-paying receipts. The FY 2016/2017 fee rule forecasted approximately 5.9 million total workload receipts and 4.9 million fee-paying receipts, excluding biometric services. *See* 81 FR 26923–4. However, the FY 2019/2020 fee review forecasts approximately 8.5 million total workload receipts and 7.0 million fee-paying receipts, excluding biometric services. This represents a 44 percent increase to workload and a 43 percent increase to fee-paying receipt assumptions.[124]

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs and benefits of available alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been designated an ''economically significant regulatory action'' under section 3(f)(1) of E.O. 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB). E.O. 13771 directs agencies to reduce regulation and control regulatory costs. Because the estimated impacts range from costs to cost savings, this final rule is considered neither regulatory or deregulatory under E.O. 13771. Details on the estimated impacts of this final rule can be found in the rule's economic analysis, section 2.

This final rule adjusts certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). It also removes certain fee exemptions, changes fee waiver requirements,[125] alters premium processing time limits, and modifies intercountry adoption processing. This final rule removes the proposed fee that was introduced in the NPRM of this rule for Form I–821D;[126] it does not provide for the proposed transfer of any Immigration Examination Fee Account (IEFA) funds collected by USCIS to ICE;[127] it reassigns the proposed National Record Center (NRC) costs that do not directly apply to the genealogy program, thereby setting genealogy fees lower than proposed;[128] and it now allows for a $10 reduction in filing fee for applicants who file online for forms that are electronically available by USCIS rather than submit paper applications.[129]

USCIS conducted a comprehensive biennial fee review and determined that current fees do not recover the full cost of providing adjudication and naturalization services. Therefore, DHS adjusts USCIS fees by a weighted average increase of 20 percent, adds new fees for certain immigration benefit requests, establishes multiple fees for nonimmigrant worker petitions, and limits the number of beneficiaries for certain forms. This final rule is intended to ensure that USCIS has the resources it needs to provide adequate service to applicants and petitioners. It also makes changes related to setting, collecting, and administering fees. DHS has kept certain fees, such as the fee for the Form

[123] DHS OIG, *H–2 Petition Fee Structure Is Inequitable and Contributes to Processing Errors* (Mar. 6, 2017), available at *https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-42-Mar17.pdf.*

[124] *See* FY 2019/2020 Immigration Examinations Fee Account Fee Review Supporting Documentation with Addendum, which is part of the docket for this final rule. DHS revised the volumes to exclude DACA and change fee-paying assumptions for Forms N–400, N–600, and N–600K, as discussed later in this preamble.

[125] Also, in this final rule DHS consolidates the Director's discretionary provision on fee waivers to remove redundancy. 84 FR 62363. New 8 CFR 106.3.

[126] 84 FR 62320, 62362; proposed and new 8 CFR 106.2(a)(2)(38).

[127] 84 FR 62287, 84 FR 67243. This final rule does not transfer funds to ICE. Therefore, DHS removes $207.6 million for ICE from its cost baseline, resulting in lower fees than if DHS pursued the transfer of funds.

[128] 84 FR 62315, 62316, 62362; proposed and new 8 CFR 106.2(c)(1)–(c)(2); new 8 CFR 106.2(c)(1)–(c)(2).

[129] New 8 CFR 106.2(d).

N–400, Application for Naturalization, below the level indicated by the fee setting model based on policy choices, or provided that certain fees may be waived, transferring the costs not covered by the lower or waived fee to other benefit requests. However, in this rule, DHS is focusing on the beneficiary pays principle and assigning fees to those who are going to directly reap the benefits of the applicable immigration benefit request. DHS's policy shift to the beneficiary-pays principle, as detailed in the preamble, recognizes that different immigration services provide varying levels of societal net benefits (whether economic or humanitarian), and previously DHS accounted for some aspects of the social benefit of specific services through holding fees below their cost.[130] However, DHS believes that the beneficiary-pays principle is generally more equitable and has largely adopted it in this fee rule. Regardless, fee schedule adjustments are necessary to recover the full operating costs of administering the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits, while protecting Americans, securing the homeland, and honoring our values. This final rule also makes certain adjustments to fee waiver eligibility, filing requirements for nonimmigrant workers, the premium processing service, and other administrative requirements.

For the 10-year implementation period of the rule, DHS estimates the annualized costs of the rule to be $13,856,291, annualized at either 3- and 7-percent discount rates. DHS estimates the annualized cost savings to be $6,192,201 to $22,546,053. DHS estimates the annualized net societal costs and savings of the rule to range from costs of $7,664,090 to savings of $8,689,762. Over the 10-year implementation period of the rule, DHS estimates annualized transfers to the government from applicants/petitioners to be $551,842,481 annualized at either 3- and 7-percent discount rates. Over 10-year implementation period of the rule, DHS estimates the annualized transfers of the rule between different groups of fee-paying applicants and/or petitioners to specific form populations is $832,239,426, annualized at either 3- and 7-percent discount rates.

The final revenue increase is based on USCIS costs and volume projections available at the time of the USCIS fee review. Table 7 provides a detailed summary of the provisions of this final rule and their impacts.

TABLE 7—SUMMARY OF PROVISIONS AND IMPACTS—COSTS, TRANSFERS, AND BENEFITS OF THIS FINAL RULE SUMMARY

Provision	Purpose of provision	Estimated costs or transfers of provision	Estimated benefits of provision
(a) Reduced Fees for Filing Online. • Form I–90, Application to Replace Permanent Resident Card • Form N–336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA) • Form N–400, Application for Naturalization • Form N–565, Application for Replacement Naturalization/Citizenship Document • Form I–130/130A, Petition for Alien Relative • Form N–600, Application for Certificate of Citizenship • Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322 • Form I–539/539A, Application To Extend/Change Nonimmigrant Status • Form G–1041, Genealogy Index Search Request • Form G–1041A, Genealogy Records Request	USCIS does not require that immigration benefit requests be filed online. Voluntarily, filing on paper remains a valid option. However, for forms currently eligible for online filing, the fee will be $10 more if filed on paper.	Quantitative: Applicants— • A transfer of $6.1 million annually from applicants/petitioners who will pay $10 more for those same filings on paper to fee-paying applicants/petitioners filing eligible forms online for a particular immigration benefit or request as a result of the final applicable USCIS filing fees. Qualitative: Applicants— • None. DHS/USCIS— • None.	Quantitative: Applicants— • None. Qualitative: Applicants— • Facilitates electronic processing and adjudications which helps streamline USCIS processes. This could reduce costs and could speed adjudication of cases. • Results in more accurately prepared and supported requests accompanied by necessary evidence and documentation. Reduces the need for USCIS to request additional data, clarifying information, or documents. • Reduce the collection of unnecessary or duplicative information as the system guides requestors to provide responses that comply with requirements and instructions that are pertinent to their benefit requests DHS/USCIS— • USCIS will save in reduced intake and storage costs at the USCIS Lockbox or other intake facilities. Based on current USCIS internal lockbox analysis at this time, each submission completed online rather than through paper provides a cost savings of $7 per submission and operational efficiencies to both USCIS and filers—benefits that will accrue throughout the immigration lifecycle of the individual and with the broader use of online filing and e-processing. • USCIS also realizes cost savings from no longer having to send paper-based notices, requests, and other communications to requestors via mail. • Decrease the risk of mishandled, misplaced, or damaged files; increase availability of administrative records; and decrease occasionally lost paper files; electronic records would not be physically moved around to different adjudication offices. USCIS could easily redistribute electronic files among adjudications offices located in different regions, for better management of workload activities.

[130] Government Accountability Office (GAO), *Federal User Fees: A Design Guide* (May 29, 2008), available at *https://www.gao.gov/products/GAO-08-386SP.* (last accessed Feb. 24, 2020).

TABLE 7—SUMMARY OF PROVISIONS AND IMPACTS—COSTS, TRANSFERS, AND BENEFITS OF THIS FINAL RULE SUMMARY—Continued

Provision	Purpose of provision	Estimated costs or transfers of provision	Estimated benefits of provision
(b) Secure Mail Initiative.	USCIS will use the Signature Confirmation Restricted Delivery as a method of delivery of secure documents for USCIS.	Quantitative: Applicants— • None. Qualitative: Applicants— • None. DHS/USCIS— • DHS will experience a cost of $34.5 million from the United States Postal Service (USPS) for total mail cost, which includes Signature Confirmation Restricted Delivery confirmation to re -send secure documents to the proper recipient. When they fail to make it to their proper recipient.	Quantitative: Applicants— • Applicants with unstable addresses or who move often will be more certain to receive their documents. Qualitative: Applicants— • USCIS and applicants can track their document using the USPS website up to when the document is delivered. • Recipients will also have the ability to change their delivery location by going to the USPS website and selecting ''hold for pickup'' to arrange for pickup at a post office at a date and time that suits them. DHS/USCIS— • Ensure secure and important identity documents issued by USCIS are delivered to the address of person to whom they rightfully belong. • Will reduce the likelihood of mis-delivered documents that could be mis-used.
(c) Clarify Dishonored Check Re-presentment Requirement and Fee Payment Method, and Non-refundability.	DHS is changing its provision in this rule that if a check or other financial instrument used to pay a fee is returned as unpayable *because of insufficient funds,* USCIS will re-submit the payment to the remitter institution one time. If the remitter institution returns the instrument used to pay a fee as unpayable a second time, USCIS will reject the filing. USCIS will not re-deposit financial instruments returned as unpayable for a reason other than insufficient funds. In addition, DHS may reject a request that is accompanied by a check that is dated more than 365 days before the receipt date. DHS is also clarifying that fees are non-refundable regardless of the result of the immigration benefit request or how much time the request requires to be adjudicated.	Quantitative: Applicants— • None. Qualitative: Applicants— • None. DHS/USCIS— • None.	Quantitative: Applicants— • None. Qualitative: Applicants— • None. DHS/USCIS— • By clarifying the dishonored fee check re-presentment processes, USCIS will reduce administrative burdens and processing errors associated with fee payments. • In the event that the bank that issues the credit card rescinds the payment of a fee to USCIS, USCIS will be able to invoice the responsible party (applicant, petitioner, or requestor) and pursue collection of the unpaid fee in accordance with 31 CFR 900—904 (Federal Claims Collection Standards). Clarifying that fees are due regardless of the result or how long the decision takes, and there are no refunds, is expected to result in USCIS losing fewer credit card disputes.
(d) Eliminate $30 Returned Check Fee.	DHS is removing the $30 charge for dishonored payments.	Quantitative: Applicants— • None. Qualitative: Applicants— • None. DHS/USCIS— • There may be an increase in insufficient payments by applicants because the $30 fee may serve as a deterrent for submitting a deficient payment.	Quantitative: Applicants— • $0.17 million annual savings. Qualitative: Applicants— • The current $30 charge and the potential of having a benefit request rejected encourages applicants to provide the correct filing fees when submitting an application or petition. • Applicants who submit bad checks will no longer have to pay a fee. DHS/USCIS— • DHS will not have to seek payment of the $30 fee if payment is dishonored resulting in a savings to USCIS as it spends more to collect the $30 returned payment charges than the $30 itself. USCIS hires a financial service provider to provide fee collection services to pursue and collect the $30 fee. This expense would no longer be necessary with this change. • DHS assumes that the current $30 charge and the potential of having a benefit request rejected encourages applicants to provide the correct filing fees when submitting an application or petition.
(e) Removal of Fee waivers.	DHS is limiting fee waivers to statutorily mandated fee waivers and two other humanitarian programs and to those applicants who have an annual household income of less than 125% of the Federal Poverty Guidelines (FPG). Additionally, fee waiver applicants cannot have been admitted into the United States subject to an affidavit of support under INA section 213A, 8 U.S.C 1183a or be subject to the public charge inadmissibility ground under INA section 212(a)(4), 8 U.S.C. 1182 (a)(4).	Quantitative: Applicants— • A transfer of $368.3 million annually to those applicants who previously received a fee waiver from different groups of fee-paying applicants. These transfers derive from applicable USCIS filing fees. DHS/USCIS— • None. Qualitative: Applicants— • Limiting fee waivers may adversely affect some applicants' ability to apply for immigration benefits. DHS/USCIS— • None.	Quantitative: Applicants— • Current fee-paying applicants are no longer burdened with covering the costs for those applicants who currently receive fee waivers. DHS/USCIS— • None. Qualitative: Applicants— • None. DHS/USCIS— • This provision may reduce administrative costs to USCIS of adjudicating fee waiver requests. It may also reduce the amount of training or guidance necessary to adjudicate unique fee waiver requests.

TABLE 7—SUMMARY OF PROVISIONS AND IMPACTS—COSTS, TRANSFERS, AND BENEFITS OF THIS FINAL RULE SUMMARY—Continued

Provision	Purpose of provision	Estimated costs or transfers of provision	Estimated benefits of provision
(f) Fee Exemptions.	DHS is removing the fee exemptions for an initial request for an employment authorization document (EAD) for the following classifications: • Citizen of Micronesia, Marshall Islands, or Palau; • Granted Withholding of Deportation; • Temporary Protected Status (TPS) if filing an initial TPS application for individuals under 14 years of age or over 65 years of age. • Applicant for Asylum and Withholding of Deportation or Removal.	Quantitative: Applicants— • A transfer of $3.9 million annually in filing fees to the categories listed in the provision that are no longer exempted from different groups of fee-paying applicants of Form I–765. Qualitative: Applicants— • This could result in lost wages for the workers who may not be able to afford the costs of filing Form I–765 and lost productivity for the employers that hire these workers. The lost wages and productivity can be considered as costs of the forgone benefits. DHS/USCIS— • None.	Quantitative: Applicants— • None. Qualitative: Applicants— • The removal of fee exemptions for these populations may reduce further increases of other fees to the fee-paying population. DHS/USCIS— • Continuing to provide these fee exemptions would result in the costs of those services being transferred to the fees for other forms. • Removing the exemptions allows DHS to recover the costs of adjudication of Form I–765 for these categories from those who benefit from the service instead of other fee payers.
(g) Changes to Biometric Services Fee.	DHS is incorporating the biometric services cost into the underlying immigration benefit request fee instead of charging a flat $85 biometric services fee.	Quantitative: Applicants— • $12.4 million costs for asylum applicants paying the biometrics service fee and for those completing and submitting new Form I–600A/600 Supplement 3.	Quantitative: Applicants— • $15.0 million in transfers from the government to fee paying applicants/petitioners for, EOIR, TPS, and term CNMI resident applicants resulting from a $55 reduction in biometrics service fees per applicant.
	DHS will require a $30 biometric services fee for an applicant for asylum or an alien approved for parole who applies for employment authorization (c)(8)'s, TPS initial applications and re-registrations, EOIR applicants, and term CNMI resident program applicants.	Qualitative: Applicants— • None. DHS/USCIS— • None.	Qualitative: Applicants— • Simplifies the process to submit payments. • May result in fewer incorrect payments and therefore, fewer rejected applications. • Biometric costs incorporated into the fee will actually correspond to the services provided. DHS/USCIS— • Eliminating the separate payment of the biometric services fee will decrease the administrative burden required to process both a filing fee and biometric services fee for a single benefit request. • USCIS can assign a biometric cost to the form fee that is based on the appropriate contract instead of a standard cost.
(h) Discontinue bundling of interim benefits when Forms I–765 and I–131 are filed concurrently with pending Form I–485 or when a Form I–485 is pending.	DHS is requiring separate fees for Forms I–765 and/or I–131 when filed concurrently with Form I–485 or when a Form I–485 is pending.	Quantitative: Applicants— • A transfer of $597.3 million from those applicants who file for Forms I–765 and/or I–131 concurrently filed with Form I–485 or while it is pending to different groups of fee-paying applicants. Qualitative: Applicants— • None.	Quantitative: Applicants— • Not estimated. Qualitative: Applicants— • None. DHS/USCIS— • The provision will isolate stand-alone interim benefit applicants from those concurrently filing Form I–485 allowing USCIS to more accurately assess fee-paying percentages, fee-paying volumes, and fees for all three benefit types. • Easier to administer separate fees than to determine if the Forms I–131 and/or I–765 is supposed to be free or require a fee. • Form I–485 applicants will be treated the same as other applicants for employment authorization and advance parole. Requests for interim benefits associated with a pending Form I–485 will be adjudicated the same as all other requests for interim benefits.
(i) Form I–485 Fee for Children Under 14, Filing with Parent.	DHS is requiring payment of the full $1,130 fee for a child under the age of 14 years when concurrently filing Form I–485 with a parent.	Quantitative: Applicants— A transfer of $11.4 million from applicants who concurrently file a Form I–485 with a child under the age of 14 to different groups of fee-paying applicants. Qualitative: Applicants— DHS/USCIS— • None.	Quantitative: Applicants— • Not estimated. Qualitative: Applicants— • None. DHS/USCIS— • Easier to administer one single fee for Form I–485 will reduce the burden of adjudication and better reflect the cost of adjudication.
(j) Allow Individuals with Advance Parole to use Form I–131A, Application for Travel Document (Carrier Documentation)	DHS is expanding the population eligible to use Form I–131A to include individuals with advance parole documents.	Quantitative: Applicants— A transfer of $10.1 annually to applicants who file Form I–131A from different groups of applicants.	Quantitative: Applicants— • None.

TABLE 7—SUMMARY OF PROVISIONS AND IMPACTS—COSTS, TRANSFERS, AND BENEFITS OF THIS FINAL RULE SUMMARY—Continued

Provision	Purpose of provision	Estimated costs or transfers of provision	Estimated benefits of provision
		Qualitative: Applicants— • In addition to the filing fee, DHS estimated a qualitative per unit cost per applicant for the opportunity cost of time for completing Form I–131A and submitting one passport-sized photo of $32.66 per unit application cost. DHS/USCIS— • None.	Qualitative: Applicants— • Individuals who lose their advance parole cards while abroad now have a defined process to receive carrier documentation to return to the U.S. DHS/USCIS— • None.
(k) Separating Form I–129, Petition for a Nonimmigrant Worker, into Different Forms, and Limit Petitions Where Multiple Beneficiaries are Permitted to 25 Named Beneficiaries per Petition.	DHS is separating the Petition for a Nonimmigrant Worker, Form I–129, into several forms with different corresponding fees. DHS also is imposing a limit of 25 named beneficiaries per petition where multiple beneficiaries are permitted.	Quantitative: Applicants— • A transfer of $75.1 million in filing fees of visa category specific petitions from petitioners using the specific new Form I–129 classification forms to different groups of fee-paying petitioners. DHS/USCIS— • Not estimated.	Quantitative: Applicants— • $5.9 million if HR specialist file, $12.8 million if in-house lawyers file, or $22.3 million if outsourced lawyers file in annual savings to the petitioners filing Form I–129 new visa category specific petitions. The annual savings will be in the Form I–129 opportunity costs of time to complete the different form classifications. DHS/USCIS— • None.
		Qualitative: Applicants— • None. DHS/USCIS— • None.	Qualitative: Applicants— • Separating forms will reduce the need to navigate lengthy instructions that do not apply to their petition. DHS/USCIS— • By splitting the form and introducing several different fees, this provision will simplify or consolidate the information requirements for petitioners and applicants as well as better reflect the cost to adjudicate each specific nonimmigrant classification type.
(l) Extend premium processing timeframe from 15 calendar days to 15 business days.	DHS is changing the premium processing timeframe from 15 calendar days to 15 business days.	Quantitative: Applicants— • Not estimated. Qualitative: Petitioners— • An employer may lose some productivity but USCIS has no way to estimate what that loss may be. • Applicants and employers may have to wait 4 days or longer for decisions on their cases DHS/USCIS— • None.	Quantitative: Applicants— • Not estimated. Qualitative: Petitioners— • Removes petitioner expectation of 15 calendar day processing to allow for better business planning. Premium processing is for quick adjudication and certainty, but they lose no productivity from the additional 4 days. DHS/USCIS— • USCIS will have additional time to process a petition before it has to issue a refund for not meeting the guaranteed timeline. • In addition, the extra time will allow USCIS to avoid suspending premium processing service as often as has recently been required when premium processing request volumes are high.
(m) Creation of Form I–600A/600 Supplement 3, Request for Action on Approved For I–600A/I–600 and new fee.	DHS is creating a new form, Form I–600 Supplement 3, Request for Action on an Approved Form I–600A/I–600 and new fee to clarify the regulations and formalize current practice for requests for action on approved Forms I–600A/I–600.	Quantitative: Applicants— • $0.14 million costs for completing and submitting new Form I–600A/600 Supplement 3.	Quantitative: Applicants— • None.
	DHS is altering the validity period for a Form I–600A approval in an orphan case from 18 to 15 months to remove inconsistencies between Form I–600A approval periods and validity of the Federal Bureau of Investigation (FBI) background check.	Qualitative: Applicants— • None. DHS/USCIS— • $0.13 million in costs for processing and reviewing the new Form I–600A/600 Supplement 3.	Qualitative: Applicants— • Improve and align the adjudication and approval processes for adoptions from countries that are party to the Hague Adoption Convention and countries that are not. • Clarify the process for applicants who would like to request an extension of Form I–600A/I–600 and/or another type of approved change to their application/petition. DHS/USCIS— • Standardizes USCIS process and provides for the ability to collect a fee. • Improve and align the USCIS adjudication and approval processes for adoptions of children from countries that are party to the Hague Adoption Convention and from countries that are not. • Changing the validity period to 15 months will make the Form I–600A approval periods consistent with the validity of FBI biometric related background checks. The uniform 15-month validity period will also alleviate the burden on prospective adoptive parents and adoption service providers to monitor multiple expiration dates.

TABLE 7—SUMMARY OF PROVISIONS AND IMPACTS—COSTS, TRANSFERS, AND BENEFITS OF THIS FINAL RULE SUMMARY—Continued

Provision	Purpose of provision	Estimated costs or transfers of provision	Estimated benefits of provision
(n) Changes to Genealogy Search and Records Requests.	DHS is changing how USCIS processes genealogy requests. DHS is expanding the use of electronic genealogy requests; changing the search request process so that USCIS can provide requesters with digital records, if they exist; and changing the genealogy fees. DHS is also offering an online filing fee, for those genealogy searches and records requests.	Quantitative: Applicants— • DHS estimates the new annual costs to file Form G–1041 index search requests and Form G–1041A records requests will be $1.3 million annually. Qualitative: Applicants— • In addition to the filing fee increase, DHS estimated qualitative per unit cost of $14.70 per index search requests and records request. DHS/USCIS— • USCIS will still need to mail some records in cases where requestors who cannot submit the forms electronically need to submit paper copies of both forms with required filing fees.	Quantitative: Applicants— • Index search and records requestors who file online, will pay a reduced fee of $10 dollars compared to those who file by paper. Qualitative: Applicants— • Genealogy search and records request process changes will increase accuracy and decrease wait times for requestors. • Fewer individuals may need to file Form G–1041A to request a record if it is provided digitally in response to a Form G–1041 filing. DHS/USCIS— • Reduce costs for mailing, records processing, and storage costs because electronic versions of records requests will reduce the administrative burden on USCIS. • USCIS will save $16 to $45 per index search service and $26 to $55 for each textual file retrieved. • The provisions are streamlining the genealogy search and records request process increases accuracy.
(o) Remove Reduced Fee for Naturalization Applicants Using Form I–942, Request for Reduced Fee.	DHS is eliminating the reduced fee option for Form N–400 that applies to applicants whose documented household income is greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines.	Quantitative: Applicants— • A transfer of $3.7 million annually from applicants who previously filed Form N–400 with the reduced fee. These individuals will no longer be able to request a reduced Form N–400 fee using Form I–942 from different fee-paying applicants. Qualitative: Applicants— • Applicants will have a total per unit cost for N–400 applications of $182.12 (opportunity cost to file, biometric collection and travel) with the increased filing fee. DHS/USCIS— • None.	Quantitative: Applicants— • None. Quantitative: Applicants— • $0.05 million annual quantitative savings to the applicants filing for a N–400 will be in the I–942 opportunity costs of time, to complete the form being eliminated. DHS/USCIS— • A qualitative benefit to DHS by eliminating the Form I–942 will reduced the administrative burden on the agency to process the Form I–942.
(p) Charge for an initial Form I–765 while an asylum application is pending.	DHS will require a fee for an initial Application for Employment Authorization, Form I–765, when asylum applicants apply for asylum or file an Application for Asylum and for Withholding of Removal, Form I–589. Currently, USCIS exempts these initial applicants from a fee with pending asylum applications.	Quantitative: Applicants— • A transfer of $118.8 million annually to applicants who file an initial Form I–765 with a pending asylum application from different fee-paying applicants. • Applicants could have costs in lost wages and employers could have costs in terms of lost productivity. DHS/USCIS— • None.	Quantitative: Applicants— • Other EAD applicants will not be required to subsidize EADs for pending asylum applicants. Qualitative: Applicants— • None. DHS/USCIS— • None.
(q) Charge a fee for Form I–589, Application for Asylum and for Withholding of Removal.	DHS will require a $50 fee for Form I–589, Application for Asylum and for Withholding of Removal.	Quantitative: Applicants— • A transfer of $5.5 million from Asylum applicants filing Form I–589 to different fee-paying applicants. Qualitative: Applicants— • Some applicants may not be able to afford this fee and will no longer be able to apply for asylum.	Quantitative: Applicants— • $0.74 million in transfers from the government to asylum I–589 applicants who will pay a reduced fee of $50 for Form I–485 Application to Register Permanent Residence or Adjust Status from $1,130 to $1,080 because their I–589 was approved. Qualitative: Applicants— • None. DHS/USCIS— • None.
(r) Combining Fees for Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100 [NACARA]).	DHS is combining the current multiple fees charged for an individual or family into a single fee for each filing of Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100, the Nicaraguan Adjustment and Central American Relief Act [NACARA]).	Quantitative: Applicants— • A transfer of $0.43 million annually to those who apply for suspension of deportation or special rule cancellation of removal under NACARA using Form I–881 from different groups of fee-paying individuals. Qualitative: Applicants— • None. DHS/USCIS— • None.	Quantitative: Applicants— • $0.03 million in savings from the reduced passport-style photos requirement. They currently have to provide 4 photos and now they will only be required to provide 2 which will save each applicant money and by not traveling to ASC facilities, for biometric collection/submission. Qualitative: Applicants— • None. DHS/USCIS— • Combining the two IEFA fees into a single fee will streamline the revenue collections and reporting. • A Single Form I–881 fee may help reduce the administrative and adjudication process for USCIS more efficient.

TABLE 7—SUMMARY OF PROVISIONS AND IMPACTS—COSTS, TRANSFERS, AND BENEFITS OF THIS FINAL RULE SUMMARY—Continued

Provision	Purpose of provision	Estimated costs or transfers of provision	Estimated benefits of provision
(s) Clarify who must pay a 9–11 Response and Biometric Entry-Exit Fee for H–1B and L–1.	DHS will apply the 9–11 Response and Biometric Entry-Exit Fee to all covered petitions (meaning those meeting the 50 employee/50 percent H–1B or L test), whether for new employment or extension.	Quantitative: Applicants— • A transfer of $199.2 million in petition fees to the government from fee paying petitioners for extensions into the 9–11 Response Biometric Entry-Exit account. Qualitative: Applicants— • None. DHS/USCIS— • None.	Quantitative: Applicants— • None. Qualitative: Applicants— • Fee will consistently be applied to all H–1B or L–1 petitions, whether for new employment or extension. DHS/USCIS— • The collected fees will help increase the 9–11 Response and Biometric Entry-Exit fee account for biometric entry-exit screening, deficit reduction, and other public purposes funded by general Treasury revenues.

A full regulatory impact analysis (RIA) of this final rule can be found in the docket at *www.regulations.gov.* In addition to the impacts summarized here, Table 8 presents the accounting statement as required by Circular A–4.[131]

TABLE 8—OMB A–4 ACCOUNTING STATEMENT ($, 2019), PERIOD OF THE ANALYSIS 2020–2029

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation
Benefits:				
Annualized Monetized Benefits over 10 years	N/A N/A	N/A N/A	N/A. N/A.	
Annualized quantified, but un-monetized, benefits. Unquantified Benefits	USCIS sets fees at levels sufficient to cover the full cost of the corresponding services associated with fairly and efficiently adjudicating immigration benefit requests and at a level sufficient to fund overall requirements and general operations, including the full costs of processing immigration benefit requests and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants at no charge; and the full cost of providing similar benefits to others at no or reduced charge. This final rule will help reduce the administrative and adjudication process for USCIS more efficient. Limiting fee waivers may reduce administrative costs to USCIS of adjudicating fee waiver requests. It may also reduce the amount of training or guidance necessary to adjudicate unique fee waiver requests. Removing the exemptions allows DHS to recover the costs of adjudicating Form I–765 for these categories from those who benefit from the service instead of other fee payers. Continuing to provide these fee exemptions would result in the costs of those fee services being transferred to the fees for other forms. This final rule will help reduce the administrative and adjudication process for USCIS more efficient.			RIA.
Costs:				
Annualized monetized costs over 10 years (discount rate in parenthesis)	N/A N/A	(3%) $7,664,090 (7%) $7,664,090	(3%) −$8,689,762 (7%) −$8,689,762	RIA.
Annualized quantified, but un-monetized, costs	N/A			
Qualitative (unquantified) costs	DHS is unable to quantify how many people will not apply because they do not have access to fee waivers and we acknowledge that some individuals will need to save, borrow, or use a credit card in order to pay fees because they do not have recourse to a fee waiver. DHS does not know the price elasticity of demand for immigration benefits, nor does DHS know the level at which the fee increases become too high for applicants/petitioners to apply. While DHS acknowledges immigrants facing financial challenges encounter added difficulty paying filing fees, any potential effects are expected to be indirect reductions in consumption of other goods with relatively more elastic demand. DHS is unable to quantify the extent to which the rule could result in some immigrants choosing to live in less costly areas, seeking out higher earnings opportunities, curtailing other purchases or rethinking their immigration altogether. DHS has not omitted data describing the price sensitivity to fees, rather, the agency has no data describing the myriad complex and changing unobservable factors that may affect each immigrant's unique decision to file for a particular immigration benefit. DHS notes that previous fee increases in 2007, 2010 and 2016 have had no discernible effect on the number of filings that USCIS received, and, in response to public comments, acknowledges that evidence presented indicating naturalization increases when previous fees were waived entirely does not support the claim that immigration benefits are sensitive to the changes implemented by this rule.[132] DHS does not know the individual financial circumstances of each applicant/petitioner applying for a particular immigration benefit.			

[131] OMB Circular A–4 is available at: *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf.*

[132] *See* RIA, Section E: Removal Fee Waivers.

TABLE 8—OMB A–4 ACCOUNTING STATEMENT ($, 2019), PERIOD OF THE ANALYSIS 2020–2029—CONTINUED

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation
	DHS believes that immigration to the United States remains attractive to millions of individuals around the world and that its benefits continue to outweigh the costs associated. Therefore, DHS believes the price elasticity of demand for immigration services is inelastic and increases in price will have a minimal or no impact on the demand for these services. This is true for all immigration services impacted by this rule. USCIS will look at future rulemakings, to encourage other forms being made available (either in phases by benefits requests or a certain number per year), to file online as DHS shifts to a more electronic immigration system. USCIS will still need to mail some records in cases where requestors who cannot submit the forms electronically need to submit paper copies of both forms with required filing fees, as a result of changes to Genealogy Search and Records Requests.			
Transfers:				
Annualized monetized transfers:				
From whom to whom?				
Annual transfer payments from specific form populations to different groups of fee-paying applicants/petitioners for a particular immigration benefit or request.	(3%) $832,239,426 (7%) $832,239,426.			RIA.
Annualized monetized transfers:				
From whom to whom?				
Annual transfer payments to Government from Fee-Paying applicants/petitions.	(3%) $551,842,481 (7%) $551,842,481.			RIA.
Miscellaneous analyses/category	Effects.			
Effects on state, local, and/or tribal governments	None.			Preamble.
Effects on small businesses	The fees in this rule will not have a significant economic impact on a substantial number of small entities for entities filing Forms I–129, I–40, I–360, I–910. The impact of this final rule for those entities that file Forms I–129, I–140, I–360, I–910, I–924, and G–1041/1041A that submit petitions on behalf of nonimmigrant and immigrant workers will face an increase or decrease in filing fees. DHS is unable to estimate the number of G–1041 index searches and G–1041A records requests considered small; however, some will receive a reduced fee and savings, by filing online. Therefore, DHS does not currently have sufficient data on the requestors for the genealogy forms to definitively assess the estimate of small entities for these requests. DHS is unable to estimate by how much because DHS does not know how many individuals will have access to a computer and/or internet capability. The case management tracking system used by DHS for genealogy requests does not allow for requestor data to be readily pulled. I–924/I–924A Regional centers are difficult to assess because there is a lack of official data on employment, income, and industry classification for these entities. It is difficult to determine the small entity status of regional centers without such data. Due to the lack of regional center revenue data, DHS assumes regional centers collect revenue primarily through the administrative fees charged to investors.			FRFA and Small Entity Analysis (SEA).
Effects on wages	None.			None.
Effects on Growth	None.			None.

B. Regulatory Flexibility Act

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.[133] A detailed Small Entity Analysis is available in the docket of this rulemaking at *http://www.regulations.gov.*

Individuals, rather than small entities, submit the majority of immigration and naturalization benefit applications and petitions. This final rule will primarily affect entities that file and pay fees for certain immigration benefit requests. Consequently, there are six categories of USCIS benefits that are subject to a small entity analysis for this final rule: Petition for a Nonimmigrant Worker, Form I–129; Immigrant Petition for an Alien Worker, Form I–140; Civil Surgeon Designation, Form I–910; Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360; Genealogy Forms G–1041 and G–1041A, Index Search and Records Requests; and the Application for Regional Center Designation Under the Immigrant Investor Program, Form I–924.

Following the review of available data, DHS does not believe that the increase in fees in this final rule will have a significant economic impact on a substantial number of small entities that are filing Form I–129, Form I–140, Form I–910 or Form I–360. DHS does not have sufficient data on the revenue collected through administrative fees by regional centers to definitively determine the economic impact on small entities that may file Form I–924. DHS also does not have sufficient data on the requestors that file genealogy forms, Forms G–1041 and G–1041A, to determine whether such filings were made by entities or individuals and thus is unable to determine if the fee increase for genealogy searches is likely to have a significant economic impact on a substantial number of small entities. DHS is publishing this Final Regulatory Flexibility Analysis (FRFA) to respond to public comments and provide further information on the likely impact of this rule on small entities.

[133] 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.

1. Final Regulatory Flexibility Analysis (FRFA)

a. A Statement of Need for, and Objectives of, the Rule

DHS issues this final rule consistent with INA section 286(m),[134] which authorizes DHS to charge fees for adjudication and naturalization services at a level to ''ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants,'' and the CFO Act,[135] which requires each agency's CFO to review, on a biennial basis, the fees imposed by the agency for services it provides, and to recommend changes to the agency's fees. DHS is adjusting the fee schedule for DHS immigration and naturalization benefit applications after conducting a comprehensive fee review for the FY 2019/2020 biennial period and determining that current fees do not recover the full costs of services provided. DHS has determined that adjusting the fee schedule is necessary to fully recover costs adjustments are necessary to associated with administering the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits, while protecting Americans, securing the homeland, and honoring our values.

b. 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

Comment: Some commenters wrote that the proposed rate increase would certainly suppress the ability of hundreds of thousands of people to research their family history. These commenters stated this would have a significant economic impact on a substantial number of small entities and prevent businesses from making profits providing information to others.

Response: DHS acknowledges the scope of the increase in fees for Form G–1041 and G–1041A. DHS recognizes that some small entities may be impacted by these increased fees but cannot determine how many or the exact impact.[136] USCIS receives fewer than 10,000 genealogy requests each year, so the fees should not affect hundreds of thousands of people as the commenter mentions.

DHS took into consideration all of the comments pertaining to Form G–1041 Genealogy Index Search Request and G–1041A Genealogy Record Request fees from the proposed and lowered the fees in this final rule. The fee for the Genealogy Index Search Request, Form G–1041 is increasing from $65 to $160, an increase of $95 (146 percent) for those who use the electronic form. The fee for Form G–1041A will increase from $65 to $265, an increase of $200 (308 percent) for those who mail in this request. DHS is setting the fee $10 lower for requesters who use the electronic version and file this request online. The fee for Form G–1041A is increasing from $65 to $255, an increase of $190 (292 percent) for those who use the electronic form.

In this final rule, DHS adjusts the fees for all categories of Form I–129 to reflect the estimated full cost of adjudication. The evidence provided in the stand-along Small Entity Analysis available in the docket of this rulemaking suggests that the additional fees in this rule do not impose a significant economic impact on a substantial number of small entities. As for the comment stating that low-wage H–2A agricultural workers would have their fees increased, this rule imposes no fees on H–2A workers because the petitioning entity is prohibited from passing any of the costs of the recruitment, hiring, petitioning, travel or housing to the H–2A worker. DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter said the proposed rule is contrary to the RFA because it fails to take into account the burdens of its regulatory actions on small entities, including small businesses and non-profits. Several commenters stated that USCIS should revise its RFA analysis to consider the economic impact of the proposed rule on small entities that file or pay for any immigration benefits applications.

Response: As required by the RFA, DHS considered whether this rule will have a significant economic impact on a substantial number of small entities. DHS also considered all types of entities as required by the RFA including small businesses, small not for profits, and small governmental jurisdictions that filed petitions with USCIS. The full analysis of these findings are found in the stand-alone Small Entity Analysis for this final rule found in the docket of this rulemaking.

Comment: A commenter said the majority of livestock producers are family businesses that play a critical role in the production of food and fiber products in the United States and require labor during several different periods each year. The commenter stated these businesses must fill out named beneficiary petitions for extension of stay, and that with marginal cost increases between 44 and 87 percent, small business employers will ''disproportionately bear the burden'' of the proposed fee increases.

Response: This final rule in no way is intended to reduce, limit, or prevent the filing of a request for any specific immigration benefit by any population, industry, or group. DHS agrees that immigrants are an important source of labor in the United States and contribute to the economy. DHS acknowledges that some employers will pay the increased Form I–129H–2A fee; however, they will only have to submit one petition based on the number of named beneficiaries.

The SEA analyzed the impacts of this rule on entities that were considered small based on employee count or revenue. Entities with missing revenue data were excluded. Among the 346 small entities with reported revenue data, all experienced an economic impact of considerably less than 2 percent with the exception of 11 entities. Those 11 small entities with greater than a 2 percent impact filed multiple petitions and had a low reported revenue. Therefore, these small entities may file fewer petitions as a result of this rule. Depending on the immigration benefit request, the average impact on all 346 small entities with revenue data ranges from −0.12 to 0.63 percent as shown in Table 7, of the SEA. In other words, no matter which version of the newly separated Form I–129 is applicable, the absolute value of the average impact on the described 346 small entities is less than 1 percent. DHS does not believe that the benefit request fees established by this final rule would make an individual forego filling a vacant position rather than submitting a petition for a foreign worker with USCIS.

The SEA outlines using the subscription or public-use databases identified previously. DHS assembled revenue and employment information on these entities and determined that 556, or 85.5 percent of these petitioners met the definition of small entities. Of those that we determined could be classified as small entities, 71 percent had annual revenues of less than a

[134] See 8 U.S.C. 1356(m).

[135] See 31 U.S.C. 901–03.

[136] *See* economic analysis (RIA) Section M *Changes to Genealogy Search and Records Requests* and Section E in the SEA for further detailed information pertaining to the economic impact on small entities.

million and approximately 9 percent of them had petitioned for five or more workers over that year. Thus, DHS does not believe that the final rule will have a significant impact on a substantial number of small entities in any one industry, including agriculture.

Comment: A commenter wrote that the Small Entity Analysis (SEA) presented in the NPRM was inaccurate because it failed to include the proposal's impact on hundreds of non-profit service providers that support LPRs' pursuit of naturalization. The commenter stated that many of these organizations cover costs related to legal consultation and preparation with their own resources, and that the agency should analyze how these organizations would be impacted by the proposal.

Response: Organizations that help applicants complete naturalization applications are not the subject of the regulations being revised in this rule, or the relevant statute, INA section 386(m), 8 U.S.C. 1356(m), which authorizes USCIS to set fees and provide discretionary fee waivers to applicants. *See* 5 U.S.C. 603(b)(4) (requiring only ''a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities *which will be subject to the requirement*'' (emphasis added)); *see* 5 U.S.C. 603(b)(3) (requiring only ''a description of and, where feasible, an estimate of the number of small entities *to which the proposed rule will apply*'' (emphasis added)); *see also Mid-Tex Elec. Co-op., Inc.* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985) (finding ''Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy'' and limiting the impact analysis requirement ''to small entities subject to the proposed regulation''). Therefore, any impacts on such organizations are too indirect to require inclusion in the SEA since the RFA only requires consideration of direct impacts to small entities. Additionally, the naturalization applicants themselves are individuals and therefore are not subjects for RFA consideration.

Comment: Another commenter stated that one example of how the rule's cost analysis is unsupported by evidence is USCIS' conclusion that only 1 percent of small businesses would be impacted. The commenter said the methodology used relies upon the *lack* of signups/registrations on several website directories, but nowhere does the agency use the data it actually collects from businesses in every I–129 form submitted (*e.g.,* company size, gross and net income, number of employees requested), all of which the commenter said is readily available within USCIS. Moreover, the commenter said the DOL's Labor Condition Application and Program Electronic Review Management (PERM) usage listing employers and numbers of employees sought shows the top 10–20 users are major corporations, while small and midsize businesses hire between 1–10 people a year, most often one-offs. The commenter said the fact that these companies mostly hire just one worker explains that the overall cost and bureaucracy is a barrier to employer participation.

Response: USCIS does not collect revenue and the number of employees for all categories of Forms I–129, as stated in the stand-alone SEA. Therefore, USCIS relied on a third-party sources (Hoover's, Cortera, Manta, and Guidestar) to obtain this information (see table 4 of the SEA). DHS obtained petitioner data filed for Forms I–129 from internal databases for fiscal year 2017 (FY 2017), spanning from October 2016 to September 2017.[137] This petitioner data included the employer firm name, city, state, ZIP code, employer identification number (EIN),[138] number/type of filing, and petitioner or beneficiary name. Filing data did not include information needed to classify the entity according to size standards, such as revenue or number of employees, so DHS used third party sources to obtain this information. Therefore, for the analysis of the effects on Forms I–129, DHS used several data sources to capture information on the characteristics of entities required to pay these fees.

One of the databases used by USCS was Hoover's online database of U.S. entities, a subscription service of Dun & Bradstreet. Hoover's covers millions of companies and uses revenue from several years and is one of the largest and most respected databases of company data. A majority of the entities in the SEA sample size were found in Hoovers. From these sources, DHS determined the North American Industry Classification System (NAICS) code,[139] revenue, and employee count for each entity in the sample. A list of NAICS codes for each entity matched in Forms I–129, I–140, I–910 and I–360 can be found in Appendix A, along with the SBA threshold for each industry cluster.[140] In order to determine an entity's size, DHS first classified each entity by its NAICS code, and then used the SBA size standards to compare the requisite revenue or employee count threshold for each entity. Based on the NAICS code, some entities are classified as small based on their annual revenue and some based on the number of employees. Comment: A commenter wrote these fees would disproportionately affect small religious organizations that serve a charitable function in our society.

Response: DHS disagrees that these fees would disproportionately affect small religious organizations. USCIS used internal data as indicated below in section (B)(1)(d), of the FRFA, including entities who petition on behalf of foreign religious workers. DHS used the same databases mentioned previously to search for information on revenue and employee count. DHS used the same method as with Forms I–129 and I–140 to conduct the SEA based on a representative sample of the impacted population. As detailed in Section of D of the SEA, DHS determined that, based on the standard statistical formula, 420 randomly selected entities from a population of 760 unique entities filed Form I–360 petitions. Therefore, DHS was able to classify 388 of 420 entities as small entities that filed Form I–360 petitions, including combined non-matches (5), matches missing data (74), and small entity matches (309). DHS also used the subscription-based, online databases mentioned above (Hoover's, Manta, Cortera, and Guidestar). The 74 matches missing data that were found in the databases lacked revenue or employee count data.

DHS determined that 388 out of 420 (92.4 percent) entities filing Form I–360 petitions were small entities.

Similar to other forms analyzed in this RFA, DHS calculated the economic impact of this rule on entities that filed Form I–360 by estimating the total costs associated with the final fee increase for each entity. Among the 309 small entities with reported revenue data, each would experience an economic impact considerably less than 1.0 percent. The greatest economic impact imposed by this final fee change totaled 0.35 percent and the smallest totaled 0.000002 percent. The average impact on all 309 small entities with revenue

[137] Source: DHS, USCIS, Office of Performance and Quality.

[138] An Employer Identification Number (EIN) is a nine-digit number that U.S. Internal Revenue Service assigns in the following format: XX–XXXXXXX. It is used to identify the tax accounts of employers. Employer Identification Number, p 2. *https://www.irs.gov/pub/irs-pdf/p1635.pdf.*

[139] U.S. Census Bureau, NAICS code listing: *http://www.census.gov/eos/www/naics/.*

[140] SBA size standards effective October, 2017. Visited April, 2018. *https://www.naics.com/wp-content/uploads/2017/10/SBA_Size_Standards_Table.pdf.*

data was 0.01 percent. DHS also analyzed the final costs of this rule on the petitioning entities relative to the costs of the typical employee's salary. Guidelines suggested by the SBA Office of Advocacy indicate that the impact of a rule could be significant if the cost of the regulation exceeds 5 percent of the labor costs of the entities in the sector.[141] According to the Bureau of Labor Statistics (BLS), the mean annual salary is $53,290 for clergy,[142] $46,980 for directors of religious activities and education,[143] and $35,860 for other religious workers.[144] Based on an average of 1.5 religious workers [145] petitioned for per entity, the additional average annual cost would be $22 per entity.[146] The additional costs per entity in this final rule represent only 0.04 percent of the average annual salary for clergy, 0.05 percent of the average annual salary for directors of religious activities and education, and 0.06 percent of the average annual salary for all other religious workers.[147] Therefore, using average annual labor cost guidelines, the additional regulatory compliance costs in this final rule are not significant.

c. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Rule, and a Detailed Statement of Any Change Made to the Final Rule as a Result of the Comments

No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA).

d. 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

Entities affected by this rule are those that file and pay fees for certain immigration benefit applications and petitions on behalf of a foreign national. These applications include Form I–129, Petition for a Nonimmigrant Worker; Form I–140, Immigrant Petition for an Alien Worker; Form I–910, Civil Surgeon Designation; Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant; Genealogy Forms G–1041 and G–1041A, Index Search and Records Requests; and Form I–924, Application for Regional Center Designation Under the Immigrant Investor Program. Annual numeric estimates of the small entities impacted by this fee increase total (in parentheses): Form I–129 (77,571 entities), Form I–140 (22,165 entities), Form I–910 (428 entities), and Form I–360 (698 entities).[148] DHS was not able to determine the numbers of regional centers or genealogy requestors that would be considered small entities, therefore does not provide numeric estimates for Form I–924 or Forms G–1041 and G–1041A.[149]

This rule applies to small entities, including businesses, non-profit organizations, and governmental jurisdictions filing for the above benefits. Forms I–129 and I–140, will see a number of industry clusters impacted by this rule. *See* Appendix A of the SEA for a list of impacted industry codes for Forms I–129, I–140, I–910, and I–360. Of the total 650 small entities in the sample for Form I–129, most entities were small businesses (556 or 85.5 percent) with 41 small not-for-profit entities and only 4 small governmental jurisdictions. Similarly, of the total 550 small entities in the sample for Form I–140, most entities were small businesses (402 or 73.1 percent) with 6 small not-for-profit entities and 0 small governmental jurisdictions. The fee for the application for civil surgeon designation (Form I–910) will apply to physicians requesting such designation. There were 300 small entities in the sample for Form I–910, consisting of 270 small governmental jurisdictions and 270 (or 90 percent) small entities that were either small businesses or small not-for-profits. The fee for Amerasian, widow(er), or special immigrants will apply to any entity petitioning on behalf of a religious worker. Finally, Form I–924 will impact any entity seeking designation as a regional center under the Immigrant Investor Program or filing an amendment to an approved regional center application. Captured in the dataset for Form I–924 is also Form I–924A, which regional centers must file annually to establish continued eligibility for regional center designation for each fiscal year.

DHS does not have sufficient data on the requestors for the genealogy forms, Forms G–1041 and G–1041A, to determine if entities or individuals submitted these requests. DHS has previously determined that requests for historical records are usually made by individuals.[150] If professional genealogists and researchers submitted such requests in the past, they did not identify themselves as commercial requestors and therefore could not be segregated within the pool of data. Genealogists typically advise clients on how to submit their own requests. For those that submit requests on behalf of clients, DHS does not know the extent to which they can pass along the fee increases to their individual clients. DHS assumes genealogists have access to a computer and the internet. DHS is unable to estimate the online number of index searches and records requests; however, some will receive a reduced fee and cost savings, by filing online. Therefore, DHS does not currently have sufficient data on the requestors for the genealogy forms to definitively assess the estimate of small entities for these requests. though DHS is unable to estimate by how much because DHS does not know how many individuals will have access to a computer and/or internet capability.

a. Petition for a Nonimmigrant Worker, Form I–129

DHS is separating Form I–129, Petition for a Nonimmigrant Worker,

[141] Office of Advocacy, Small Business Administration, ''A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act'', page 19: *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf.*

[142] Bureau of Labor Statistics, U.S. Department of Labor, ''Occupational Employment Statistics, May 2018, ''Clergy'': *https://www.bls.gov/oes/2018/may/oes212011.htm.*

[143] Bureau of Labor Statistics, U.S. Department of Labor, ''Occupational Employment Statistics, May 2018, ''Directors of Religious Activities and Education'': *https://www.bls.gov/oes/2018/may/oes212099.htm.*

[144] Bureau of Labor Statistics, U.S. Department of Labor, ''Occupational Employment Statistics, May 2018, ''Religious Workers, All Other'': *https://www.bls.gov/oes/2018/may/oes212099.htm.*

[145] USCIS calculated the average filing per entity of 1.5 petitions, from the Form I–360 Sample with Petition Totals in Appendix E, of the SEA for the U.S. Citizenship and Immigration Services Fee Schedule NPRM. Calculation: (total number of petitions from each sample id)/(total number of sample Form I–360 petitions) = 618/420 = 1.5 average petitions filed per entity.

[146] Calculation: 1.5 average petitions per entity * $15 increase in petition fees = approximately $22 additional total cost per entity.

[147] Calculation: $22 per entity/$53,290 clergy salary × 100 = .04 percent;

$22 per entity/$46,980 directors of religious activities and education × 100 = .05 percent;

$22 per entity/$35,860 other religious workers × 100 = .06 percent.

[148] Calculation: 90,726 Form I–129 * 85.5 percent = 77,571 small entities; 30,321 Form I–140 * 73.1 percent = 22,165 small entities; 476 Form I–910 * 90.0 percent = 428 small entities; 760 Form I–360 * 91.9 percent = 698 small entities.

[149] Small entity estimates are calculated by multiplying the population (total annual receipts for the USCIS form) by the percentage of small entities, which are presented in subsequent sections of this analysis.

[150] See Genealogy Program, 73 FR 28026 (May 15, 2008) (final rule).

into several forms with different corresponding fees, from the previous $460. Currently, employers may use Form I–129, to petition for CW, E, H–1B, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, or R–1 nonimmigrant workers. As applicable, employers also may use Form I–129 to apply for E–1, E–2, E–3, or TN nonimmigrant status for eligible workers. DHS is separating the Petition for a Nonimmigrant Worker, Form I–129, into several forms. These forms will include information from the various supplemental forms for specific types of workers. DHS will have different fees for these new forms. The final fees are calculated at a more detailed level than the current fees.

The current fee for Form I–129 is $460. DHS will impose the following fees for new Forms I–129 (separated into new forms by worker type):

- Form I–129H1, Petition for Nonimmigrant Worker: H–1 Classifications—$555
- Form I–129H2A, Petition for Nonimmigrant Worker: H–2A Classification (Named Beneficiaries)—$850
- Form I–129H2B, Petition for Nonimmigrant Worker: H–2B Classification (Named Beneficiaries)—$715
- Form I–129L, Petition for Nonimmigrant Worker: L Classifications—$805
- Form I–129O, Petition for Nonimmigrant Worker: O Classifications—$705
- I–129E&TN, Application for Nonimmigrant Worker: E and TN Classifications; and I–129MISC, Petition for Nonimmigrant Worker: H–3, P, Q, or R Classification—$695
- Form I–129H2A, Petition for Nonimmigrant Work Classification: H–2A Classification (Unnamed Beneficiaries)—$415
- Form I–129H2B, Petition for Nonimmigrant Worker: H–2B Classification (Unnamed Beneficiaries)—$385.

For petitioners filing Form I–129 for H–2A and H–2B workers with only unnamed beneficiaries, DHS will impose a lower fee than the current filing fee. DHS will increase the fee when filed for all other worker types. The fee adjustments and percentage increases or decreases are summarized in Table 9.

TABLE 9—USCIS FEES FOR SEPARATED FORMS I–129 FOR FISCAL YEAR 2019/2020

Immigration benefit request	Current fee	Final fee	Fee increase/decrease	Percent change
Form I–129H1—Named Beneficiaries	$460	$555	$95	$21
Form I–129H2A—Named Beneficiaries	460	850	390	85
Form I–129H2A—Unnamed Beneficiaries	460	415	−45	−10
Form I–129H2B—Named Beneficiaries	460	715	255	55
Form I–129H2B—Unnamed Beneficiaries	460	385	−75	−16
Form I–129O	460	705	245	53
Form I–129 L1A/L1B/LZ Blanket	460	805	345	75
Forms I–129CW, I–129E&TN, and I–129MISC	460	695	235	51

Source: USCIS FY 2019/2020 Final Fee Schedule (see preamble).

Using a 12-month period of data on the number of Form I–129 petitions filed from October 1, 2016 to September 31, 2017, DHS collected internal data for each filing organization including the name, Employer Identification Number (EIN), city, state, zip code, and number/type of filings. Each entity may make multiple filings. For instance, there were receipts for 530,442 Form I–129 petitions, but only 90,726 unique entities that filed those petitions. Since the filing statistics do not contain information such as the revenue of the business, DHS used third party sources of data to collect this information. DHS used a subscription-based, online database—Hoover's—as well as three open-access databases—Manta, Cortera, and Guidestar—to help determine an organization's small entity status and then applied Small Business Administration size standards to the entities under examination.[151]

The method DHS used to conduct the SEA was based on a representative sample of the impacted population with respect to each form. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 384 entities, which included using a 95 percent confidence level and a 5 percent confidence interval for a population of 90,726 unique entities filing Form I–129 petitions. Based on previous experience conducting small entity analyses, DHS expects to find 40 to 50 percent of the filing organizations in the online subscription and public databases. Accordingly, DHS selected a sample size that was approximately 69 percent larger than the necessary minimum to allow for non-matches (filing entities that could not be found in any of the four databases). Therefore, DHS conducted searches on 650 randomly selected entities from a population of 90,726 unique entities that filed Form I–129 petitions.

Of the 650 searches for small entities that filed Form I–129 petitions, 473 searches returned a successful match of a filing entity's name in one of the databases and 177 searches did not match a filing entity. Based on previous experience conducting regulatory flexibility analyses, DHS assumes filing entities not found in the online database are likely to be small entities. As a result, in order to prevent underestimating the number of small entities this rule would affect, DHS conservatively considers all of the non-matched entities as small entities for the purpose of this analysis. Among the 473 matches for Form I–129, DHS determined 346 to be small entities based on revenue or employee count and according to their assigned North American Industry Classification System (NAICS) code. Therefore, DHS was able to classify 556 of 650 entities as small entities that filed Form I–129 petitions, including combined non-matches (177), matches missing data (33), and small entity matches (346). Using the subscription-based, online databases mentioned above (Hoover's, Manta, Cortera, and Guidestar), the 33 matches missing data found in the databases lacked applicable revenue or employee count data.

DHS determined that 556 of 650 (85.5 percent) of the entities filing Form I–129 petitions were small entities. Furthermore, DHS determined that 346 of the 650 entities searched were small entities based on sales revenue data,

[151] U.S. Small Business Administration, Office of Advocacy, Size Standards Table effective August 19, 2019. Available at *https://www.sba.gov/document/support--table-size-standards.*

which were needed to estimate the economic impact of this final rule. Since these 346 small entities were a subset of the random sample of 650 entity searches, they were statistically significant in the context of this research. In order to calculate the economic impact of this rule, DHS estimated the total costs associated with the final fee increase for each entity and divided that amount by the sales revenue of that entity.[152] Based on the final fee increases for Form I–129, DHS calculated the average economic impact on the 346 small entities with revenue data as summarized in Table 10.

TABLE 10—ECONOMIC IMPACTS ON SMALL ENTITIES WITH REVENUE DATA

Immigration benefit request	Fee increase/ decrease	Average impact percentage
Form I–129H1	$95	0.15
Form I–129H2A—Named Beneficiaries	390	0.63
Form I–129H2A—Unnamed Beneficiaries	−45	−0.07
Form I–129H2B—Named Beneficiaries	255	0.41
Form I–129H2B—Unnamed Beneficiaries	−75	−0.12
Form I–129L	345	0.56
Form I–129O	245	0.40
Forms I–129CW, I–129E&TN, and I–129MISC	235	0.38

Source: USCIS calculation.

Among the 346 small entities with reported revenue data, all experienced an economic impact of considerably less than 2 percent with the exception of 11 entities. Those 11 small entities with greater than a 2 percent impact filed multiple petitions and had a low reported revenue, for any immigration benefit request made using separate Forms I–129. Therefore, these small entities may file fewer petitions as a result of this rule. Depending on the type of immigration benefit request, the average impact on all 346 small entities with revenue data ranges from –0.12 to 0.63 percent, as shown in the supporting comprehensive SEA. Therefore, the average economic impact on the described 346 small entities is less than 1 percent, regardless of which newly separate Form I–129 petition is applicable. The evidence suggests that the changes in fees imposed by this rule do not represent a significant economic impact on these entities.

b. Immigrant Petition for an Alien Worker, Form I–140

USCIS is decreasing the fee to file Immigrant Petition for an Alien Worker, Form I–140, from $700 to $555, a decrease of $145 (21 percent). Using a 12-month period of data on the number of Form I–140 petitions filed from October 1, 2016 to September 31, 2017, DHS collected internal data similar to that of Form I–129. The total number of Form I–140 petitions filed was 139,439, with 30,321 unique entities that filed petitions. DHS used the same databases previously mentioned to search for information on revenue and employee count.

DHS used the same method as with Form I–129 to conduct the SEA based on a representative sample of the impacted population. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 383 entities, which included using a 95 percent confidence level and a 5 percent confidence interval on a population of 30,321 unique entities for Form I–140 petitions. Based on previous experience conducting small entity analyses, DHS expected to find 40 to 50 percent of the filing organizations in the online subscription and public databases. Accordingly, DHS selected a sample size that was approximately 44 percent larger than the necessary minimum to allow for non-matches (filing entities that could not be found in any of the four databases). Therefore, DHS conducted searches on 550 randomly selected entities from a population of 30,321 unique entities that filed Form I–140 petitions.

Of the 550 searches for small entities that filed Form I–140 petitions, 480 searches successfully matched the name of the filing entity to names in the databases and 70 searches did not match the name of a filing entity. Based on previous experience conducting regulatory flexibility analyses, DHS assumes filing entities not found in the online databases are likely to be small entities. As a result, in order to prevent underestimating the number of small entities this rule would affect, DHS conservatively considers all of the non-matched entities as small entities for the purpose of this analysis. Among the 480 matches for Form I–140, DHS determined 324 to be small entities based on revenue or employee count and according to their NAICS code. Therefore, DHS was able to classify 402 of 550 entities as small entities that filed Form I–140 petitions, including combined non-matches (70), matches missing data (8), and small entity matches (324). Using the subscription-based, online databases mentioned above (Hoover's, Manta, Cortera, and Guidestar), the 8 matches missing data that were found in the databases lacked applicable revenue or employee count statistics.

DHS determined that 402 out of 550 (73.1 percent) entities filing Form I–140 petitions were small entities. Furthermore, DHS determined that 324 of the 550 searched were small entities based on sales revenue data, which were needed to estimate the economic impact of the final rule. Since these 324 were a small entity subset of the random sample of 550 entity searches, they were considered statistically significant in the context of this research. Similar to Form I–129, DHS calculated the economic impact of this rule on entities that filed Form I–140 by estimating the total cost savings associated with the final fee decrease for each entity and divided that amount by sales revenue of that entity.

Among the 324 small entities with reported revenue data, each would experience an economic impact of less than −2 percent. Using the above methodology, the greatest economic

[152] Total Economic Impact to Entity = (Number of Petitions Submitted per Entity * $X difference in current fee from final fee)/Entity Sales Revenue.

impact by this fee change totaled −1.74 percent and the smallest totaled −0.00000006 percent, resulting in a cost savings as shown in the supporting comprehensive SEA. The average impact on all 324 small entities with revenue data was −0.06 percent. Because of the fee decrease, these small entities will see a cost savings per application in filing fees based on petitions. The negative number represents cost savings to the petitioner. Therefore, the larger it is, the greater the cost savings for the petitioners. The average impact on all 324 small entities with revenue data was −0.06 percent. The evidence suggests that the decreased fee in this final rule does not represent a significant economic impact on these entities.

In addition to the individual Form I–129 and Form I–140 analyses, USCIS analyzed any cumulative impacts of these form types to determine if there were any impacts to small entities when analyzed together. USCIS isolated those entities that overlapped in both samples of Forms I–129 and I–140 by EIN. Only 1 entity had an EIN that overlapped in both samples; this was a small entity that submitted 3 Form I–129 petitions and 1 Form I–140 petition. Due to little overlap in entities in the samples and the relatively minor impacts on revenue of fee increases of Forms I–129 and I–140, USCIS does not expect the combined impact of these two forms to be an economically significant burden on a substantial number of small entities.

c. Application for Civil Surgeon Designation, Form I–910

By law, a civil surgeon is a physician designated by USCIS to conduct immigration medical examinations for individuals applying for an immigration benefit in the United States. Form I–910 is used by a physician to request that USCIS designate him or her as a civil surgeon to perform immigration medical examinations in the United States and complete USCIS Form I–693, Report of Medical Examination and Vaccination Record.

DHS is decreasing the fee for Civil Surgeon Designations, Form I–910, from $785 to $635, a decrease of $150 (19 percent). Using a 12-month period of data from October 1, 2016 to September 31, 2017, DHS reviewed collected internal data for Form I–910 filings. The total number of Form I–910 applications was 757, with 476 unique entities that filed applications. The third-party databases mentioned previously were used again to search for revenue and employee count information.

Using the same methodology as the Forms I–129 and I–140, USCIS conducted the SEA based on a representative sample of the impacted population. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 213 entities, which included using a 95 percent confidence level and a 5 percent confidence interval on a population of 476 unique entities for Form I–910. USCIS conducted searches on 300 randomly selected entities from a population of 476 unique entities for Form I–910 applications, a sample size approximately 40 percent larger than the minimum necessary.

Of the 300 searches for small entities that filed Form I–910 applications, 266 searches successfully matched the name of the filing entity to names in the databases and 34 searches did not match the name of a filing entity. DHS assumes filing entities not found in the online databases are likely to be small entities. DHS also assumes all of the non-matched entities as small entities for the purpose of this analysis. Among the 266 matches for Form I–910, DHS determined 189 to be small entities based on their revenue or employee count and according to their NAICS code. Therefore, DHS was able to classify 270 of 300 entities as small entities that filed Form I–910 applications, including combined non-matches (34), matches missing data (47), and small entity matches (189). DHS also used the subscription-based, online databases mentioned above (Hoover's, Manta, Cortera, and Guidestar), and the 8 matches missing data that were found in the databases lacked revenue or employee count statistics.

DHS determined that 270 out of 300 (90 percent) entities filing Form I–910 applications were small entities. Furthermore, DHS determined that 189 of the 300 entities searched were small entities based on sales revenue data, which were needed in order to estimate the economic impact of this final rule. Since the 189 entities were a small entity subset of the random sample of 300 entity searches, they were statistically significant in the context of this research.

Similar to the Forms I–129 and I–140, DHS calculated the economic impact of this rule on entities that filed Form I–910 by estimating estimated the total savings associated with the final fee decrease for each entity and divided that amount by sales revenue of that entity. Among the 189 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0 percent. The greatest economic impact imposed by this final fee change totaled −1.50 percent and the smallest totaled −0.001 percent. The average impact on all 189 small entities with revenue data was −0.116 percent. The decreased fee will create cost savings for the individual applicant of $150. The negative number represents cost savings to the applicant. Therefore, the larger it is, the greater the cost savings for the applicants. The evidence suggests that the decreased fee by this final rule does not represent a significant economic impact on these entities.

d. Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360

DHS is increasing the fee for applicants who file using Form I–360 from $435 to $450, an increase of $15 (4 percent), including entities who petition on behalf of foreign religious workers. Using a 12-month period of data on the number of Form I–360 petitions filed from October 1, 2016 to September 31, 2017, DHS collected internal data on filings of Form I–360 petitioners who file for foreign religious workers. The total number of Form I–360 petitions was 2,446, with 760 unique entities that filed petitions. DHS used the same databases mentioned previously to search for information on revenue and employee count.

DHS used the same method as with Forms I–129 and I–140 to conduct the SEA based on a representative sample of the impacted population. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 332 entities, which included using with a 95 percent confidence level and a 5 percent confidence interval on a population of 760 unique entities for Form I–360 petitions. To account for missing organizations in the online subscription and public databases, DHS selected a sample size that was approximately 27 percent larger than the necessary minimum to allow for non-matches (filing entities that could not be found in any of the four databases). Therefore, DHS conducted searches on 420 randomly selected entities from a population of 760 unique entities that filed Form I–360 petitions.

Of the 420 searches for small entities that filed Form I–360 petitions, 415 searches successfully matched the name of the filing entity to names in the databases and 5 searches did not match the name of the filing entities in the databases. DHS assumes that filing entities not found in the online databases are likely to be small entities. As a result, in order to prevent underestimating the number of small

entities this rule would affect, DHS conservatively assumes to consider all of the non-matched entities as small entities for the purpose of this analysis. Among the 415 matches for Form I–360, DHS determined 309 to be small entities based on revenue or employee count and according to their NAICS code. Therefore, DHS was able to classify 388 of 420 entities as small entities that filed Form I–360 petitions, including combined non-matches (5), matches missing data (74), and small entity matches (309). DHS also used the subscription-based, online databases mentioned above (Hoover's, Manta, Cortera, and Guidestar), the 74 matches missing data that were found in the databases lacked revenue or employee count data.

DHS determined that 388 out of 420 (92.4 percent) entities filing Form I–360 petitions were small entities. Furthermore, DHS determined that 309 of the 420 searched were small entities based on sales revenue data, which were needed to estimate the economic impact of this final rule. Since 309 small entities were a subset of the random sample of 420 entity searches, they were statistically significant in the context of this research.

Similar to other forms analyzed in this RFA, DHS calculated the economic impact of this rule on entities that filed Form I–360 by estimating the total costs associated with the final fee increase for each entity. Among the 309 small entities with reported revenue data, each would experience an economic impact considerably less than 1.0 percent. The greatest economic impact imposed by this final fee change totaled 0.35 percent and the smallest totaled 0.000002 percent. The average impact on all 309 small entities with revenue data was 0.01 percent.

DHS also analyzed the final costs of this rule on the petitioning entities relative to the costs of the typical employee's salary. Guidelines suggested by the SBA Office of Advocacy indicate that the impact of a rule could be significant if the cost of the regulation exceeds 5 percent of the labor costs of the entities in the sector.[153] According to the Bureau of Labor Statistics (BLS), the mean annual salary is $53,290 for clergy,[154] $46,980 for directors of religious activities and education,[155] and $35,860 for other religious workers.[156] Based on an average of 1.5 religious workers [157] petitioned for per entity, the additional average annual cost would be $22 per entity.[158] The additional costs per entity in this final rule represent only 0.04 percent of the average annual salary for clergy, 0.05 percent of the average annual salary for directors of religious activities and education, and 0.06 percent of the average annual salary for all other religious workers.[159] Therefore, using average annual labor cost guidelines, the additional regulatory compliance costs in this final rule are not significant.

e. Genealogy Requests. Genealogy Index Search Request Form G–1041 and Genealogy Record Request, Form G–1041A

DHS is increasing the fee to file both types of genealogy requests: Form G–1041, Genealogy Index Search Request, and Form G–1041A, Genealogy Record Request. The fee to file Form G–1041 will increase from $65 to $170, an increase of $105 (162 percent increase) for those who mail in this request on paper. In this rule, increases the fee for requestors who use the online electronic Form G–1041 version from the current $65 to $160, an increase of $95 (146 percent). The fee for Form G–1041A will increase from $65 to $265, an increase of $200 (308 percent) for those who mail in this request on paper. The fee for Form G–1041A is increasing from $65 to $255, an increase of $190 (292 percent) for those who use the electronic form.

Based on DHS records for calendar years 2013 to 2017, there was an annual average of 3,840 genealogy index search requests made using Form G–1041 and there was an annual average of 2,152 genealogy records requests made using Form G–1041A. DHS does not have sufficient data on the requestors for the genealogy forms to determine if entities or individuals submitted these requests.

DHS has previously determined that individuals usually make requests for historical records.[160] If professional genealogists and researchers submitted such requests in the past, they did not identify themselves as commercial requestors and, therefore, DHS could not separate these data from the dataset. Genealogists typically advise clients on how to submit their own requests. For those that submit requests on behalf of clients, DHS does not know the extent to which they can pass along the fee increases to their individual clients. Therefore, DHS currently does not have sufficient data to definitively assess the impact on small entities for these requests.

However, DHS must still recover the full costs of this program. As stated in the preamble to this rule, reducing the filing fee for any one benefit request submitted to DHS simply transfers the additional cost to process this request to other immigration and naturalization filing fees.

For this rule, DHS is expanding the use of electronic genealogy requests to encourage requesters to use the electronic versions of Form G–1041 and Form G–1041A. DHS is changing the search request process so that USCIS may provide requesters with electronic records, if they exist, in response to the initial index request. These final changes may reduce the time it takes to request and receive genealogy records, and, in some cases, it will eliminate the need to make multiple search requests and submit separate fees. Moreover, DHS notes that providing digital records in response to a Form G–1041 request may reduce the number of Form G–1041A requests that will be filed because there would already be a copy of the record if it was previously digitized. As a result, the volume of Form G–1041A requests USCIS receives may decrease, though DHS is unable to estimate by how much. DHS recognizes that some small entities may be impacted by these proposed increased but cannot determine how many or the exact impact.

DHS recognizes that some small entities may be impacted by these increased fees but cannot determine how many or the exact impact.

[153] Office of Advocacy, Small Business Administration, ''A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act'', page 19: *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf*

[154] Bureau of Labor Statistics, U.S. Department of Labor, ''Occupational Employment Statistics, May 2018, ''Clergy'': *https://www.bls.gov/oes/2018/may/oes212011.htm*

[155] Bureau of Labor Statistics, U.S. Department of Labor, ''Occupational Employment Statistics, May 2018, ''Directors of Religious Activities and Education'': *https://www.bls.gov/oes/2018/may/oes212099.htm*

[156] Bureau of Labor Statistics, U.S. Department of Labor, ''Occupational Employment Statistics, May 2018, ''Religious Workers, All Other'': *https://www.bls.gov/oes/2018/may/oes212099.htm.*

[157] USCIS calculated the average filing per entity of 1.5 petitions, from the Form I–360 Sample with Petition Totals in Appendix E, of the SEA for the U.S. Citizenship and Immigration Services Fee Schedule NPRM. Calculation: (total number of petitions from each sample id)/(total number of sample Form I–360 petitions) = 618/420 = 1.5 average petitions filed per entity.

[158] Calculation: 1.5 average petitions per entity * $15 increase in petition fees = approximately $22 additional total cost per entity.

[159] Calculation: $22 per entity/$53,290 clergy salary × 100 = .04 percent;

$22 per entity/$46,980 directors of religious activities and education × 100 = .05 percent;

$22 per entity/$35,860 other religious workers × 100 = .06 percent.

[160] *See* ''Establishment of a Genealogy Program; Proposed Rule,'' 71 FR 20357—20368 (April 20, 2006). Available at: *https://www.regulations.gov/document?D=USCIS-2006-0013-0001.*

f. Regional Center Under the Immigrant Investor Program, Form I–924 and I–924A

As part of the Immigration Act of 1990, Public Law 101–649, 104 Stat. 4978 (Nov. 29, 1990), Congress established the EB–5 immigrant visa classification to incentivize employment creation in the United States. Under the EB–5 program, lawful permanent resident (LPR) status is available to foreign nationals who invest the required amount in a new commercial enterprise that will create at least 10 full-time jobs in the United States. *See* INA section 203(b)(5), 8 U.S.C. 1153(b)(5). A foreign national may also invest a lower amount in a targeted employment area defined to include rural areas and areas of high unemployment. *Id.;* 8 CFR 204.6(f). The INA allots 9,940 immigrant visas each fiscal year for foreign nationals seeking to enter the United States under the EB–5 classification.[161] *See* INA section 201(d), 8 U.S.C. 1151(d); INA section 203(b)(5), 8 U.S.C. 1153(b)(5). Not fewer than 3,000 of these visas must be reserved for foreign nationals investing in targeted employment areas. *See* INA section 203(b)(5)(B), 8 U.S.C. 1153(b)(5)(B).

Enacted in 1992, section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Public Law 102–395, 106 Stat. 1828 (Oct. 6, 1992), established a pilot program that requires the allocation of a limited number of EB–5 immigrant visas to individuals who invest through DHS-designated regional centers.[162] Under the Regional Center Program, foreign nationals base their EB–5 petitions on investments in new commercial enterprises located within USCIS-designated ''regional centers.'' DHS regulations define a regional center as an economic unit, public or private, that promotes economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. *See* 8 CFR 204.6(e). While all EB–5 petitioners go through the same petition process, those petitioners participating in the Regional Center Program may meet statutory job creation requirements based on economic projections of either *direct* or *indirect* job creation, rather than only on jobs directly created by the new commercial enterprise. *See* 8 CFR 204.6(j)(4)(iii), (m)(3). As of August 12, 2019, there were 826 USCIS-approved Regional Centers.[163] Requests for regional center designation must be filed with USCIS on Form I–924, Application for Regional Center Designation Under the Immigrant Investor Program. *See* 8 CFR 204.6(m)(3)–(4). Once designated, regional centers must provide USCIS with updated information to demonstrate continued eligibility for the designation by submitting a Form I–924A, Annual Certification of Regional Center, on an annual basis or as otherwise requested. *See* 8 CFR 204.6(m)(6)(i)(B).

DHS will not adjust the fee for Form I–924. The current fee to file Form I–924 is $17,795. However, DHS is increasing the fee for Form I–924A from $3,035 to $4,465 per filing, an increase of $1,430 (47 percent). Using a 12-month period of data on the number of Forms I–924 and I–924A from October 1, 2016 to September 31, 2017, DHS collected internal data on these forms. DHS received a total of 280 Form I–924 applications and 847 Form I–924A applications.

Regional centers are difficult to assess because there is a lack of official data on employment, income, and industry classification for these entities. It is difficult to determine the small entity status of regional centers without such data. Such a determination is also difficult because regional centers can be structured in a variety of different ways and can involve multiple business and financial activities, some of which may play a direct or indirect role in linking investor funds to new commercial enterprises and job-creating projects or entities.

Regional centers also pose a challenge for analysis as the structure is often complex and can involve many related business and financial activities not directly involved with EB–5 activities. Regional centers can be made up of several layers of business and financial activities that focus on matching foreign investor funds to development projects to capture above market return differentials. In the past, DHS has attempted to treat the regional centers similar to the other entities in this analysis. DHS was not able to identify most of the entities in any of the public or private databases. Furthermore, while regional centers are an integral component of the EB–5 program, DHS does not collect data on the administrative fees the regional centers charge to the foreign investors who are investing in one of their projects. DHS did not focus on the bundled capital investment amounts (either $900,000 for TEA projects or $1.8 million for a non-TEA projects per investor)[164] that get invested into an NCE. Such investments amounts are not necessarily indicative of whether the regional center is appropriately characterized as a small entity for purposes of the RFA. Due to the lack of regional center revenue data, DHS assumes regional centers collect revenue primarily through the administrative fees charged to investors.

The information provided by regional centers as part of the Forms I–924 and I–924A does not include adequate data to allow DHS to reliably identify the small entity status of individual applicants. Although regional center applicants typically report the NAICS codes associated with the sectors they plan to direct investor funds toward, these codes do not necessarily apply to the regional centers themselves. In addition, information provided to DHS concerning regional centers generally does not include regional center revenues or employment.

DHS was able to obtain some information under some specific assumptions in an attempt to analyze the small entity status of regional centers.[165] In the DHS final rule ''EB–5 Immigrant Investor Program Modernization,'' DHS analyzed the estimated administrative fees and revenue amounts for regional centers. DHS found both the mean and median for administrative fees to be $50,000 and the median revenue amount to be $1,250,000 over the period fiscal years 2014 to 2017. DHS does not know the extent to which these regional centers can pass along the fee increases to the individual investors. Passing along the costs from this rule can reduce or eliminate the economic impacts to the regional centers. While DHS cannot definitively claim there is no significant economic impact to these small entities

[161] An immigrant investor, his or her spouse, and children (if any) will each use a separate visa number.

[162] Current law requires that DHS annually set aside 3,000 EB–5 immigrant visas for regional center investors. Public Law 105–119, sec. 116, 111 Stat. 2440 (Nov. 26, 1997). If this full annual allocation is not used, remaining visas may be allocated to foreign nationals who do not invest in regional centers.

[163] USCIS Immigrant Investor Regional Centers: *https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers* (last reviewed/updated Aug. 20, 2019).

[164] U.S. Department of Homeland Security, USCIS—EB–5 Immigrant Investor Program Modernization, Final Rule. *See* 84 FR 35750. Dated July 24, 2019. Available at *https://www.govinfo.gov/content/pkg/FR-2019-07-24/pdf/2019-15000.pdf.* This amount by investor is determined between a designated Target Employment Area and non-Target Employment Area.

[165] The methodology used to analyze the small entity status of regional centers is explained in further detail in Section D of the RFA section within DHS final rule ''EB–5 Immigrant Investor Program Modernization,'' available at 84 FR 35750.

based on existing information, DHS would assume existing regional centers with revenues equal to or less than $446,500 per year (some of which DHS assumes would be derived from administrative fees charged to individual investors) could experience a significant economic impact. If DHS assumes a fee increase that represents 1 percent of annual revenue is a ''significant'' economic burden under the RFA.[166]

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

This final rule imposed lower or higher fees for filers of Forms I–129. DHS is changing the following fees for new Forms I–129 (separated into new forms by worker type). The new fee structure as it applies to the small entities outline above, resulting the following fees: I–129H1 ($555), I–129H2A (Named Beneficiaries, $850) I–129H2A (Unnamed Beneficiaries, $415), I–129H2B (Named, $715), I–129H2B (Unnamed, $385), I–129O ($705), I–129L ($805), I–129CW ($695), I–129E&TN ($695), I–129MISC (Includes H–3, P, Q, or R Classifications, $695), I–140 ($555), I–910 ($635), I–924 ($17,795), I–924A ($4,465), Form I–360 ($450), G–1041 ($170 paper, $160 online) and G–1041A ($265 paper, $255 online). This final rule does not require any new professional skills for reporting.

f. 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 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

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other applicants. In addition, DHS must fund the costs of providing services without charge by using a portion of the filing fees collected for other immigration benefits. Without an increase in fees, DHS will not be able to maintain the level of service for immigration and naturalization benefits that it now provides. DHS has considered the alternative of maintaining fees at the current level with reduced services and increased processing times but has determined that this will not be in the interest of applicants and petitioners. Therefore, this alternative was rejected. While most immigration benefit fees apply to individuals, as described previously, some also apply to small entities. DHS seeks to minimize the impact on all parties, but in particular small entities.

Another alternative to the increased economic burden of the fee adjustment is to maintain fees at their current level for small entities. The strength of this alternative is that it assures that no additional fee-burden is placed on small entities; however, small entities will experience negative effects due to the service reductions that will result in the absence of the fee adjustments in this final rule. Without the fee adjustments provided in this final rule, significant operational changes to USCIS would be necessary. Given current filing volume considerations, DHS requires additional revenue to prevent immediate and significant cuts in planned spending. These spending cuts would include reductions in areas such as Federal and contract staff, infrastructure spending on information technology and facilities, and training. Depending on the actual level of workload received, these operational changes could result in longer processing times, a degradation in customer service, and reduced efficiency over time. These cuts would ultimately represent an increased cost to small entities by causing delays in benefit processing and reductions in customer service.

For reasons explained more fully elsewhere in the preamble to the final rule, DHS chose the approach contained in this final rule.

C. Congressional Review Act

DHS has sent this final rule to the Congress and to the Comptroller General under the Congressional Review Act, 5 U.S.C. 801 *et seq.* The Administrator of the Office of Information and Regulatory Affairs has determined that this final rule is a ''major rule'' within the meaning of the Congressional Review Act. This rule will 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

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of 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 inflation-adjusted value equivalent of $100 million in 1995 adjusted for inflation to 2019 levels by the Consumer Price Index for All Urban Consumers (CPI–U) is approximately $168 million based on the Consumer Price Index for All Urban Consumers.[167]

While this final rule may result in the expenditure of more than $100 million by the private sector annually, the rulemaking is not a ''Federal mandate'' as defined for UMRA purposes.[168] The payment of immigration benefit fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program, applying for immigration status in the United States.[169] This final rule does not contain such a mandate. The requirements of Title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

E. Executive Order 13132 (Federalism)

This final rule does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

[166] Calculation: 1 percent of $446,500 = $4,465 (the new fee for Form I–924A).

[167] *See* U.S. Bureau of Labor Statistics, *Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. City Average, All Items, available at https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202003.pdf* (last visited June 2, 2020).

Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2019); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2019 − Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)] * 100 = [(255.657 − 152.383)/152.383] * 100 = (103.274/152.383) *100 = 0.6777 * 100 = 67.77 percent = 68 percent (rounded)

Calculation of inflation-adjusted value: $100 million in 1995 dollars * 1.68 = $168 million in 2019 dollars.

[168] *See* 2 U.S.C. 658(6).

[169] *See* 2 U.S.C. 658(7)(A)(ii).

accordance with section 6 of Executive Order 13132, it is determined that this final 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 final rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. DHS has determined that this final rule meets the applicable standards provided in section 3 of E.O. 12988.

G. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This final rule does not have ''tribal implications'' because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

H. Family Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Agencies must assess whether the regulatory action: (1) Impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) if the regulatory action financially impacts families, are justified; (6) may be carried out by State or local government or by the family; and (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the determination is affirmative, then the Agency must prepare an impact assessment to address criteria specified in the law. DHS has no data that indicates that the rule will have any impacts on disposable income or the poverty of certain families and children, including U.S. citizen children. A family may have to delay applying until they have saved funds for a fee set by this final rule, or pay the fee using a credit card. Nevertheless, DHS believes that the benefits of the new fees justify the financial impact on the family. DHS determined that this rulemaking's impact is justified and no further actions are required. DHS also determined that this final rule will not have any impact on the autonomy or integrity of the family as an institution.

I. National Environmental Policy Act (NEPA)

This final rule adjusts certain immigration and naturalization benefit request fees charged by USCIS. It also makes changes related to setting, collecting, and administering fees. Fee schedule adjustments are necessary to recover the full operating costs associated with administering the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits, while protecting Americans, securing the homeland, and honoring our values. This final rule also makes certain adjustments to fee waiver eligibility, filing requirements for nonimmigrant workers, premium processing service, and other administrative requirements.

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 Manual (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).

DHS has 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. This final rule fits within the Categorical Exclusion found in DHS Inst. 023–01–001 Rev. 01, Appendix A, Table 1, number A3(d): ''Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.'' This final rule is not part of a larger action. This final rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this final rule is categorically excluded from further NEPA review.

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–12, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule, unless they are exempt. *See* Public Law 104–13, 109 Stat. 163 (May 22, 1995). The Information Collection table 11 below shows the summary of forms that are part of this rulemaking.

TABLE 11—INFORMATION COLLECTION

OMB No.	Form No.	Form name	Type of information collection.
1615–0105	G–28	Notice of Entry of Appearance as Attorney or Accredited Representative.	No material or non-substantive change to a currently approved collection.
1615–0096	G–1041	Genealogy Index Search Request	No material or non-substantive change to a currently approved collection.
	G–1041A	Genealogy Records Request (For each microfilm or hard copy file).	

TABLE 11—INFORMATION COLLECTION—Continued

OMB No.	Form No.	Form name	Type of information collection.
1615–0079	I–102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.	No material or non-substantive change to a currently approved collection.
1615–0111	I–129CW	Petition for a CNMI-Only Nonimmigrant Transitional Worker.	No material or non-substantive change to a currently approved collection.
	I–129CWR	Semiannual Report for CW–1 Employers.	
1615–0146	I–129E&TN	Application for Nonimmigrant Worker: E and TN Classifications.	New Collection.
1615–0001	I–129F	Petition for Alien Fiancé(e)	No material or non-substantive change to a currently approved collection.
1615–0009	I–129H1	Petition for Nonimmigrant Worker: H–1 Classifications.	Revision of a Currently Approved Collection.
1615–0150	I–129H2A	Petition for Nonimmigrant Worker: H–2A Classification.	New Collection.
1615–0149	I–129H2B	Petition for Nonimmigrant Worker: H–2B Classification.	New Collection.
1615–0147	I–129L	Petition for Nonimmigrant Worker: L Classifications.	New Collection.
1615–0145	I–129MISC	Petition for Nonimmigrant Worker: H–3, P, Q, or R Classifications.	New Collection.
1615–0148	I–129O	Petition for Nonimmigrant Worker: O Classifications.	New Collection.
1615–0012	I–130	Petition for Alien Relative	No material or non-substantive change to a currently approved collection.
	I–130A	Supplemental Information for Spouse Beneficiary.	
1615–0013	I–131	Application for Travel Document	Revision of a Currently Approved Collection.
1615–0135	I–131A	Application for Travel Document (Carrier Documentation).	Revision of a Currently Approved Collection.
1615–0015	I–140	Immigrant Petition for Alien Worker	No material or non-substantive change to a currently approved collection.
1615–0016	I–191	Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act.	No material or non-substantive change to a currently approved collection.
1615–0017	I–192	Application for Advance Permission to Enter as Nonimmigrant.	No material or non-substantive change to a currently approved collection.
1615–0018	I–212	Application for Permission to Reapply for Admission Into the United States After Deportation or Removal.	No material or non-substantive change to a currently approved collection.
1615–0095	I–290B	Notice of Appeal or Motion	No material or non-substantive change to a currently approved collection.
1615–0020	I–360	Petition for Amerasian, Widow(er), or Special Immigrant.	No material or non-substantive change to a currently approved collection.
1615–0023	I–485	Application to Register Permanent Residence or Adjust Status.	No material or non-substantive change to a currently approved collection.
	I–485A	Supplement A to Form I–485, Adjustment of Status Under Section 245(i).	
	I–485J	Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j).	
1615–0026	I–526	Immigrant Petition by Alien	No material or non-substantive change to a currently approved collection.
1615–0003	I–539	Application to Extend/Change Nonimmigrant Status.	No material or non-substantive change to a currently approved collection.
1615–0003	I–539A	Supplemental Information for Application to Extend/Change Nonimmigrant Status.	No material or non-substantive change to a currently approved collection.
1615–0067	I–589	Application for Asylum and for Withholding of Removal.	Revision of a Currently Approved Collection.
1615–0028	I–600	Petition to Classify Orphan as an Immediate Relative.	Revision of a Currently Approved Collection.
	I–600A	Application for Advance Processing of an Orphan Petition.	
	I–600/A SUPP1	Form I–600A/I–600 Supplement 1, Listing of Adult Member of the Household.	
	I–600/A SUPP2	Form I–600A/I–600 Supplement 2, Consent to Disclose Information.	
	I–600/A SUPP3	Form I–600A/I–600 Supplement 3, Request for Action on Approved Form I–600A/I–600.	
1615–0029	I–601	Application for Waiver of Grounds of Inadmissibility.	No material or non-substantive change to a currently approved collection.
1615–0123	I–601A	Application for Provisional Unlawful Presence Waiver.	No material or non-substantive change to a currently approved collection.

TABLE 11—INFORMATION COLLECTION—Continued

OMB No.	Form No.	Form name	Type of information collection.
1615–0030	I–612	Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended).	No material or non-substantive change to a currently approved collection.
1615–0032	I–690	Application for Waiver of Grounds of Inadmissibility.	No material or non-substantive change to a currently approved collection.
1615–0034	I–694	Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act.	No material or non-substantive change to a currently approved collection.
1615–0035	I–698	Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA).	No material or non-substantive change to a currently approved collection.
1615–0038	I–751	Petition to Remove Conditions on Residence	No material or non-substantive change to a currently approved collection.
1615–0040	I–765	Application for Employment Authorization	Revision of a Currently Approved Collection.
1615–0005	I–817	Application for Benefits Under the Family Unity Program.	No material or non-substantive change to a currently approved collection.
1615–0043	I–821	Application for Temporary Protected Status	No material or non-substantive change to a currently approved collection.
1615–0044	I–824	Application for Action on an Approved Application or Petition.	No material or non-substantive change to a currently approved collection.
1615–0045	I–829	Petition by Investor to Remove Conditions on Permanent Resident Status.	No material or non-substantive change to a currently approved collection.
1615–0072	I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Sec. 203 of Pub. L. 105–100).	No material or non-substantive change to a currently approved collection.
1615–0082	I–90	Application to Replace Permanent Resident Card.	No material or non-substantive change to a currently approved collection.
1615–0048	I–907	Request for Premium Processing Service	No material or non-substantive change to a currently approved collection.
1615–0114	I–910	Application for Civil Surgeon Designation	No material or non-substantive change to a currently approved collection.
1615–0116	I–912	Request for Fee Waiver	Revision of a Currently Approved Collection.
1615–0099	I–914	Application for T nonimmigrant status	No material or non-substantive change to a currently approved collection.
1615–0104	I–918	Petition for U nonimmigrant status	No material or non-substantive change to a currently approved collection.
1615–0061	I–924	Application for Regional Designation Center Under the Immigrant Investor Program.	No material or non-substantive change to a currently approved collection.
	I–924A	Annual Certification of Regional Center.	
1615–0106	I–929	Petition for Qualifying Family Member of a U–1 Nonimmigrant.	No material or non-substantive change to a currently approved collection.
1615–0136	I–941	Application for Entrepreneur Parole	No material or non-substantive change to a currently approved collection.
1615–0133	I–942	Application for Reduced Fee	Discontinuation
1615–0122	Immigrant Fee	Fee paid for immigrant visa processing	No material or non-substantive change to a currently approved collection.
1615–0050	N–336	Request for a Hearing on a Decision in Naturalization Proceedings Under Section 336.	No material or non-substantive change to a currently approved collection.
1615–0052	N–400	Application for Naturalization	No material or non-substantive change to a currently approved collection.
1615–0056	N–470	Application to Preserve Residence for Naturalization Purposes.	No material or non-substantive change to a currently approved collection.
1615–0091	N–565	Application for Replacement of Naturalization/Citizenship Document.	No material or non-substantive change to a currently approved collection.
1615–0057	N–600	Application for Certification of Citizenship	No material or non-substantive change to a currently approved collection.
1615–0087	N–600K	Application for Citizenship and Issuance of Certificate under Section 322.	No material or non-substantive change to a currently approved collection.

Various USCIS Forms

This final rule will require non-substantive edits to the forms listed above where the Type of Information Collection column states, ''No material/non-substantive change to a currently approved collection.'' These edits include: Updates to the fees collected, including changes to the collection of biometric services fees; modification of various form instructions to conform with changes to USCIS Form I–912; modification to USCIS Form N–400 to conform with the discontinuation of USCIS Form I–942; modification to various form instructions to conform with changes to the conditions for fee exemptions; removal of the returned check fee; text clarifying that a second presentment is limited to NSF checks, addition of language regarding delivery requirements of certain secured documents; general language modification of fee activities within various USCIS forms. Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form

OMB 83–C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.[170]

USCIS Form I–129H1

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for a Nonimmigrant Worker: H–1B Classifications.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129H1; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant classification and/or requests to extend or change nonimmigrant status. An employer (or agent, where applicable) uses this form to petition USCIS for classification of an alien as an H–1B nonimmigrant. An employer (or agent, where applicable) also uses this form to request an extension of stay of an H–1B or H–1B1 nonimmigrant worker or to change the status of an alien currently in the United States as a nonimmigrant to H–1B or H–1B1. The form serves the purpose of standardizing requests for H–1B and H–1B1 nonimmigrant workers and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under the H–1B or H–1B1 nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(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–129H1 is 402,034 and the estimated hour burden per response is 4 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 1,608,136 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $207,047,510.

USCIS Form I–129H2A

Overview of information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Petition for a Nonimmigrant Worker: H–2A Classifications.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129H2A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested H–2A nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer or agent uses this form to petition USCIS for classification of an alien as an H–2A nonimmigrant. An employer or agent also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for H–2A nonimmigrant workers and ensuring that basic information required for assessing eligibility is provided by the petitioner. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(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–129H2A is 12,008 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection Named Worker Attachment for Form I–129H2A is 65,760 and the estimated hour burden per response is 0.5 hours; the estimated total number of respondents for the information collection Joint Employer Supplement for Form I–129H2A is 5,000 and the estimated hour burden per response is 0.167 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 69,739 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $6,184,120.

USCIS Form I–129H2B

Overview of information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker: H–2B Classification.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129H2B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested H–2B nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer or agent uses this form to petition USCIS for classification of an alien as an H–2B nonimmigrant. An employer or agent also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for nonimmigrant workers and ensuring that basic information required for assessing eligibility is provided by the petitioner. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(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–129H2B is 6,340 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection Named Worker Attachment for Form I–129H2B is 58,104 and the estimated hour burden per response is 0.5 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 48,072 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $3,265,100.

USCIS Form I–129L

Overview of information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker: I–129L Classification.

(3) *Agency form number, if any, and the applicable component of the DHS*

[170] As stated earlier DHS is removing the $30 fee for dishonored fee payment instruments. EOIR will make conforming changes to its affected forms separately. . .

sponsoring the collection: I–129L; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on Form I–129L to determine a petitioner and beneficiary's eligibility for L–1A and L–1B classification. The form is also used to determine eligibility for an LZ Blanket petition. An employer uses this form to petition USCIS for classification of the beneficiary as an L–1 nonimmigrant. An employer also uses this form to request an extension of stay or change of status on behalf of the beneficiary. The form standardizes these types of petitioners and ensures that the information required for assessing eligibility is provided by the petitioner about themselves and the beneficiary. The form also enables USCIS to compile data required for an annual report to Congress assessing the effectiveness and utilization of certain nonimmigrant classifications.

(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–129L is 42,871 and the estimated hour burden per response is 3 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 128,613 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $22,078,565.

USCIS Form I–129O

Overview of information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker: O Classification.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129O; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer or agent uses this form to petition USCIS for classification of an alien as an O nonimmigrant worker. An employer or agent also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for nonimmigrant workers and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under certain nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(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–129O is 25,516 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection Attachment 1—Additional Beneficiary for Form I–129O is 1,189 and the estimated hour burden per response is 0.5 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 77,143 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $13,140,740.

USCIS Form I–129MISC

Overview of information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker: H–3, P, Q, or R Classification.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129MISC; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant classification and/or requests to extend or change nonimmigrant status. An employer (or agent, where applicable) uses this form to petition USCIS for classification of an alien as an H–3, P, Q, or R nonimmigrant. An employer (or agent, where applicable) also uses this form to request an extension of stay of an H–3, P, Q, or R nonimmigrant worker or to change the status of an alien currently in the United States as a nonimmigrant to H–3, P, Q, or R. The form serves the purpose of standardizing requests for H–3, P, Q, or R nonimmigrant workers, and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under the H–3, P, Q, or R nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classification.

(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–129MISC is 28,799 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection H–3 Classification Supplement to Form I–129MISC, Petition for Nonimmigrant Worker: H–3, P, Q, or R Classification is 1,449 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the information collection P Classification Supplement to Form I–129MISC is 18,524 and the estimated hour burden per response is 0.5 hours; the estimated total number of respondents for the information collection Q–1 International Cultural Exchange Alien Supplement to Form I–129MISC is 295 and the estimated hour burden per response is 0.167 hours; the estimated total number of respondents for the information collection R–1 Classification Supplement to Form I–129MISC is 1 and the estimated hour burden per response is 1 hours; the estimated total number of respondents for the information collection Attachment 1-Additional Beneficiary for Form I–129MISC is 8,531 and the estimated hour burden per response is 0.5 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 107,847 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $14,831,485.

USCIS Form I–129E&TN

Overview of information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker: E and TN Classification.

(3) *Agency form number, if any, and the applicable component of the DHS*

sponsoring the collection: I–129E&TN; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant classification and/or requests to extend or change nonimmigrant status. An employer agent, or applicant uses this form to apply to USCIS for classification of an alien as an E–1, E–2, E–3, or TN nonimmigrant. An employer, agent, applicant, or CNMI investor also uses this form to request an extension of stay in one of these classifications for an alien or for themselves, or to change the status of an alien currently in the United States as a nonimmigrant or their own status if they are currently in the United States as a nonimmigrant to E–1, E–2, E–3, or TN. The form serves the purpose of standardizing requests for nonimmigrant workers in these classifications and ensuring that basic information required for assessing eligibility is provided by the applicant. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classification.

(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–129E&TN is 12,709 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection E–1/E–2 Classification Supplement to Form I–129E&TN is 4,236 and the estimated hour burden per response is 1.45 hours; the estimated total number of respondents for the information collection E–3 Classification Supplement to Form I–129E&TN is 2,824 and the estimated hour burden per response is 1 hours; the estimated total number of respondents for the information collection NAFTA Supplement to Form I–129E&TN is 7,349 and the estimated hour burden per response is 0.5 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 50,768 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $6,545,135.

USCIS Form I–131

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Travel Document, Form I–131; Extension, Without Change, of a Currently Approved Collection.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–131; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Certain aliens, principally permanent or conditional residents, refugees or asylees, applicants for adjustment of status, aliens in Temporary Protected Status (TPS), and aliens abroad seeking humanitarian parole who need to apply for a travel document to lawfully enter or reenter the United States. Lawful permanent residents may now file requests for travel permits (transportation letter or boarding foil).

(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 I–131 is 464,900 and the estimated hour burden per response is 1.9 hours; the estimated total number of respondents for biometrics processing is 86,000 and the estimated hour burden per response is 1.17 hours, the estimated total number of respondents for passport-style photos is 360,000 and the estimated hour burden per response is 0.5 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 1,163,930 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $143,654,100.

USCIS Form I–131A

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Carrier Documentation.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–131A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses the information provided on Form I–131A to verify the status of permanent or conditional residents, and aliens traveling abroad on an Advance Parole Document (Form I–512 or I–512L) or Employment Authorization Documents (EAD) with travel endorsement (Form I–766) and to determine whether the applicant is eligible for the requested travel document.

(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–131A is 5,100 and the estimated hour burden per response is .92 hours; biometrics processing is 5,100 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 10,659 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $919,275.

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:* I–589; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form I–589 is necessary to determine whether an alien applying for asylum and/or withholding of removal in the United States is classified as a refugee and is eligible to remain in the United States.

(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 USCIS respondents for the information collection in Form I–589 is approximately 114,000, and the estimated annual respondents for Form I–589 filed with DOJ is approximately 150,000. The estimated hour burden per response is 13 hours per response; and the estimated number of respondents providing biometrics to USCIS is 110,000, and to DOJ (collected on their behalf by USCIS) is 150,000. The estimated hour burden per response for biometrics submissions 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 for USCIS is 1,610,700 hours, and for DOJ is 2,125,500.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information for USCIS is estimated to be $46,968,000 and for DOJ is $61,800,000.

USCIS Form I–600, I–600A, Supplement 1, Supplement 2, Supplement 3

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household; Supplement 2, Consent to Disclose Information; Supplement 3, Request for Action on Approved Form I–600A/I–600.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–600, Form I–600A, Form I–600A/I–600 Supplement 1, Form I–600A/I–600 Supplement 2, Form I–600A/I–600 Supplement 3; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. A U.S. citizen prospective/adoptive parent may file a petition to classify an orphan as an immediate relative under section 201(b)(2)(A) of the INA. A U.S. citizen adoptive parent may file a petition to classify an orphan as an immediate relative through Form I–600 under section 101(b)(1)(F) of the INA. A U.S. citizen prospective adoptive parent may file Form I–600A in advance of the Form I–600 filing and USCIS will make a determination regarding the prospective adoptive parent's eligibility to file Form I–600A and his or her suitability and eligibility to properly parent an orphan. If there are other adult members of the U.S. citizen prospective/adoptive parent's household, as defined at 8 CFR 204.301, the prospective/adoptive parent must include Form I–600A/I–600 Supplement 1 when filing both Form I–600A and Form I–600. A Form I–600A/I–600 Supplement 2, Consent to Disclose Information, is an optional form that a U.S. citizen prospective/adoptive parent may file to authorize USCIS to disclose case-related information that would otherwise be protected under the Privacy Act, 5 U.S.C. 552a, to adoption service providers or other individuals. Form I–600A/I–600 authorize d disclosures will assist USCIS in the adjudication of Forms I–600A and I–600. USCIS has created a new Form I–600A/I–600 Supplement 3, Request for Action on Approved Form I–600A/I–600, for this information collection. Form I–600A/I–600 Supplement 3 is a form that prospective/adoptive parents must use if they need to request action such as an extended or updated suitability determination based upon a significant change in their circumstances or change in the number or characteristics of the children they intend to adopt, a change in their intended country of adoption, or a request for a duplicate notice of their approved Form I–600A suitability determination.

(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–600 is 1,200 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A is 2,000 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600/I–600A Supplement 1 is 301 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600/I–600A Supplement 2 is 1,260 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the information collection Form I–600/I–600A Supplement 3 is 1,286 and the estimated hour burden per response is 1 hours; the estimated total number of respondents for the Home Study information collection is 2,500 and the estimated hour burden per response is 25 hours; the estimated total number of respondents for the Biometrics information collection is 2,520 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the Biometrics—DNA information collection is 2 and the estimated hour burden per response is 6 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 70,562.40 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $7,759,232.

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:* I–765; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses Form I–765 to collect information needed to determine if an alien is eligible for an initial EAD, a new replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Aliens in many immigration statuses are required to possess an EAD as evidence of work authorization.

(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 I–765 is 2,286,000 and the estimated hour burden per response is 4.5 hours; the estimated total number of respondents for the information collection I–765WS is 302,000 and the estimated hour burden per response is 0.5 hours; the estimated total number of respondents for the information collection biometrics is 302,535 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection passport photos is 2,286,000 and the estimated hour burden per response is 0.5 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 11,934,966 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $400,895,820.

USCIS Form I–912

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Fee Waiver.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–912; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses the data collected on this form to verify that the applicant is unable to pay for the immigration benefit being requested. USCIS will consider waiving a fee for an application or petition when the applicant or petitioner clearly demonstrates he or she is eligible based on 8 CFR 106.3. Form I–912 standardizes the collection and analysis of statements and supporting documentation provided by the applicant with the fee waiver request. Form I–912 also streamlines and expedites USCIS' approval, or rejection of the fee waiver request by clearly laying out the most salient data and evidence necessary for the determination of inability to pay. Officers evaluate all information and evidence supplied in support of a fee waiver request when making a final determination. Each case is unique and is considered on its own merits. If the fee waiver is granted, the application will be processed. If the fee waiver is not granted, USCIS will notify the applicant and instruct him or her to file a new application with the appropriate fee.

(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 I–912 is 116,832 and the estimated hour burden per response is 2.33 hours; the estimated total number of respondents for the information collection DACA Exemptions is 108 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection Director's Exemption Provision in new 8 CFR 106.3(e) is 20 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 272,368 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $438,600.

USCIS Form I–942

This final rule discontinues the use of Form I–942, Request for Reduced Fee, because DHS is eliminating the option to request a reduced fee. Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83–D, and amended information collection instruments to OMB for review and approval in accordance with the PRA.

Differences in information collection request respondent volume and fee model filing volume projections.

DHS acknowledges that the estimates of annual filing volume in the PRA section of this preamble are not the same as those used in the ABC model used to calculate the fee amounts in this rule. For example, the fee calculation model estimates 163,000 annual Form I–589 filings while the PRA section estimates the average annual number of respondents will be 114,000. The model projects 2,455,000 Form I–765 filings while the estimated total number of respondents for the information collection I–765 is 2,096,000. As stated in the NPRM and section III.L.1 of this preamble, the VPC forecasts USCIS workload volume based on short- and long-term volume trends and time series models, historical receipts data, patterns (such as level, trend, and seasonality) or correlations with historical events to forecast receipts. Workload volume is used to determine the USCIS resources needed to process benefit requests and is the primary cost driver for assigning activity costs to immigration benefits and biometric services in the USCIS ABC model. DHS uses a different method for estimating the average annual number of respondents for the information collection over the three-year OMB approval of the control number, generally basing the estimate on the average filing volumes in the previous 3 or 5 year period, with less consideration of the volume effects of planned or past policy changes. Nevertheless, when the information collection request is nearing expiration, USCIS will update the estimates of annual respondents based on actual filing volumes that occur after this final rule takes effect in the submission to OMB. The PRA burden estimates are generally updated at least every three years. Thus, DHS expects that the PRA estimated annual respondents will be updated to reflect the actual effects of this proposed rule within a relatively short period after a final rule takes effect.

K. 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 103

Administrative practice and procedures, Authority delegations (government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, and Surety bonds.

8 CFR Part 106

Immigration, User fees.

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping, requirements, Students.

8 CFR Part 216

Administrative practice and procedure, Aliens.

8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

8 CFR Part 223

Aliens, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirement.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 240

Administrative practice and procedure, Aliens.

8 CFR Part 244

Administrative practice and procedure; Immigration.

8 CFR Parts 245 and 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Parts 248 and 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

8 CFR Parts 301 and 319

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Parts 320 and 322

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

8 CFR Part 324

Citizenship and naturalization, Reporting and recordkeeping requirements, Women.

8 CFR Part 334

Administrative practice and procedure, Citizenship and naturalization, Courts, Reporting and recordkeeping requirements.

8 CFR Parts 341, 343a, 343b, and 392

Citizenship and naturalization, Reporting and recordkeeping requirements.

Accordingly, DHS proposes to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 103—IMMIGRATION BENEFIT REQUESTS; USCIS FILING REQUIREMENTS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 31 U.S.C. 9701; 48 U.S.C. 1806; Pub. L.107–296, 116 Stat. 2135 (6 U.S.C. 101 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–54, 125 Stat 550. Pub. L. 115–218.

■ 2. The heading for part 103 is revised to read as set forth above.

■ 3. Section 103.2 amended:

■ a. By revising the last sentence of paragraph (a)(1) and adding a new last sentence;

■ b. By revising paragraph (a)(7)(ii)(D);

■ c. In paragraph (b)(9) introductory text, by removing ''8 CFR 103.7(b)(1)(i)(C)'' and adding in its place ''8 CFR 106.2'' in the second sentence; and

■ d. By revising paragraph (b)(19)(iii).

The revisions read as follows:

§ 103.2 Submission and adjudication of benefit requests.

(a) * * *

(1) * * * All USCIS fees are generally are non-refundable regardless of if the benefit request or other service is approved, denied, or selected, or how much time the adjudication or processing requires. Except as otherwise provided in this chapter I, fees must be paid when the request is filed or submitted.

* * * * *

(7) * * *

(ii) * * *

(D) Submitted with the correct fee(s). If a check or other financial instrument used to pay a fee is returned as unpayable because of insufficient funds, USCIS will resubmit the payment to the remitter institution one time. If the instrument used to pay a fee is returned as unpayable a second time, the filing may be rejected. Financial instruments returned as unpayable for a reason other than insufficient funds will not be redeposited. If a check or other financial instrument used to pay a fee is dated more than one year before the request is received, the payment and request may be rejected.

* * * * *

(b) * * *

(19) * * *

(iii) *Secure identity documents.* (A) USCIS may send secure identification documents, such as a Permanent Resident Card or Employment Authorization Document, only to the applicant or self-petitioner unless the applicant or self-petitioner specifically consents to having his or her secure identification document sent to a designated agent, their attorney or accredited representative or record, as specified on the form instructions.

(B) The designated agent, or attorney or accredited representative, will be required to provide identification and sign for receipt of the secure document.

* * * * *

§ 103.3 [Amended]

■ 4. Section 103.3 is amended in paragraph (a)(2)(i) by removing ''§ 103.7 of this part'' and adding in its place ''8 CFR 106.2''.

§ 103.5 [Amended]

■ 5. Section 103.5 is amended in paragraph (a)(1)(iii)(B) by removing ''§ 103.7'' and adding in its place ''8 CFR 106.2''.

■ 6. Section 103.7 is revised to read as follows:

§ 103.7 Fees.

(a) *DOJ fees.* Fees for proceedings before immigration judges and the Board of Immigration Appeals are described in 8 CFR 1003.8, 1003.24, and 1103.7.

(1) *USCIS may accept DOJ fees.* Except as provided in 8 CFR 1003.8, or as the Attorney General otherwise may provide by regulation, any fee relating to any EOIR proceeding may be paid to USCIS. Payment of a fee under this section does not constitute filing of the document with the Board or with the immigration court. DHS will provide the payer with a receipt for a fee and return any documents submitted with the fee relating to any immigration court proceeding.

(2) *DHS–EOIR biometric services fee.* Fees paid to and accepted by DHS relating to any immigration proceeding as provided in 8 CFR 1103.7(a)(3) must include an additional $30 for DHS to collect, store, and use biometric information.

(3) *Waiver of Immigration Court fees.* An immigration judge or the Board may waive any fees prescribed under this chapter for cases under their jurisdiction to the extent provided in 8 CFR 1003.8 and 1003.24.

(b) *USCIS fees.* USCIS fees will be required as provided in 8 CFR part 106.

(c) *Remittances.* Remittances to the Board of Immigration Appeals must be made payable to the ''United States Department of Justice,'' in accordance with 8 CFR 1003.8.

(d) *Non-USCIS DHS immigration fees.* The following fees are applicable to one or more of the immigration components of DHS:

(1) *DCL System Costs Fee.* For use of a Dedicated Commuter Lane (DCL) located at specific U.S. ports-of-entry by an approved participant in a designated vehicle:

(i) $80.00, or

(ii) $160.00 for a family (applicant, spouse and minor children); plus,

(iii) $42 for each additional vehicle enrolled.

(iv) The fee is due after approval of the application but before use of the DCL.

(v) This fee is non-refundable, but may be waived by DHS.

(2) *Petition for Approval of School for Attendance by Nonimmigrant Student* (Form I–17). (i) For filing a petition for school certification: $3,000 plus, a site visit fee of $655 for each location required to be listed on the form;

(ii) For filing a petition for school recertification: $1,250 plus a site visit

fee of $655 for each new location required to be listed on the form.

(3) *Form I–68.* For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act:

(i) $16.00, or

(ii) $32 for a family (applicant, spouse and unmarried children under 21 years of age, and parents of either spouse).

(4) *Form I–94.* For issuance of Arrival/Departure Record at a land border port-of-entry: $6.00.

(5) *Form I–94W.* For issuance of Nonimmigrant Visa Waiver Arrival/Departure Form at a land border port-of-entry under section 217 of the Act: $6.00.

(6) *Form I–246.* For filing application for stay of deportation under 8 CFR part 243: $155.00.

(7) *Form I–823.* For application to a PORTPASS program under section 286 of the Act:

(i) $25.00, or

(ii) $50.00 for a family (applicant, spouse, and minor children).

(iii) The application fee may be waived by DHS.

(iv) If biometrics, such as fingerprints, are required, the inspector will inform the applicant of the current Federal Bureau of Investigation fee for conducting background checks prior to accepting the application fee.

(v) The application fee (if not waived) and fingerprint fee must be paid to CBP before the application will be processed. The fingerprint fee may not be waived.

(vi) For replacement of PORTPASS documentation during the participation period: $25.00.

(8) *Fee Remittance for F, J, and M Nonimmigrants* (Form I–901). The fee for Form I–901 is:

(i) For F and M students: $350.

(ii) For J–1 au pairs, camp counselors, and participants in a summer work or travel program: $35.

(iii) For all other J exchange visitors (except those participating in a program sponsored by the Federal Government): $220.

(iv) There is no Form I–901 fee for J exchange visitors in federally funded programs with a program identifier designation prefix that begins with G–1, G–2, G–3, or G–7.

(9) *Special statistical tabulations:* The DHS cost of the work involved.

(10) *Monthly, semiannual, or annual* ''*Passenger Travel Reports via Sea and Air*'' *tables.* (i) For the years 1975 and before: $7.00.

(ii) For after 1975: Contact: U.S. Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

(11) *Request for Classification of a citizen of Canada to engage in professional business activities pursuant to section 214(e) of the Act (Chapter 16 of the North American Free Trade Agreement):* $50.00.

(12) *Request for authorization for parole of an alien into the United States:* $65.00.

(13) *Global Entry.* Application for Global Entry: $100.

(14) *U.S. Asia-Pacific Economic Cooperation (APEC) Business Travel Card.* Application fee: $70.

(15) *Notice of Appeal or Motion (Form I–290B) filed with ICE SEVP.* For a Form I–290B filed with the Student and Exchange Visitor Program (SEVP): $675.

■ 7. Section 103.17 is revised to read as follows:

§ 103.17 Biometric services fee.

DHS may charge a fee to collect biometric information, to provide biometric collection services, to conduct required national security and criminal history background checks, to verify an individual's identity, and to store and maintain this biometric information for reuse to support other benefit requests. If a benefit request as defined in 8 CFR 1.2 must be submitted with a biometric services fee, 8 CFR part 106 will contain the requirement. When a biometric services fee is required, a benefit request submitted without the correct biometric services fee may be rejected.

■ 8. Section 103.40 is revised to read as follows:

§ 103.40 Genealogical research requests.

(a) *Nature of requests.* Genealogy requests are requests for searches and/or copies of historical records relating to a deceased person, usually for genealogy and family history research purposes.

(b) *Forms.* USCIS provides on its website at *https://www.uscis.gov/genealogy* the required forms in electronic versions: Genealogy Index Search Request, or Genealogy Records Request.

(c) *Required information.* Genealogical Research Requests may be submitted to request one or more separate records relating to an individual. A separate request must be submitted for each individual searched. All requests for records or index searches must include the individual's:

(1) Full name (including variant spellings of the name and/or aliases, if any).

(2) Date of birth, at least as specific as a year.

(3) Place of birth, at least as specific as a country and preferably the country name at the time of the individual's immigration or naturalization.

(d) *Optional information.* To better ensure a successful search, a Genealogical Research Request may include each individual's:

(1) Date of arrival in the United States.

(2) Residence address at time of naturalization.

(3) Names of parents, spouse, and children if applicable and available.

(e) *Additional information required to retrieve records.* For a Genealogy Records Request, requests for copies of historical records or files must:

(1) Identify the record by number or other specific data used by the Genealogy Program Office to retrieve the record as follows:

(i) C-Files must be identified by a naturalization certificate number.

(ii) Forms AR–2 and A-Files numbered below 8 million must be identified by Alien Registration Number.

(iii) Visa Files must be identified by the Visa File Number. Registry Files must be identified by the Registry File Number (for example, R–12345).

(2) [Reserved]

(f) *Information required for release of records.* (1) Documentary evidence must be attached to a Genealogy Records Request or submitted in accordance with the instructions on the Genealogy Records Request form.

(2) Search subjects will be presumed deceased if their birth dates are more than 100 years before the date of the request. In other cases, the subject is presumed to be living until the requestor establishes to the satisfaction of USCIS that the subject is deceased.

(3) Documentary evidence of the subject's death is required (including but not limited to death records, published obituaries or eulogies, published death notices, church or bible records, photographs of gravestones, and/or copies of official documents relating to payment of death benefits).

(g) *Index search.* Requestors who are unsure whether USCIS has any record of their ancestor, or who suspect a record exists but cannot identify that record by number, may submit a request for index search. An index search will determine the existence of responsive historical records. If no record is found, USCIS will notify the requestor accordingly. If records are found, USCIS will give the requestor electronic copies of records stored in digital format for no additional fee. For records found that are stored in paper format, USCIS will give the requestor the search results, including the type of record found and the file number or other information identifying the record. The requestor can use index search results to submit a Genealogy Records Request.

(h) *Processing of paper record copy requests.* This service is designed for

requestors who can identify a specific record or file to be retrieved, copied, reviewed, and released. Requestors may identify one or more files in a single request.

§ 103.41 [Removed and Reserved]

■ 9. Section 103.41 is removed and reserved.

■ 10. Part 106 is added to read as follows:

PART 106—USCIS FEE SCHEDULE

Sec.
106.1 Fee requirements.
106.2 Fees.
106.3 Fee waivers and exemptions.
106.4 Premium processing service.
106.5 Authority to certify records.
106.6 DHS severability.

Authority: 8 U.S.C. 1101, 1103, 1254a, 1254b, 1304, 1356; Pub. L. 107–609; 48 U.S.C. 1806; Pub. L. 115–218.

§ 106.1 Fee requirements.

(a) Fees must be submitted with any USCIS benefit request or other request in the amount and subject to the conditions provided in this part and remitted in the manner prescribed in the relevant form instructions, on the USCIS website, or in a **Federal Register** document. The fees established in this part are associated with the benefit, the adjudication, or the type of request and not solely determined by the form number listed in 8 CFR 106.2.

(b) Fees must be remitted from a bank or other institution located in the United States and payable in U.S. currency. The fee must be paid using the method that USCIS prescribes for the request, office, filing method, or filing location, as provided in the form instructions or by individual notice.

(c) If a remittance in payment of a fee or any other matter is not honored by the bank or financial institution on which it is drawn:

(1) The provisions of 8 CFR 103.2(a)(7)(ii) apply, no receipt will be issued, and if a receipt was issued, it is void and the benefit request loses its receipt date; and

(2) If the benefit request was approved, the approval may be revoked upon notice. If the approved benefit request requires multiple fees, this provision will apply if any fee submitted is not honored. Other fees that were paid for a benefit request that is revoked under this provision will be retained and not refunded. A revocation of an approval because the fee submitted is not honored may be appealed to the USCIS Administrative Appeals Office, in accordance with 8 CFR 103.3 and the applicable form instructions.

§ 106.2 Fees.

(a) *I Forms*—(1) *Application to Replace Permanent Resident Card, Form I–90.* For filing an application for a Permanent Resident Card, Form I–551, to replace an obsolete card or to replace one lost, mutilated, or destroyed, or for a change in name: $415.

(2) *Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, Form I–102.* For filing an application for Arrival/Departure Record, Form I–94, or Crewman's Landing Permit, Form I–95, to replace one lost, mutilated, or destroyed: $485.

(i) For nonimmigrant member of the U.S. armed forces: No fee for initial filing;

(ii) For a nonimmigrant member of the North Atlantic Treaty Organization (NATO) armed forces or civil component: No fee for initial filing;

(iii) For nonimmigrant member of the Partnership for Peace military program under the Status of Forces Agreement (SOFA): No fee for initial filing.

(3) *Petition or Application for a Nonimmigrant Worker, Form I–129.* For filing a petition or application for a nonimmigrant worker:

(i) Petition for H–1B Nonimmigrant Worker or H–1B1 Free Trade Nonimmigrant Worker, Form I–129H1: $555.

(ii) Petition for H–2A Nonimmigrant Worker, Form I–129H2A, with 1 to 25 named beneficiaries: $850.

(iii) Petition for H–2A Nonimmigrant Worker, Form I–129H2A, with only unnamed beneficiaries: $415.

(iv) Petition for H–2B Nonimmigrant Worker, Form I–129H2B, with 1 to 25 named beneficiaries: $715.

(v) Petition for H–2B Nonimmigrant Worker, Form I–129H2B, with only unnamed beneficiaries: $385.

(vi) Petition for L Nonimmigrant Worker, Form I–129L: $805.

(vii) Petition for O Nonimmigrant Worker, Form I–129O, with 1 to 25 named beneficiaries: $705.

(viii) Petition or Application for E, H–3, P, Q, R, or TN Nonimmigrant Worker, Forms I–129E or I–129MISC, with 1 to 25 named beneficiaries: $695.

(4) *Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW.* For an employer to petition on behalf of beneficiaries in the Commonwealth of the Northern Mariana Islands (CNMI): $695, plus the following fees:

(i) CNMI education funding fee:

(A) $200 per beneficiary per year.

(B) DHS may adjust this fee once per year by notice in the **Federal Register** based on the amount of inflation according to the change in the unadjusted All Items Consumer Price Index for All Urban Consumers (CPI–U) for the U.S. City Average published by the Bureau of Labor Statistics since the fee was set on June 18, 2020.

(ii) A fraud prevention and detection fee: $50 per employer filing a petition.

(iii) For filing Form I–129CWR, Semiannual Report for CW–1 Employers: No fee.

(5) *Petition for Alien Fiancé(e), Form I–129F.* (i) For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act: $510.

(ii) For a K–3 spouse as designated in 8 CFR 214.1(a)(2) who is the beneficiary of an immigrant petition filed by a U.S. citizen on a Petition for Alien Relative, Form I–130: No fee.

(6) *Petition for Alien Relative, Form I–130.* For filing a petition to classify status of a foreign national relative for issuance of an immigrant visa under section 204(a) of the Act: $560.

(7) *Application for Travel Document, Form I–131.* For filing an application for travel document:

(i) $145 for a Refugee Travel Document for someone 16 or older.

(ii) $115 for a Refugee Travel Document for a child under 16.

(iii) $590 for advance parole and any other travel document except Form I–131A.

(iv) There is no fee for applicants who filed USCIS Form I–485 on or after July 30, 2007, and before October 2, 2020, and paid the Form I–485 fee, or for applicants for Special Immigrant Status based on an approved Form I–360 as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (''ISAF'').

(8) *Application for Travel Document (Carrier Documentation), Form I–131A.* For filing an application to allow a lawful permanent resident, conditional permanent resident or other alien traveling abroad on an Advance Parole Document (Form I–512 or I–512L) or Employment Authorization Documents (EAD) with travel endorsement (Form I–766), to apply for carrier documentation to board an airline or other transportation carrier to return to the United States: $1,010.

(9) *Immigrant Petition for Alien Workers, Form I–140.* For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act: $555.

(10) *Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA), Form I–191.* For filing an application for

discretionary relief under section 212(c) of the Act: $790.

(11) *Application for Advance Permission to Enter as Nonimmigrant, Form I–192.* For filing an application for discretionary relief under section 212(d)(3), (d)(13), or (d)(14) of the Act, except in an emergency case or where the approval of the application is in the interest of the U.S. Government: $1,400.

(12) *Application for Waiver of Passport and/or Visa, Form I–193.* For filing an application for waiver of passport and/or visa: $2,790.

(13) *Application for Permission to Reapply for Admission into the United States After Deportation or Removal, Form I–212.* For filing an application for permission to reapply for admission by an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense: $1,050.

(14) *Notice of Appeal or Motion, Form I–290B.* For appealing a decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction: $700. In addition:

(i) The fee will be the same for appeal or a motion to reopen a denial of a benefit request with one or multiple beneficiaries.

(ii) There is no fee for an appeal or motion associated with a denial of a petition for a special immigrant visa filed by or on behalf of an individual seeking special immigrant status as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (''ISAF'').

(15) *Request for Cancellation of Public Charge Bond, Form I–356.* $25.

(16) *Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360.* For filing a petition for an Amerasian, Widow(er), or Special Immigrant: $450. The following requests are exempt from this fee:

(i) A petition seeking classification as an Amerasian;

(ii) A self-petition for immigrant classification as an abused spouse or child of a U.S. citizen or lawful permanent resident or an abused parent of a U.S. citizen son or daughter; or

(iii) A petition for special immigrant juvenile classification; or

(iv) A petition seeking special immigrant visa or status an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (''ISAF'').

(17) *Application to Register Permanent Residence or Adjust Status, Form I–485*—(i) *Most permanent residence applications.* For filing an application for permanent resident status or creation of a record of lawful permanent residence: $1,130.

(ii) *Asylees.* For the first Form I–485, Application to Register Permanent Residence or Adjust Status, filed by individuals who have paid the $50 fee for Form I–589 and are subsequently granted asylum based on that Form I–589: $1,080.

(iii) *Refugees and Special Immigrants.* There is no fee if an applicant is filing as a refugee under section 209(a) of the Act or for applicants for Special Immigrant Status based on an approved Form I–360 as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (''ISAF'').

(iv) *Adjustment of Status Under Section 245(i), Form I–485 Supplement A.* Persons seeking to adjust status under the provisions of section 245(i) of the Act must submit a sum of $1,000 in addition to the fee for filing the Form I–485, unless payment of the additional sum is not required under section 245(i) of the Act. The additional sum is not required when the applicant is an unmarried child less than 17 years of age, when the applicant is the spouse, or the unmarried child less than 21 years of age of a legalized alien and who is qualified for and has properly filed an application for voluntary departure under the family unity program.

(18) *Immigrant Petition by Alien Investor, Form I–526.* For filing a petition for an alien investor: $4,010.

(19) *Application To Extend/Change Nonimmigrant Status, Form I–539.* For filing an application to extend or change nonimmigrant status: $400. For nonimmigrant A, G, and NATO: No fee.

(20) *Application for Asylum and for Withholding of Removal, Form I–589.* For filing an application for asylum status: $50. There is no fee for applications filed by unaccompanied alien children who are in removal proceedings.

(21) *Petition to Classify Orphan as an Immediate Relative, Form I–600.* For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act.

(i) There is no fee for the first Form I–600 filed for a child on the basis of an approved Application for Advance Processing of an Orphan Petition, Form I–600A, during the Form I–600A approval or extended approval period.

(ii) Except as specified in paragraph (a)(21)(iii) of this section, if more than one Form I–600 is filed during the Form I–600A approval period, the fee is $805 for the second and each subsequent Form I–600 petition submitted.

(iii) If more than one Form I–600 is filed during the Form I–600A approval period on behalf of beneficiary birth siblings, no additional fee is required.

(22) *Application for Advance Processing of an Orphan Petition, Form I–600A.* For filing an application for determination of suitability and eligibility to adopt an orphan: $805.

(23) *Request for Action on Approved Form I–600A/I–600, Form I–600A/I–600 Supplement 3:* $400.

(i) This filing fee:

(A) Is not charged if Form I–600A/I–600 Supplement 3 is filed in order to obtain a first extension of the approval of the Form I–600A or to obtain a first time change of non-Hague Adoption Convention country during the Form I–600A approval period.

(B) Is charged if Form I–600A/I–600 Supplement 3 is filed in order to request a new approval notice based on a significant change and updated home study, unless a first extension of the Form I–600A approval or first time change of non-Hague Adoption Convention country is also being requested on the same Supplement 3.

(C) Is $400 for second or subsequent extensions of the approval of the Form I–600A, second or subsequent changes of non-Hague Adoption Convention country, requests for a new approval notice based on a significant change and updated home study, and requests for a duplicate approval notice permitted with Form I–600A/I–600 Supplement 3 with the filing fee.

(ii) Form I–600A/I–600 Supplement 3 cannot be used to:

(A) Extend eligibility to proceed as a Hague Adoption Convention transition case beyond the first extension once the Convention enters into force for the new Convention country.

(B) Request a change of country to a Hague Adoption Convention transition country for purposes of becoming a transition case if another country was already designated on the Form I–600A or prior change of country request.

(iii) Form I–600A/I–600 Supplement 3 may only be used to request an increase the number of children the applicant/petitioner is approved to adopt from a transition country if the additional child is a birth sibling of a child who the applicant/petitioner has adopted or is in the process of adopting, as a transition case, and is identified and petitioned for

while the Form I–600A approval is valid, unless the new Convention country prohibits such birth sibling cases from proceeding as transition cases.

(24) *Application for Waiver of Grounds of Inadmissibility, Form I–601.* For filing an application for waiver of grounds of inadmissibility: $1,010.

(25) *Application for Provisional Unlawful Presence Waiver, Form I–601A.* For filing an application for provisional unlawful presence waiver: $960.

(26) *Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended), Form I–612.* For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act: $515.

(27) *Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, Form I–687.* For filing an application for status as a temporary resident under section 245A(a) of the Act: $1,130.

(28) *Application for Waiver of Grounds of Inadmissibility, Form I–690.* For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act as amended, in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: $765.

(29) *Notice of Appeal of Decision under Sections 245A or 210 of the Immigration and Nationality Act (or a petition under section 210A of the Act), Form I–694.* For appealing the denial of an application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: $715.

(30) *Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA), Form I–698.* For filing an application to adjust status from temporary to permanent resident (Pub. L. 99–603): $1,615.

(31) *Petition to Remove Conditions on Residence, Form I–751.* For filing a petition to remove the conditions on residence based on marriage: $760.

(32) *Application for Employment Authorization, Form I–765:* $550.

(i) A $30 biometric services must be included with a Form I–765 filed by:

(A) An asylum applicant with a pending Form I–589.

(B) An applicant for status as a long-term resident of the Commonwealth of the Northern Mariana Islands.

(ii) There is no fee for an initial Employment Authorization Document for:

(A) An applicant who filed USCIS Form I–485 on or after July 30, 2007, and before October 2, 2020, and paid the Form I–485 fee;

(B) Refugees and aliens paroled as a refugee;

(C) Aliens granted asylee status;

(D) Victims of Severe Forms of Trafficking (T–1);

(E) Nonimmigrant Victim of Criminal Activity (U–1);

(F) Dependents of certain government and internal organizations or NATO personnel;

(G) N–8 (Parent of alien classed as SK3) and N–9 (Child of N–8) nonimmigrants;

(H) Principal VAWA Self-Petitioners who have approved petitions pursuant to section 204(a) of the Act;

(I) VAWA Self-Petitioners as defined in section 101(a)(51)(D), (E), and (F) of the Act;

(J) Applicants for Special Immigrant Status based on an approved Form I–360 as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (''ISAF''); and

(iii) Request for replacement Employment Authorization Document based on USCIS error: No fee.

(iv) There is no fee for a renewal or replacement Employment Authorization Document for:

(A) Any current Adjustment of Status or Registry applicant who filed for adjustment of status on or after July 30, 2007, and before October 2, 2020, and paid the appropriate Form I–485 filing fee.

(B) Applicants for Special Immigrant Status based on an approved Form I–360 as an Afghan or Iraqi Translator or Interpreter, Iraqi National employed by or on behalf of the U.S. Government, or Afghan National employed by or on behalf of the U.S. government or employed by the International Security Assistance Forces: And

(C) Dependent of certain foreign government, international organization, or NATO personnel.

(v) *An Application for Employment Authorization for Abused Nonimmigrant Spouse, Form I–765V:* No fee.

(vi) The Form I–765 fee for initial and renewal requestors of Consideration of Deferred Action for Childhood Arrivals is $410. Requestors of Consideration of Deferred Action for Childhood Arrivals must also pay a biometric services fee of $85 for an initial, renewal of, or to replace their employment authorization document.

(33) *Petition to Classify Convention Adoptee as an Immediate Relative, Form I–800.* (i) There is no fee for the first Form I–800 filed for a child on the basis of an approved Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I–800A, during the Form I–800A approval period.

(ii) Except as specified in paragraph (a)(33)(iii) of this section, if more than one Form I–800 is filed during the Form I–800A approval period, the fee is $805 for the second and each subsequent Form I–800 petition submitted.

(iii) If more than one Form I–800 is filed during the Form I–800A approval period on behalf of beneficiary birth siblings, no additional fee is required.

(34) *Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I–800A.* For filing an application for determination of suitability and eligibility to adopt a child from a Hague Adoption Convention country: $805.

(35) *Request for Action on Approved Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I–800A Supplement 3:* $400.

(i) This filing fee:

(A) Is not charged if Form I–800A Supplement 3 is filed in order to obtain a first extension of the approval of the Form I–800A or to obtain a first time change of Hague Adoption Convention country during the Form I–800A approval period.

(B) Is charged if Form I–800A Supplement 3 is filed in order to request a new approval notice based on a significant change and updated home study, unless a first extension of the Form I–800A approval or first time change of Hague Adoption Convention country is also being requested on the same Supplement 3.

(ii) Is $400 for second or subsequent extensions of the Form I–800A approval, second or subsequent changes of Hague Adoption Convention country, requests for a new approval notice based on a significant change and updated home study, and requests for a duplicate approval notice, permitted with the filing of a Form I–800A, Supplement 3 and the required filing fee: $400.

(36) *Application for Family Unity Benefits, Form I–817.* For filing an application for voluntary departure under the Family Unity Program: $590.

(37) *Application for Temporary Protected Status, Form I–821.* (i) For first time applicants: $50 or the maximum permitted by section 244(c)(1)(B) of the Act.

(ii) There is no fee for re-registration.

(iii) A Temporary Protected Status (TPS) applicant or re-registrant must pay $30 for biometric services unless

exempted in the applicable form instructions.

(38) *Application for Deferred Action for Childhood Arrivals, Form I–821D.* No fee.

(39) *Application for Action on an Approved Application, Form I–824:* $495.

(40) *Petition by Investor to Remove Conditions, Form I–829.* For filing a petition by an investor to remove conditions: $3,900.

(41) *Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100), Form I–881.*

(i) $1,810 for adjudication by DHS.

(ii) $165 for adjudication by EOIR. If the Form I–881 is referred to the immigration court by DHS, the $1,810 fee is required.

(42) *Application for Authorization to Issue Certification for Health Care Workers, Form I–905:* $230.

(43) *Request for Premium Processing Service, Form I–907.* The Request for Premium Processing Service fee will be as provided in 8 CFR 106.4.

(44) *Application for Civil Surgeon Designation, Form I–910:* $635. There is no filing fee for:

(i) A medical officer in the U.S. Armed Forces or

(ii) A civilian physician employed by the U.S. Government who examines members and veterans of the U.S. Armed Forces and their dependents at a military, Department of Veterans Affairs, or U.S. Government facility in the United States.

(45) *Application for T Nonimmigrant Status, Form I–914:* No fee.

(46) *Petition for U Nonimmigrant Status, Form I–918:* No fee.

(47) *Application for Regional Center Designation under the Immigrant Investor Program, Form I–924:* $17,795.

(48) *Annual Certification of Regional Center, Form I–924A.* To provide updated information and certify that a Regional Center under the Immigrant Investor Program has maintained its eligibility: $4,465.

(49) *Petition for Qualifying Family Member of a U–1 Nonimmigrant, Form I–929.* For a principal U–1 nonimmigrant to request immigration benefits on behalf of a qualifying family member who has never held U nonimmigrant status: $1,485.

(50) *Application for Entrepreneur Parole, Form I–941.* For filing an application for parole for an entrepreneur: $1,200.

(51) *Public Charge Bond, Form I–945:* $25.

(b) *N Forms*—(1) *Application to File Declaration of Intention, Form N–300.* For filing an application for declaration of intention to become a U.S. citizen: $1,305.

(2) *Request for a Hearing on a Decision in Naturalization Proceedings (under section 336 of the Act), Form N–336.* For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act: $1,735. There is no fee for an applicant who has filed an Application for Naturalization under sections 328 or 329 of the Act with respect to military service and whose application has been denied.

(3) *Application for Naturalization, Form N–400.* For filing an application for naturalization: $1,170. No fee is charged an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service.

(4) *Application to Preserve Residence for Naturalization Purposes, Form N–470.* For filing an application for benefits under section 316(b) or 317 of the Act: $1,585.

(5) *Application for Replacement Naturalization/Citizenship Document, Form N–565:* $545.

(i) This fee is for filing an application for:

(A) A certificate of naturalization or certificate of citizenship;

(B) A declaration of intention in place of a certificate or declaration alleged to have been lost, mutilated, or destroyed;

(C) A changed name under section 343(c) of the Act; or

(D) A special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act;

(ii) There is no fee when this application is submitted under 8 CFR 338.5(a) or 343a.1 to request correction of a certificate of naturalization or certificate of citizenship that contains an error.

(6) *Application for Certificate of Citizenship, Form N–600.* For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act: $1,000. There is no fee for any application filed by a member or veteran of any branch of the U.S. Armed Forces.

(7) *Application for Citizenship and Issuance of Certificate Under Section 322, Form N–600K.* For filing an application for citizenship and issuance of certificate under section 322 of the Act: $945.

(c) *G Forms, Statutory Fees, and Non-Form Fees*—(1) *Genealogy Index Search Request, Form G–1041:* $170. The fee is due regardless of the search results.

(2) *Genealogy Records Request, Form G–1041A:* $265. USCIS will refund the records request fee when it is unable to locate any file previously identified in response to the index search request.

(3) *USCIS Immigrant Fee.* For DHS domestic processing and issuance of required documents after an immigrant visa is issued by the U.S. Department of State: $190.

(4) *American Competitiveness and Workforce Improvement Act (ACWIA) fee.* For filing certain H–1B petitions as described in 8 CFR 214.2(h)(19) and USCIS form instructions: $1,500 or $750.

(5) *Fraud detection and prevention fee.* (i) For filing certain H–1B and L petitions as described in 8 U.S.C. 1184(c) and USCIS form instructions: $500.

(ii) For filing certain H–2B petitions as described in 8 U.S.C. 1184(c) and USCIS form instructions: $150.

(6) *Fraud detection and prevention fee for CNMI.* For employer petitions in CNMI as described in Public Law 115–218 and USCIS form instructions: $50.

(7) *9–11 Response and Biometric Entry-Exit Fee for H–1B Visa.* For all petitioners filing an H–1B petition who employ 50 or more employees in the United States if more than 50 percent of the petitioner's employees in the aggregate are in H–1B, L–1A or L–1B nonimmigrant status, except for petitioners filing an amended petition without an extension of stay request: $4,000. This fee will apply to petitions filed on or before September 30, 2027.

(8) *9–11 Response and Biometric Entry-Exit Fee for L–1 Visa.* For all petitioners filing an L–1 petition who employ 50 or more employees in the United States, if more than 50 percent of the petitioner's employees in the aggregate are in H–1B, L–1A or L–1B nonimmigrant status, except for petitioners filing an amended petition without an extension of stay request: $4,500. This fee will apply to petitions filed on or before September 30, 2027.

(9) *Claimant under section 289 of the Act:* No fee.

(10) *Registration requirement for petitioners seeking to file H–1B petitions on behalf of cap-subject aliens.* For each registration submitted to register for the H–1B cap or advanced degree exemption selection process: $10. This fee will not be refunded if the registration is not selected or is withdrawn.

(d) *Online forms.* The fee for the following forms is $10.00 lower than the fee established in paragraphs (a), (b), and (c) of this section when submitted to USCIS online and not in paper form:

(1) I–90, Application to Replace Permanent Resident Card;

(2) N–336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA);

(3) N–400, Application for Naturalization;

(4) N–565, Application for Replacement Naturalization/Citizenship Document;

(5) I–130/130A, Petition for Alien Relative;

(6) N–600, Application for Certificate of Citizenship;

(7) N–600K, Application for Citizenship and Issuance of Certificate Under Section 322;

(8) I–539/539A, Application To Extend/Change Nonimmigrant Status;

(9) G–1041, Genealogy Index Search Request; and

(10) G–1041A, Genealogy Records Request.

§ 106.3 Fee waivers and exemptions.

(a) *Fee waiver.* No fee relating to any benefit request submitted to USCIS may be waived unless otherwise provided in this paragraph.

(1) An alien may apply for a fee waiver if there is a statutory or regulatory provision allowing for fee waivers including as provided by section 245(l)(7) of the Act, 8 U.S.C. 1255(l)(7). Specifically, the following categories of requestors may apply for a waiver of any fees for an immigration benefit and any associated filing up to and including an application for adjustment of status:

(i) Violence Against Women Act (VAWA) self-petitioners and derivatives as defined under section 101(a)(51) and anyone otherwise self-petitioning due to battery or extreme cruelty pursuant to the procedures in section 204(a) of the Act;

(ii) T nonimmigrants;

(iii) U nonimmigrants;

(iv) Battered spouses of A, G, E–3, or H nonimmigrants;

(v) Battered spouses or children of a lawful permanent resident or U.S. citizen and derivatives as provided under section 240A(b)(2) of the Act; and

(vi) Applicants for Temporary Protected Status, including both initial applicants and re-registering TPS beneficiaries.

(2) The following categories of requestors may apply for a waiver of any fees for an immigration benefit and any associated filing up to and including an application for adjustment of status:

(i) Special Immigrant Juveniles (SIJs) who have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency at the time of filing; and

(ii) Afghan or Iraqi Translator or Interpreter, Iraqi National employed by or on behalf of the U.S. Government, or Afghan National employed by or on behalf of the U.S. government or employed by the International Security Assistance Forces.

(3) Requestors who have been approved for the immigration benefits in paragraphs (a)(1) and (2) of this section may apply for a waiver of any fees for Form N–400, Application for Naturalization, Form N–600 Application for Certificate of Citizenship, or Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322, as applicable.

(b) *Director's exception.* The Director of USCIS may authorize the waiver, in whole or in part, of a form fee required by 8 CFR 106.2 that is not otherwise waivable under this section, if the Director determines that such action is an emergent circumstance, or if a major natural disaster has been declared in accordance with 44 CFR part 206, subpart B. This discretionary authority may be delegated only to the USCIS Deputy Director. The Director may not waive the requirements of paragraph (c) or (d) of this section. An applicant, petitioner, or requestor may not directly submit a request to the Director. In addition, a waiver of fees as provided in this paragraph may not be provided to a requestor who is seeking an immigration benefit for which he or she:

(1) Is subject to the affidavit of support requirements under section 213A of the Act or is already a sponsored immigrant as defined in 8 CFR 213a.1 unless the applicant is seeking a waiver of the joint filing requirement to remove conditions on his or her residence based on abuse; or

(2) Is subject to the public charge inadmissibility ground under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4).

(c) *Eligibility for fee waiver.* A waiver of fees is limited to an alien with an annual gross household income at or below 125 percent of the Federal Poverty Guidelines as updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(d) *Form required.* A person must submit a request for a fee waiver on the form prescribed by USCIS in accordance with the instructions on the form.

(e) *Exemptions.* The Director of USCIS may provide an exemption for any fee required by 8 CFR 106.2. This discretionary authority may only be delegated to the USCIS Deputy Director. The Director must determine that such action would be in the public interest, the action is consistent with the applicable law, and the exemption is related to one of the following:

(1) Asylees;

(2) Refugees;

(3) National security;

(4) Emergencies or major disasters declared in accordance with 44 CFR part 206, subpart B;

(5) An agreement between the U.S. government and another nation or nations; or

(6) USCIS error.

(f) *Documentation of gross household income.* A person submitting a request for a fee waiver must submit the following documents as evidence of annual gross household income:

(1) A transcript(s) from the United States Internal Revenue Service (IRS) of the person's IRS Form 1040, U.S. Individual Income Tax Return;

(2) If the person was not required to file a Federal income tax return, he or she must submit their most recent IRS Form W–2, Wage and Tax Statement, Form 1099G, Certain Government Payments, or Social Security Benefit Form SSA–1099, if applicable;

(3) If the person filed a Federal income tax return, and has recently changed employment or had a change in salary, the person must also submit copies of consecutive pay statements (stubs) for the most recent month or longer;

(4) If the person does not have income and has not filed income tax returns, he or she must submit documentation from the IRS that indicates that no Federal income tax transcripts and no IRS Form W–2s were found;

(5) An alien who is applying for or has been granted benefits or status as a VAWA self-petitioner or derivative or a T or U nonimmigrant, who does not have any income or cannot provide proof of income may:

(i) Describe the situation in sufficient detail as provided in the form and form instructions prescribed by DHS to substantiate that he or she has income at or below 125 percent of the Federal Poverty Guidelines as well as the inability to obtain the required documentation; and

(ii) Provide pay statements (stubs) or affidavits from religious institutions, non-profits, or other community-based organizations verifying that he or she is currently receiving some benefit or support from that entity and attesting to his or her financial situation as documentation of income, if available; and

(6) For applications related to Special Immigrant Juvenile classification, the applicant must provide the following in lieu of documentation of gross household income:

(i) Evidence that the applicant is approved for or filed for Special Immigrant Juvenile classification, and

(ii) Evidence that the applicant remains in out-of-home care such as foster care.

§ 106.4 Premium processing service.

(a) *General.* A person submitting a request to USCIS may request 15 business-day processing of certain employment-based immigration benefit requests.

(b) *Submitting a request.* A request must be submitted on the form prescribed by USCIS and prepared and submitted in accordance with the form instructions. If the request for premium processing is submitted together with the underlying benefit request, all required fees in the correct amount must be paid.

(c) *Fee amount.* The fee amount will be prescribed in the form instructions and:

(1) Must be paid in addition to, and in a separate remittance from, other filing fees.

(2) May be adjusted once per year by notice in the **Federal Register** based on the amount of inflation according to the Consumer Price Index (CPI) since the fee was set by law at $1,000 on June 1, 2001.

(d) *15-day limitation.* USCIS will refund the premium processing service fee, but continue to process the case if:

(1) USCIS does not issue a notice of any adjudicative action by the end of the 15th business day from the date USCIS accepted a properly filed request for premium processing for an eligible employment-based immigration benefit request, including all required fees. The adjudicative action is evidenced by the notification of, but not necessarily receipt of, an approval, denial, request for evidence (RFE) or notice of intent to deny (NOID); or

(2) USCIS does not issue a notice of a subsequent adjudicative action by the end of the 15th business-day from the date USCIS received the response to an RFE or NOID. In premium processing cases where USCIS issues an RFE or NOID within 15 business days from the initial date of acceptance, a new 15-day period begins on the date that USCIS receives the response to the RFE or NOID.

(3) USCIS may retain the premium processing fee and not reach a conclusion on the request within 15 business days, and not notify the person who filed the request, if USCIS opens an investigation for fraud or misrepresentation relating to the benefit request.

(e) *Requests eligible for premium processing.* (1) USCIS will designate the categories of employment-based benefit requests that are eligible for premium processing.

(2) USCIS will announce by its official internet website, currently *http://www.uscis.gov,* those requests for which premium processing may be requested, the dates upon which such availability commences and ends, and any conditions that may apply.

§ 106.5 Authority to certify records.

The Director of USCIS, or such officials as he or she may designate, may certify records when authorized under 5 U.S.C. 552 or any other law to provide such records.

§ 106.6 DHS severability.

Each provision of this part is separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions will continue in effect.

PART 204—IMMIGRANT PETITIONS

■ 11. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1641; 8 CFR part 2.

■ 12. Section 204.3 is amended:

■ a. By revising the section heading;

■ b. In paragraph (b), in the definition of ''Orphan petition'', by revising the second sentence;

■ c. By revising the fourth and fifth sentences of paragraph (d) introductory text; and

■ d. By revising paragraphs (h)(3)(i) and (ii) and (h)(7) and (13).

The revisions read as follows:

§ 204.3 Orphan cases under section 101(b)(1)(F) of the Act (non-Hague Adoption Convention cases).

* * * * *

(b) * * *

Orphan petition means * * * The petition must be completed in accordance with the form's instructions and submitted with the required supporting documentation and, if there is not a pending, or currently valid and approved advanced processing application, the fee as required in 8 CFR 106.2. * * *

* * * * *

(d) * * * If the prospective adoptive parents fail to file the orphan petition within the approval validity period of the advanced processing application, the advanced processing application will be deemed abandoned pursuant to paragraph (h)(7) of this section. If the prospective adoptive parents file the orphan petition after the approval period of the advanced processing application has expired, the petition will be denied pursuant to paragraph (h)(13) of this section. * * *

* * * * *

(h) * * *

(3) * * *

(i) If the advanced processing application is approved:

(A) The prospective adoptive parents will be advised in writing. A notice of approval expires 15 months after the date on which USCIS received the FBI response on the applicant's, and any additional adult member of the household's, biometrics, unless approval is revoked. If USCIS received the responses on different days, the 15-month period begins on the earliest response date. The notice of approval will specify the expiration date.

(B) USCIS may extend the validity period for the approval of a Form I–600A as provided in paragraph (h)(3)(ii) of this section or if requested in accordance with 8 CFR 106.2(a)(23). During this time, the prospective adoptive parents may file an orphan petition for one orphan without fee.

(C) If the Form I–600A approval is for more than one orphan, the prospective adoptive parents may file a petition for each of the additional children, to the maximum number approved.

(D) If the orphans are birth siblings, no additional fee is required. If the orphans are not birth siblings, an additional fee is required for each orphan beyond the first orphan.

(E) It does not guarantee that the orphan petition will be approved.

(ii) In the case of an outbreak affecting a public health or other emergency:

(A) The USCIS Director or his or her designee, may extend the validity period of the approval of the advance processing application, either in an individual case or for a class of cases if the Director or designee determines that the ability of a prospective adoptive parent to timely file a petition has been adversely affected.

(B) An extension of the validity of the approval of the advance processing application may be subject to such conditions as the USCIS Director, or officer designated by the USCIS Director, may establish.

* * * * *

(7) *Advanced processing application deemed abandoned for failure to file orphan petition within the approval validity period of the advanced processing application.* If an orphan petition is not properly filed within 15 months of the approval date of the advanced processing application:

(i) The application will be deemed abandoned;

(ii) Supporting documentation will be returned to the prospective adoptive parents, except for documentation submitted by a third party which will be returned to the third party, and documentation relating to the biometrics checks;

(iii) The director will dispose of documentation relating to biometrics checks in accordance with current policy; and

(iv) Such abandonment will be without prejudice to a new filing at any time with fee.

* * * * *

(13) *Orphan petition denied: petitioner files orphan petition after the approval of the advanced processing application has expired.* If the petitioner files the orphan petition after the advanced processing application has expired, the petition will be denied. This action will be without prejudice to a new filing at any time with fee.

* * * * *

■ 13. Section 204.5 is amended:

■ a. In paragraph (m)(5), in the definition of ''Petition'', by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''; and

■ b. By revising paragraph (p)(4).

The revision reads as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(p) * * *

(4) *Application for employment authorization.* (i) To request employment authorization, an eligible applicant described in paragraph (p)(1), (2), or (3) of this section must:

(A) File an application for employment authorization (Form I–765), with USCIS, in accordance with 8 CFR 274a.13(a) and the form instructions.

(B) Submit biometric information as may be provided in the applicable form instructions.

(ii) Employment authorization under this paragraph may be granted solely in 1-year increments, but not to exceed the period of the alien's authorized admission.

* * * * *

§ 204.6 [Amended]

■ 14. Section 204.6 is amended in paragraph (m)(6)(i)(C) by removing ''8 CFR 103.7(b)(1)(i)(XX)'' and adding in its place ''8 CFR 106.2''.

§ 204.310 [Amended]

■ 15. Section 204.310 is amended in paragraph (a)(3)(i) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' and by removing and reserving paragraph (a)(3)(ii).

§ 204.311 [Amended]

■ 16. Section 204.311 is amended in paragraph (u)(4) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

■ 17. Section 204.312 is amended by revising paragraph (e)(3) to read as follows:

§ 204.312 Adjudication of the Form I–800A.

* * * * *

(e) * * *

(3)(i) If the 15-month validity period for a Form I–800A approval is about to expire, the applicant:

(A) May file Form I–800A Supplement 3, with the filing fee under 8 CFR 106.2, if required.

(B) May not file a Form I–800A Supplement 3 seeking extension of an approval notice more than 90 days before the expiration of the validity period for the Form I–800A approval, but must do so on or before the date on which the validity period expires.

(C) Is not required to pay the Form I–800A Supplement 3 filing fee for the first request to extend the approval of a Form I–800A, or to obtain a first time change of Hague Convention country during the Form I–800A approval period.

(D) Must pay the Form I–800A Supplement 3 filing fee, as specified in 8 CFR 106.2, for the second, or any subsequent, Form I–800A Supplement 3 that is filed, if the applicant files a second or subsequent Form I–800A Supplement 3 to obtain a second or subsequent extension or a second or subsequent change of Hague Convention country.

(ii) Any Form I–800A Supplement 3 that is filed to obtain an extension of the approval of a Form I–800A or a change of Hague Convention country must be accompanied by:

(A) A statement, signed by the applicant under penalty of perjury, detailing any changes to the answers given to the questions on the original Form I–800A;

(B) An updated or amended home study as required under 8 CFR 204.311(u); and

(C) A photocopy of the Form I–800A approval notice.

(iii) If USCIS continues to be satisfied that the applicant remains suitable as the adoptive parent of a Convention adoptee, USCIS will extend the approval of the Form I–800A to a date not more than 15 months after the date on which USCIS received the new biometric responses. If new responses are received on different dates, the new 15-month period begins on the earliest response date. The new notice of approval will specify the new expiration date.

(iv) There is no limit to the number of extensions that may be requested and granted under this section, so long as each request is supported by an updated or amended home study that continues to recommend approval of the applicant for intercountry adoption and USCIS continues to find that the applicant remain suitable as the adoptive parent(s) of a Convention adoptee.

* * * * *

§ 204.313 [Amended]

■ 18. Section 204.313 is amended in the last sentence of paragraph (a) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' and by adding the word ''birth'' before ''siblings''.

* * * * *

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

■ 19. The authority citation for part 211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

§ 211.1 [Amended]

■ 20. Section 211.1 is amended in the second sentence in paragraph (b)(3) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 211.2 [Amended]

■ 21. Section 211.2 is amended in the second sentence in paragraph (b) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 22. The authority citation for part 212 continues to read as follows:

Authority: 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1185 note (section 7209 of Pub. L. 108–458), 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 CFR part 2.

§ 212.2 [Amended]

■ 23. Section 212.2 is amended in paragraphs (b)(1), (c)(1)(ii), (d), and (g)(1) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 212.3 [Amended]

■ 24. Section 212.3 is amended in paragraph (a) by removing ''8 CFR

103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 212.4 [Amended]

■ 25. Section 212.4 is amended in the first sentence in paragraph (b) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 212.7 [Amended]

■ 26. Section 212.7 is amended:
■ a. In paragraph (a)(1), by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in paragraph (a)(1); and
■ b. In paragraphs (e)(1) and (e)(5)(i), by removing ''8 CFR 103.7(b)'' and adding in its place ''8 CFR 106.2''.

§ 212.15 [Amended]

■ 27. Section 212.15 is amended in paragraph (j)(2)(ii) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 212.18 [Amended]

■ 28. Section 212.18 is amended in paragraph (a)(2) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

■ 29. Section 212.19 is amended by revising paragraphs (b)(1), (c)(1), (e), (h)(1), and (j) to read as follows:

§ 212.19 Parole for entrepreneurs.

* * * * *

(b) * * *

(1) *Filing of initial parole request form.* An alien seeking an initial grant of parole as an entrepreneur of a start-up entity must file Form I–941, Application for Entrepreneur Parole, with USCIS, with the required fee, and supporting documentary evidence in accordance with this section and the form instructions, demonstrating eligibility as provided in paragraph (b)(2) of this section.

* * * * *

(c) * * *

(1) *Filing of re-parole request form.* Before expiration of the initial period of parole, an entrepreneur parolee may request an additional period of parole based on the same start-up entity that formed the basis for his or her initial period of parole granted under this section. To request such parole, an entrepreneur parolee must timely file Form I–941, Application for Entrepreneur Parole, with USCIS, with the required fee and supporting documentation in accordance with the form instructions, demonstrating eligibility as provided in paragraph (c)(2) of this section.

* * * * *

(e) *Collection of biometric information.* An alien seeking an initial grant of parole or re-parole before October 2, 2020 will be required to submit biometric information. An alien seeking an initial grant of parole or re-parole may be required to submit biometric information.

* * * * *

(h) * * *

(1) The entrepreneur's spouse and children who are seeking parole as derivatives of such entrepreneur must individually file Form I–131, Application for Travel Document. Such application must also include evidence that the derivative has a qualifying relationship to the entrepreneur and otherwise merits a grant of parole in the exercise of discretion. Such spouse or child will be required to appear for collection of biometrics in accordance with the form instructions or upon request.

* * * * *

(j) *Reporting of material changes.* An alien granted parole under this section must immediately report any material change(s) to USCIS. If the entrepreneur will continue to be employed by the start-up entity and maintain a qualifying ownership interest in the start-up entity, the entrepreneur must submit a form prescribed by USCIS, with any applicable fee in accordance with the form instructions to notify USCIS of the material change(s). The entrepreneur parolee must immediately notify USCIS in writing if he or she will no longer be employed by the start-up entity or ceases to possess a qualifying ownership stake in the start-up entity.

* * * * *

PART 214—NONIMMIGRANT CLASSES

■ 30. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1356, and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Public Law 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

■ 31. Section 214.1 is amended:
■ a. In paragraph (c)(1), by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'';
■ b. In paragraph (c)(2), by removing ''§ 103.7 of this chapter'' and adding in its place ''8 CFR 106.2'';
■ c. By revising paragraph (c)(5); and
■ d. In paragraph (j) introductory text, by removing:
■ i. ''a Form I–129'' and adding in its place ''an application or petition'' in the first sentence; and
■ ii. ''Form I–129'' and adding in its place ''application or petition'' in the second and third sentences.

The revision reads as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(c) * * *

(5) *Decision on application for extension or change of status.* Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of USCIS. The denial of an application for extension of stay may not be appealed.

* * * * *

■ 32. Section 214.2 is amended:
■ a. By revising paragraph (e)(8)(iii), the first sentence of paragraph (e)(8)(iv) introductory text, and paragraphs (e)(8)(iv)(B) and (e)(8)(v);
■ b. In paragraph (e)(20) introductory text and in two places in paragraph (e)(21)(i), by removing ''Form I–129 and E Supplement'' and adding in its place ''the form prescribed by USCIS'';
■ c. By revising paragraph (e)(23)(viii);
■ d. By removing and reserving paragraph (e)(23)(xv);
■ e. In paragraph (f)(9)(ii)(F)(*1*), by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'';
■ f. By revising paragraph (h)(2)(i)(A);
■ g. In paragraph (h)(2)(i)(B), by removing ''Form I–129'' and adding in its place ''application or petition'' wherever it appears;
■ h. In paragraph (h)(2)(i)(D), by removing ''Form I–129'' and adding in its place ''the form prescribed by USCIS'';
■ i. By revising paragraph (h)(2)(ii);
■ j. In paragraph (h)(5)(i)(A), by removing ''Form I–129'' and adding in its place ''the form prescribed by USCIS'';
■ k. By revising paragraph (h)(5)(i)(B);
■ l. In paragraph (h)(6)(iii)(E), by removing ''I–129'' and adding in its place ''the form prescribed by USCIS'';
■ m. In paragraph (h)(6)(vii), by removing ''Form I–129'' and adding in its place ''application or petition'' wherever it appears;
■ n. In paragraphs (h)(11)(i)(A), (h)(14), and (h)(15)(i), by removing ''Form I–129'' and adding in its place ''the form prescribed by USCIS'';
■ o. By revising paragraph (h)(19)(i);
■ p. In paragraph (h)(19)(vi)(A), by removing ''Petition for Nonimmigrant Worker (Form I–129)'' and adding in its place ''the form prescribed by USCIS'';
■ q. In paragraph (l)(2)(i), by removing ''Form I–129, Petition for Nonimmigrant

Worker'' and adding in its place ''the form prescribed by USCIS'' in its place;
■ r. In paragraphs (l)(2)(ii), (l)(3) introductory text, and (l)(4)(iv) introductory text by removing ''Form I–129'' and adding in its place ''the form prescribed by USCIS'';
■ s. In paragraph (l)(5)(ii)(F), by removing ''Form I–129, Petition for Nonimmigrant Worker'' and adding in its place ''the form prescribed by USCIS'' in its place;
■ t. In paragraph (l)(14)(ii) introductory text, by removing ''Form I–129'' and adding in its place ''application or petition'' wherever it appears;
■ u. In paragraph (l)(17)(i), by removing ''Form I–129'' and adding in its place ''the form prescribed by USCIS'' wherever it occurs;
■ v. By revising paragraph (m)(14)(ii) introductory text;
■ w. In paragraph (o)(2)(i), by removing ''Form I–129, Petition for Nonimmigrant Worker'' and adding in its place ''the form prescribed by USCIS'' in its place;
■ x. In paragraph (o)(2)(iv)(D), by removing ''Form I–129'' and adding in its place ''the form prescribed by USCIS'';
■ y. By revising paragraph (o)(2)(iv)(F);
■ z. In paragraph (o)(2)(iv)(G), by removing ''Form I–129'' and adding in its place ''application or petition'' wherever it appears;
■ aa. In paragraph (o)(11), by removing ''Form I–129, Petition for Nonimmigrant Worker'' and adding in its place ''the form prescribed by USCIS'' in its place;
■ bb. In paragraph (o)(12(i), by removing ''Form I–129'' and adding in its place ''an application or petition'' in the first sentence;
■ cc. In paragraph (p)(2)(i), by removing ''Form I–129, Petition for Nonimmigrant Worker'' and adding in its place ''the form prescribed by USCIS'' in its place;
■ dd. In paragraph (p)(2)(iv)(C)(*2*), by removing ''Form I–129'' and adding in its place ''application or petition'' wherever it appears;
■ ee. By revising paragraph (p)(2)(iv)(F);
■ ff. In paragraph (p)(2)(iv)(H), by removing ''Form I–129 petition'' and adding in its place ''application or petition'';
■ gg. In paragraphs (p)(13) and (p)(14)(i), by removing ''Form I–129'' and adding in its place ''the form prescribed by USCIS'';
■ hh. In paragraph (q)(3)(i), by removing ''Form I–129, Petition for Nonimmigrant Worker'' and adding in its place ''the form prescribed by USCIS'';
■ ii. In the second sentence of paragraph (q)(3)(i) wherever it appears and in paragraph (q)(4)(i), by removing ''Form I–129'' and adding in its place ''application or petition'';
■ jj. In paragraph (q)(4)(iii), by removing ''Form I–129'' and adding in its place ''the form prescribed by USCIS'';
■ kk. In the first sentence of paragraph (q)(5)(i), by removing ''Form I–129, Petition for Nonimmigrant Worker'' and adding in its place ''the form prescribed by USCIS'';
■ ll. In the second sentence of paragraph (q)(5)(i), by removing ''Form I–129'' and adding in its place ''the form prescribed by USCIS'';
■ mm. In paragraph (q)(6), by removing ''Form I–129'' and adding in its place ''application or petition'';
■ nn. By revising paragraph (r)(3) introductory text and the definition of ''Petition'' in paragraph (r)(3);
■ oo. By revising paragraph (r)(5);
■ pp. In paragraph (r)(13), by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''; and
■ qq. By revising paragraphs (w)(5), (w)(15)(iii), and (w)(16).

The revisions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(e) * * *

(8) * * *

(iii) *Substantive changes.* Approval of USCIS must be obtained where there will be a substantive change in the terms or conditions of E status. The treaty alien must file a new application in accordance with the instructions on the form prescribed by USCIS requesting extension of stay in the United States, plus evidence of continued eligibility for E classification in the new capacity. Or the alien may obtain a visa reflecting the new terms and conditions and subsequently apply for admission at a port-of-entry. USCIS will deem there to have been a substantive change necessitating the filing of a new application where there has been a fundamental change in the employing entity's basic characteristics, such as a merger, acquisition, or sale of the division where the alien is employed.

(iv) * * * Neither prior approval nor a new application is required if there is no substantive, or fundamental, change in the terms or conditions of the alien's employment which would affect the alien's eligibility for E classification.

* * *

* * * * *

(B) Request a new approval notice reflecting the non-substantive change by filing an application with a description of the change, or;

* * * * *

(v) *Advice.* To request advice from USCIS as to whether a change is substantive, an alien may file an application with a complete description of the change. In cases involving multiple employees, an alien may request that USCIS determine if a merger or other corporate restructuring requires the filing of separate applications by filing a single application and attaching a list of the related receipt numbers for the employees involved and an explanation of the change or changes.

* * * * *

(23) * * *

(viii) *Information for background checks.* USCIS may require an applicant for E–2 CNMI Investor status, including but not limited to any applicant for derivative status as a spouse or child, to submit biometrics as required under 8 CFR 103.16.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(A) *General.* A United States employer seeking to classify an alien as an H–1B, H–2A, H–2B, or H–3 temporary employee must file a petition on the form prescribed by USCIS in accordance with the form instructions.

* * * * *

(ii) *Multiple beneficiaries.* Up to 25 named beneficiaries may be included in an H–1C, H–2A, H–2B, or H–3 petition if the beneficiaries will be performing the same service, or receiving the same training, for the same period, and in the same location. If more than 25 named beneficiaries are being petitioned for, an additional petition is required. Petitions for H–2A and H–2B workers from countries not designated in accordance with paragraph (h)(6)(i)(E) of this section must be filed separately.

* * * * *

(5) * * *

(i) * * *

(B) *Multiple beneficiaries.* The total number of beneficiaries of a petition or series of petitions based on the same temporary labor certification may not exceed the number of workers indicated on that document. A single petition can include more than one named beneficiary if the total number is 25 or less and does not exceed the number of positions indicated on the relating temporary labor certification.

* * * * *

(19) * * *

(i) A United States employer (other than an exempt employer defined in paragraph (h)(19)(iii) of this section, or an employer filing a petition described in paragraph (h)(19)(v) of this section) who files a petition or application must include the additional American

Competitiveness and Workforce Improvement Act (ACWIA) fee referenced in 8 CFR 106.2, if the petition is filed for any of the following purposes:

* * * * *

(m) * * *

(14) * * *

(ii) *Application.* A M–1 student must apply for permission to accept employment for practical training on Form I–765, with fee as contained in 8 CFR part 106, accompanied by a properly endorsed Form I–20 by the designated school official for practical training. The application must be submitted before the program end date listed on the student's Form I–20 but not more than 90 days before the program end date. The designated school official must certify on Form I–538 that—

* * * * *

(o) * * *

(2) * * *

(iv) * * *

(F) *Multiple beneficiaries.* More than one O–2 accompanying alien may be included on a petition if they are assisting the same O–1 alien for the same events or performances, during the same period, and in the same location. Up to 25 named beneficiaries may be included per petition.

* * * * *

(p) * * *

(2) * * *

(iv) * * *

(F) *Multiple beneficiaries.* More than one beneficiary may be included in a P petition if they are members of a team or group, or if they will provide essential support to P–1, P–2, or P–3 beneficiaries performing in the same location and in the same occupation. Up to 25 named beneficiaries may be included per petition.

* * * * *

(r) * * *

(3) *Definitions.* As used in this section, the term:

* * * * *

Petition means the form or as may be prescribed by USCIS, a supplement containing attestations required by this section, and the supporting evidence required by this part.

* * * * *

(5) *Extension of stay or readmission.* An R–1 alien who is maintaining status or is seeking readmission and who satisfies the eligibility requirements of this section may be granted an extension of R–1 stay or readmission in R–1 status for the validity period of the petition, up to 30 months, provided the total period of time spent in R–1 status does not exceed a maximum of five years. A Petition for a Nonimmigrant Worker to request an extension of R–1 status must be filed by the employer with a supplement prescribed by USCIS containing attestations required by this section, the fee specified in 8 CFR part 106, and the supporting evidence, in accordance with the applicable form instructions.

* * * * *

(w) * * *

(5) *Petition requirements.* An employer who seeks to classify an alien as a CW–1 worker must file a petition with USCIS and pay the requisite petition fee plus the CNMI education funding fee and the fraud prevention and detection fee as prescribed in the form instructions and 8 CFR part 106. If the beneficiary will perform services for more than one employer, each employer must file a separate petition with fees with USCIS.

* * * * *

(15) * * *

(iii) If the eligible spouse and/or minor child(ren) are present in the CNMI, the spouse or child(ren) may apply for CW–2 dependent status on Form I–539 (or such alternative form as USCIS may designate) in accordance with the form instructions. The CW–2 status may not be approved until approval of the CW–1 petition.

(16) *Biometrics and other information.* The beneficiary of a CW–1 petition or the spouse or child applying for a grant or, extension of CW–2 status, or a change of status to CW–2 status, must submit biometric information as requested by USCIS.

* * * * *

§ 214.3 [Amended]

■ 33. Section 214.3 is amended:

■ a. In paragraph (h)(1)(i), by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''; and

■ b. In paragraph (h)(2) introductory text, by removing ''8 CFR 103.7(b)(1)(ii)(B)'' and adding in its place ''8 CFR 103.7(d)(2)''.

§ 214.6 [Amended]

■ 34. Section 214.6 is amended in paragraphs (g)(1), (h)(1)(i), (h)(2), and (i)(2) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 214.11 [Amended]

■ 35. Section 214.11 is amended in paragraphs (d)(2)(iii) and (k)(1) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

■ 36. Section 214.14 is amended by revising paragraph (c)(1) introductory text to read as follows:

§ 214.14 Alien victims of certain qualifying criminal activity.

* * * * *

(c) * * *

(1) *Filing a petition.* USCIS has sole jurisdiction over all petitions for U nonimmigrant status. An alien seeking U–1 nonimmigrant status must submit, Form I–918, Petition for U Nonimmigrant Status, and initial evidence to USCIS in accordance with this paragraph and the instructions to Form I–918. A petitioner who received interim relief is not required to submit initial evidence with Form I–918 if he or she wishes to rely on the law enforcement certification and other evidence that was submitted with the request for interim relief.

* * * * *

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

■ 37. The authority citation for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

§ 216.4 [Amended]

■ 38. Section 216.4 is amended in paragraph (a)(1) by removing ''§ 103.7(b) of this chapter'' and adding in its place ''8 CFR 106.2''.

§ 216.5 [Amended]

■ 39. Section 216.5 is amended in paragraph (b) by removing ''§ 103.7(b) of this Chapter'' and adding in its place ''8 CFR 106.2''.

§ 216.6 [Amended]

■ 40. Section 216.6 is amended in paragraph (a)(1)(i) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

PART 217—VISA WAIVER PROGRAM

■ 41. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

§ 217.2 [Amended]

■ 42. Section 217.2 is amended in paragraph (c)(2) by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 103.7(d)(4)''.

PART 223—REENTRY PERMITS, REFUGEE TRAVEL DOCUMENTS, AND ADVANCE PAROLE DOCUMENTS

■ 43. The authority citation for part 223 continues to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1186a, 1203, 1225, 1226, 1227, 1251; Protocol

Relating to the Status of Refugees, November 1, 1968, 19 U.S.T. 6223 (TIAS) 6577; 8 CFR part 2.

§ 223.2 [Amended]

■ 44. Section 223.2 is amended in paragraph (a) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 45. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2004 Comp., p.278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; Title VII of Public Law 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); Pub. L. 112–54.

§ 235.1 [Amended]

■ 46. Section 235.1 is amended in paragraphs (g)(1)(iii) and (g)(2) by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 103.7(d)(3)''.

§ 235.7 [Amended]

■ 47. Section 235.7 is amended in paragraph (a)(4)(v) by removing ''§ 103.7(b)(1) of this chapter'' and ''§ 103.7(b)(1)'' and adding in their place ''8 CFR 103.7(d)(7)''.

§ 235.12 [Amended]

■ 48. Section 235.12 is amended in paragraph (d)(2) by removing ''8 CFR 103.7(b)(1)(ii)(M)'' and adding in its place ''8 CFR 103.7(d)(13)''.

§ 235.13 [Amended]

■ 49. Section 235.13 is amended in paragraph (c)(5) by removing ''8 CFR 103.7(b)(1)(ii)(N)'' and adding in its place ''8 CFR 103.7(d)(14)''.

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

■ 50. The authority citation for part 236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

§ 236.14 [Amended]

■ 51. Section 236.14 is amended in paragraph (a) by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2''.

§ 236.15 [Amended]

■ 52. Section 236.15 is amended in paragraph (e) by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2''.

PART 240—VOLUNTARY DEPARTURE, SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL

■ 53. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

■ 54. Section 240.63 is amended by revising paragraph (a) to read as follows:

§ 240.63 Application process.

(a) *Form and fees.* Except as provided in paragraph (b) of this section, the application must be made on the form prescribed by USCIS for this program and filed in accordance with the instructions for that form. An applicant who submitted to EOIR a completed Form EOIR–40, Application for Suspension of Deportation, before the effective date of the form prescribed by USCIS may apply with the Service by submitting the completed Form EOIR–40 attached to a completed first page of the application. Each application must be filed with the required fees as provided in 8 CFR 106.2.

* * * * *

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

■ 55. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§ 244.6 [Amended]

■ 56. Section 244.6 is revised to read as follows:

§ 244.6 Application.

(a) An application for Temporary Protected Status must be submitted in accordance with the form instructions, the applicable country-specific **Federal Register** notice that announces the procedures for TPS registration or re-registration and, except as otherwise provided in this section, with the appropriate fees as described in 8 CFR part 106.

(b) An applicant for TPS may also request an employment authorization document pursuant to 8 CFR 274a by filing an Application for Employment Authorization in accordance with the form instructions and in accordance with 8 CFR 106.2 and 106.3.

■ 57. Section 244.17 is amended by revising paragraph (a) to read as follows:

§ 244.17 Periodic registration.

(a) Aliens granted Temporary Protected Status must re-register periodically in accordance with USCIS instructions. Such registration applies to nationals of those foreign states designated for more than one year by DHS or where a designation has been extended for a year or more. Applicants for re-registration must apply during the period provided by USCIS. Re-registration applicants do not need to pay the fee that was required for initial registration except the biometric services fee, unless that fee is waived in the applicable form instructions, and if requesting an employment authorization document, the application fee for an Application for Employment Authorization. By completing the application, applicants attest to their continuing eligibility. Such applicants do not need to submit additional supporting documents unless USCIS requests that they do so.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 58. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

§ 245.7 [Amended]

■ 59. Section 245.7 is amended in paragraph (a) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 245.10 [Amended]

■ 60. Section 245.10 is amended in paragraph (c) introductory text by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2''.

§ 245.15 [Amended]

■ 61. Section 245.15 is amended:

■ a. In paragraph (c)(2)(iv)(A), by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2'';

■ b. By removing and reserving paragraph (c)(2)(iv)(B);

■ c. In paragraph (g)(1), by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'';

■ d. In paragraph (h)(1), by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2'';

■ e. By removing and reserving paragraph (h)(2); and

■ f. In paragraphs (n)(1), (t)(1), and (t)(2)(i), by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 245.18 [Amended]

■ 62. Section 245.18 is amended in paragraphs (d)(1) and (k) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 245.21 [Amended]

■ 63. Section 245.21 is amended:

■ a. In paragraph (b), by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in the first sentence and removing the second sentence; and

■ b. In paragraphs (f), (h), and (i), by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 245.23 [Amended]

■ 64. Section 245.23 is amended in paragraph (e)(1)(ii) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' and by removing and reserving paragraph (e)(1)(iii).

§ 245.24 [Amended]

■ 65. Section 245.24 is amended:

■ a. In paragraph (d)(2), by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' and by removing and reserving paragraph (d)(3); and

■ b. In paragraphs (h)(1)(ii) and (i)(1)(iii), by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' and by removing paragraph (i)(1)(iv).

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

■ 66. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

■ 67. Section 245a.2 is amended by revising paragraph (e)(3) to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(e) * * *

(3) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

* * * * *

■ 68. Section 245a.3 is amended by revising paragraph (d)(3) to read as follows:

§ 245a.3 Application for adjustment from temporary to permanent resident status.

* * * * *

(d) * * *

(3) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

* * * * *

■ 69. Section 245a.4 is amended by revising paragraph (b)(5)(iii) to read as follows:

§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

* * * * *

(b) * * *

(5) * * *

(iii) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

* * * * *

■ 70. Section 245a.12 is amended:

■ a. In paragraphs (b) introductory text and (c), by removing ''Missouri Service Center'' and adding in its place ''National Benefit Center'';

■ b. By revising paragraph (d) introductory text;

■ c. In paragraph (d)(1), by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''; and

■ d. By removing and reserving paragraphs (d)(2), (4), and (6).

The revision reads as follows:

§ 245a.12 Filing and applications.

* * * * *

(d) *Application and supporting documentation.* Each applicant for LIFE Legalization adjustment of status must submit the form prescribed by USCIS completed in accordance with the form instructions accompanied by the required evidence.

* * * * *

§ 245a.13 [Amended]

■ 71. Section 245a.13 is amended:

■ a. In paragraphs (d)(1) and (e)(1), by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2''; and

■ b. In paragraph (e) introductory text and (e)(1), by removing ''Missouri Service Center'' and adding in its place ''National Benefit Center''; and

§ 245a.18 [Amended]

■ 72. Section 245a.18 is amended in paragraph (c)(1) by removing ''Missouri Service Center'' and adding in its place ''National Benefit Center'' in paragraph (c)(1).

§ 245a.19 [Amended]

■ 73. Section 245a.19 is amended in paragraph (a) by removing ''Missouri Service Center'' and adding in its place ''National Benefit Center''.

§ 245a.20 [Amended]

■ 74. Section 245a.20 is amended in paragraph (a)(2) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 245a.33 [Amended]

■ 75. Section 245a.33 is amended in paragraph (a) by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2'' and in paragraphs (a) and (b) by removing ''Missouri Service Center'' and adding in its place ''National Benefit Center''.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

■ 76. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

§ 248.3 [Amended]

■ 77. Section 248.3 is amended in the introductory text by removing ''8 CFR 103.7(b)'' and adding in its place ''8 CFR 106.2'' in its place and in paragraph (h) introductory text by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

■ 78. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1303–1305; 8 CFR part 2.

§ 264.2 [Amended]

■ 79. Section 264.2 is amended in paragraphs (c)(1)(i) and (c)(2)(i) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 264.5 [Amended]

■ 80. Section 264.5 is amended in paragraph (a) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 264.6 [Amended]

■ 81. Section 264.6 is amended in paragraph (b) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 82. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 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.

■ 83. Section 274a.12 is amended by revising paragraphs (b)(9), (13), and (14) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(9) A temporary worker or trainee (H–1, H–2A, H–2B, or H–3), pursuant to 8 CFR 214.2(h), or a nonimmigrant specialty occupation worker pursuant to sections 101(a)(15)(H)(i)(b)(1), 101(a)(15)(H)(ii)(a), 101(a)(15)(H)(ii)(b) and INA 101(a)(15)(H)(iii) of the Act. An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional H–2B athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization must file a new petition for H–2B classification. If a new petition is not filed within 30 days, employment authorization will cease. If a new petition is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease. In the case of a nonimmigrant with H–1B status, employment authorization will automatically continue upon the filing of a qualifying petition under 8 CFR 214.2(h)(2)(i)(H) until such petition is adjudicated, in accordance with section 214(n) of the Act and 8 CFR 214.2(h)(2)(i)(H);

* * * * *

(13) An alien having extraordinary ability in the sciences, arts, education, business, or athletics (O–1), and an accompanying alien (O–2), pursuant to 8 CFR 214.2(o). An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional O–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the acquisition by the new organization, within which time the new organization is expected to file a new petition for O nonimmigrant classification. If a new petition is not filed within 30 days, employment authorization will cease. If a new petition is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(14) An athlete, artist, or entertainer (P–1, P–2, or P–3), pursuant to 8 CFR 214.2(p). An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional P–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the acquisition by the new organization, within which time the new organization is expected to file a new petition for P–1 nonimmigrant classification. If a new petition is not filed within 30 days, employment authorization will cease. If a new petition is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease;

* * * * *

PART 286—IMMIGRATION USER FEE

■ 84. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1356; Title VII of Public Law 110–229; 8 CFR part 2.

§ 286.9 [Amended]

■ 85. Section 286.9 is amended in paragraph (a) by removing ''§ 103.7(b)(1)'' and adding in its place ''8 CFR 103.7(d)''.

PART 301—NATIONALS AND CITIZENS OF THE UNITED STATES AT BIRTH

■ 86. The authority citation for part 301 continues to read as follows:

Authority: 8 U.S.C. 1103, 1401; 8 CFR part 2.

§ 301.1 [Amended]

■ 87. Section 301.1 is amended in paragraph (a)(1) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

PART 319—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SPOUSES OF UNITED STATES CITIZENS

■ 88. The authority citation for part 319 continues to read as follows:

Authority: 8 U.S.C. 1103, 1430, 1443.

§ 319.11 [Amended]

■ 89. Section 319.11 is amended in paragraph (a) introductory text by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

PART 320—CHILD BORN OUTSIDE THE UNITED STATES AND RESIDING PERMANENTLY IN THE UNITED STATES; REQUIREMENTS FOR AUTOMATIC ACQUISITION OF CITIZENSHIP

■ 90. The authority citation for part 320 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 320.5 [Amended]

■ 91. Section 320.5 is amended in paragraphs (b) and (c) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

PART 322—CHILD BORN OUTSIDE THE UNITED STATES; REQUIREMENTS FOR APPLICATION FOR CERTIFICATE OF CITIZENSHIP

■ 92. The authority citation for part 322 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 322.3 [Amended]

■ 93. Section 322.3 is amended in paragraph (a) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' and in paragraph (b)(1) introductory text by removing ''§ 103.7(b)(1) of this chapter'' and adding in its place ''8 CFR 106.2''.

§ 322.5 [Amended]

■ 94. Section 322.5 is amended in paragraphs (b) and (c) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

PART 324—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP BY MARRIAGE AND FORMER CITIZENS WHOSE NATURALIZATION IS AUTHORIZED BY PRIVATE LAW

■ 95. The authority citation for part 324 continues to read as follows:

Authority: 8 U.S.C. 1103, 1435, 1443, 1448, 1101 note.

§ 324.2 [Amended]

■ 96. Section 324.2 is amended in paragraph (b) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

PART 334—APPLICATION FOR NATURALIZATION

■ 97. The authority citation for part 334 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 334.2 [Amended]

■ 98. Section 334.2 is amended in paragraph (a) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

PART 341—CERTIFICATES OF CITIZENSHIP

■ 99. The authority citation for part 341 continues to read as follows:

Authority: Pub. L. 82–414, 66 Stat. 173, 238, 254, 264, as amended; 8 U.S.C. 1103, 1409(c), 1443, 1444, 1448, 1452, 1455; 8 CFR part 2.

§ 341.1 [Amended]

■ 100. Section 341.1 is amended by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

§ 341.5 [Amended]

■ 101. Section 341.5 is amended in paragraph (e) by removing ''8 CFR 103.7'' and adding in its place ''8 CFR 106.2''.

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

■ 102. The authority citation for part 343a continues to read as follows:

Authority: 8 U.S.C. 1101 note, 1103, 1435, 1443, 1454, and 1455.

§ 343a.1 [Amended]

■ 103. Section 343a.1 is amended in paragraph (a) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR part 106''.

PART 343b—SPECIAL CERTIFICATE OF NATURALIZATION FOR RECOGNITION BY A FOREIGN STATE

■ 104. The authority citation for part 343b continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1454, 1455.

§ 343b.1 [Amended]

■ 105. Section 343b.1 is amended by removing the term ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2'' in the first sentence.

PART 392—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO DIE WHILE SERVING ON ACTIVE DUTY WITH THE UNITED STATES ARMED FORCES DURING CERTAIN PERIODS OF HOSTILITIES

■ 106. The authority citation for part 392 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440 and note, and 1440–1; 8 CFR part 2.

§ 392.4 [Amended]

■ 107. Section 392.4 is amended in paragraph (e) by removing ''8 CFR 103.7(b)(1)'' and adding in its place ''8 CFR 106.2''.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel for DHS.

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Part III

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Patent and Trademark Office

37 CFR Parts 1, 11, 41, *et al.*

Setting and Adjusting Patent Fees During Fiscal Year 2020; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 11, 41, and 42

[Docket No. PTO–P–2018–0031]

RIN 0651–AD31

Setting and Adjusting Patent Fees During Fiscal Year 2020

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) sets or adjusts patent fees as authorized by the Leahy-Smith America Invents Act (Act or AIA), as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). The USPTO is a business-like operation where the demand for patent products and services and the cost of operations are affected by external factors, such as the economy, legislation, court decisions, and increases in the costs of supplies and contract services, as well as internal factors, such as changes in patent examination processes and procedures. The fee adjustments are needed to provide the Office with a sufficient amount of aggregate revenue to recover the aggregate cost of patent operations in future years (based on assumptions and estimates found in the FY 2021 Congressional Justification (FY 2021 Budget)) and to allow the Office to continue progress toward achieving its strategic goals.

DATES: This rule is effective on October 2, 2020, except for the amendment to § 1.16(u) in amendatory instruction 2i, which is effective on January 1, 2022. The changes to § 1.18(b)(1) shall apply to those international design applications under the Hague Agreement having a date of international registration on or after October 2, 2020.

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of This Action

The Office issues this Final Rule under section 10 of the AIA (section 10), Public Law 112–29, 125 Stat. 284, as amended by Public Law 115–273, 132 Stat. 4158 (the SUCCESS Act), which authorizes the director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under title 35 of the United States Code (U.S.C.) for any services performed, or materials furnished, by the Office. Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents, including administrative costs of the Office with respect to such patent fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services. Section 10 also establishes certain procedural requirements for setting or adjusting fee regulations, such as public hearings and input from the Patent Public Advisory Committee (PPAC) and congressional oversight. The revenue and workload assumptions in this Final Rule are based on the assumptions and estimates found in the FY 2021 Budget. However, projections of aggregate revenues and costs are based on point-in-time estimates, and are subject to change. Notably, since the FY 2021 Budget was published, fee collections have been lower than anticipated, due, in part, to fewer application filings resulting from the COVID–19 outbreak.

Although economic circumstances have changed substantially since the FY 2021 Budget was developed, the USPTO determined it remains the most appropriate starting point for developing this Final Rule. First, the USPTO's projections of aggregate revenues and costs are necessarily estimates that can change substantially from one point in time to the next due to numerous factors outside the USPTO's control, including cyclical economic changes or exogenous shocks, such as COVID–19, changes in the laws governing USPTO revenues or expenditures, and other events. Nevertheless, the USPTO has historically used its most recent budget assumptions when setting fees, because they are the most recent complete evaluation of the USPTO's budget expectations and requirements, and provide assumptions for stakeholders to use when formulating their comments. Those projections were developed in late calendar year 2019, prior to the COVID–19 outbreak, and assumed continuing stable economic growth, not the sharp economic downturn and rebound of 2020.

The FY 2021 Budget was developed based on the assumptions that real GDP would grow around 2.2 percent in FY 2020 and 1.9 percent in FY 2021. The USPTO appreciates that revenue estimates based on those assumptions may be higher than what will ultimately be collected.

The USPTO has considered the state of the U.S. economy, the operational needs of the agency, and the comments and advice received from the public during the 60-day comment period. The USPTO has made adjustments to the timing of the Final Rule based on all of these considerations, specifically delay publishing the Final Rule from April with a July effective date to August with an October effective date. This approach is consistent with the USPTO's many other efforts to provide various types of relief to stakeholders, including deadline extensions and fee postponements. Ultimately, the goal of the USPTO is to ensure not only that businesses and entrepreneurs can weather the economic downturn, but that they can hit the ground running as it passes.

B. Summary of Provisions Impacted by This Action

Consistent with federal fee setting standards, the Office conducted a biennial review of fees, costs, and revenues that began in 2017 and concluded that fee adjustments are necessary to provide the resources needed to improve patent operations, including implementing the USPTO 2018–2022 Strategic Plan (Strategic Plan). As a result, the 296 fees set or adjusted in this rule align directly with the Office's strategic goals and four key fee setting policy factors, discussed in detail in Part III: Rulemaking Goals and Strategies.

The assumptions and estimates found in the FY 2021 Budget show that the fee schedule in this rule will recover the aggregate estimated costs of patent operations, including achieving the Office's strategic goals as detailed in the Strategic Plan, available at: *www.uspto.gov/strategicplan.* The Strategic Plan defines the USPTO's mission, vision, and long-term goals and presents the actions the Office will take to realize those goals. This fee setting rule supports the patent-related strategic goal to optimize patent quality and timeliness, which includes optimizing patent application pendency and examination time frames, issuing highly reliable patents, fostering innovation through business effectiveness, and enhancing the operations of the Patent Trial and Appeal Board (PTAB or Board). To the extent that the aggregate revenue generated by this rule will be used to pay for all patent-related costs

of the USPTO, this rule also supports the USPTO's goal to provide domestic and global leadership to improve intellectual property (IP) policy protection and enforcement, as well as the mission support goal to deliver organizational excellence, which includes optimizing the speed, quality, and cost-effectiveness of IT delivery to achieve business value and ensuring financial sustainability to facilitate effective USPTO operations. Before issuing this Final Rule, the Office considered and analyzed all comments, advice, and recommendations received from the public during the 60-day comment period. The Office's response to comments received is available in Part VI: Discussion of Comments.

During a formal process closely tied to the annual budget process, the USPTO reviewed and analyzed the overall balance between the Office's estimated revenue and costs over the next five years (based on the assumptions and estimates found in the FY 2021 Budget) and also reviewed individual fee changes and new fee proposals to assess their alignment with the Office's strategic goals and fee structure philosophy, both of which aim to provide sufficient financial resources to facilitate the effective administration of patent operations. Specifically, the Office assessed how well each proposal aligned with four key fee setting policy factors: Promote innovation strategies, align fees with the full cost of products and services, set fees to facilitate the effective administration of the patent system, and offer processing options for applicants.

This Final Rule sets or adjusts 296 patent fees for large, small, and micro entities (any reference herein to ''large entity'' includes all entities other than those that have established entitlement to either a small or micro entity fee discount). The fee rates for small and micro entities are tiered, with small entities receiving a 50 percent discount on certain patent fees and micro entities receiving a 75 percent discount. Small entity fee eligibility is based on the size or certain non-profit status of the applicant's business and that of any other party holding rights to the invention. Micro entity fee eligibility is described in section 10(g) of the AIA. The Office is also introducing five new fees and discontinuing four fees.

Overall, the routine fees to obtain a patent (*i.e.,* filing, search, examination, and issue fees) will increase under this Final Rule, relative to the current fee schedule, in order to ensure financial sustainability and accommodate increases needed to improve the predictability and reliability of patent IP protection. Applicants who meet the definition for small or micro entity discounts will continue to pay a reduced fee for the fees eligible for a discount under section 10(b) of the AIA. Additional information describing the fee adjustments is included in Part V: Individual Fee Rationale in this rulemaking and in the ''Table of Patent Fees: Current, Final Patent Fee Schedule, and Unit Cost'' (hereinafter ''Table of Patent Fees'') available at *https://www.uspto.gov/FeeSettingAndAdjusting.*

As background, section 10 of the AIA changed the Office's fee setting model and authorized the USPTO to set or adjust patent fees within the regulatory process. Section 10 better equips the Office to respond to changing circumstances. In Fiscal Year (FY) 2013 and FY 2018, the USPTO used the AIA's fee setting authority to achieve key fee setting policy factors—to promote innovation strategies, align fees with the full cost of products and services, set fees to facilitate the effective administration of the patent system, and offer patent processing options for applicants—and to generate sufficient resources needed to meet the Office's strategic patent priorities. With the additional fees collected as a result of the January 2013 Setting and Adjusting Patent Fees Final Rule (hereinafter ''the January 2013 Final Rule'') (78 FR 4212) and the January 2018 Setting and Adjusting Patent Fees in Fiscal Year 2017 Final Rule (hereinafter ''the January 2018 Final Rule'') (82 FR 52780), the Office made considerable progress in reducing the patent application backlog and pendency.

Since the development of the USPTO fee schedule currently in effect, there have been changes to a number of the assumptions on which the cost and revenue projections supporting that rulemaking were based. Notably, since the January 2018 Final Rule was published, the USPTO's projected patent examination costs have increased, and (b) fee collections have been lower than anticipated due to a later than planned implementation of the January 2018 Final Rule. The higher fees set or adjusted in this rulemaking are needed as the Office continues its efforts towards accomplishing its mission and responding to the demands of both the domestic and international economies for robust and timely IP products and services. The USPTO must continually reinforce the predictability, reliability, and quality of those IP rights. Doing so fosters the utmost confidence in the legal durability of the USPTO's products and inspires greater innovation and further economic growth.

The Office's strategic goal to optimize patent quality and timeliness recognizes the importance of innovation as the foundation of American economic growth and national competitiveness. Through this goal, the Office diligently works to balance timely examination with improvements in patent quality, particularly the reliability of issued patents. One of these improvements was a comprehensive analysis of examination time, known as the examiner time analysis (ETA). The last comprehensive review of examination time was completed over 40 years ago. Since then, significant changes to the examination process have occurred, including the emergence of new, more complex technologies, an increase in available prior art that must be searched, the impact of new electronic tools on the examination process, the challenges of transitioning to a new patent classification system, and changes in the legal landscape. As the USPTO plans for the future, the Office considers how changes such as these impact the amount of time it takes to examine an application.

The USPTO is also working towards improving patent quality by providing increased clarity on patentable subject matter eligibility under 35 U.S.C. 101. The Office continues to strive to create consistency and increased clarity through this guidance. The Office is also focusing efforts on improving the initial search and availability of the best prior art to examiners. This aspect takes a variety of forms, and the Office is working on many possible approaches. Overall, presenting more comprehensive search results to the examiners initially will lead to more efficient examination, a decrease in the information gap between the examination phase and any potential later challenge or litigation phases during the life of a patent, and an increase in the reliability of the patent grant overall. Effecting the changes in the examination process needed to ensure the issuance of reliable patents, while also issuing those patents in a timely manner, means recognizing a potential increase in the core operating costs for future years.

Another major component of the overall patent process is the work carried out by the PTAB. On April 24, 2018, the U.S. Supreme Court issued its decision in *SAS Institute Inc.* v. *Iancu,* 138 S. Ct. 1348 (2018). Changes related to the *SAS* decision, along with the implementation of other improvements, have increased the average cost to conduct each proceeding. These changes are discussed in detail in Part V: Individual Fee Rationale.

In addition, as a production-oriented entity, the USPTO relies on IT as a mission-critical enabler for every aspect of its operation. The quality, efficiency, and productivity of patent operations correlate to the performance of the USPTO's IT systems. To accomplish its performance-based strategies, the USPTO continuously engages in multi-year efforts to stabilize and upgrade its business systems and the IT infrastructure supporting those systems in order to keep pace with emerging business, legislative, and court needs and technology standards. Since the last patent fee setting effort, the USPTO has made significant progress on IT tools, including continued development and implementation of the Patent End-to-End (PE2E) IT capability. For example, the Office continues to work on releasing systems such as Patent Center which will modernize the transaction systems by combining EFS Web and Patent Application Information Retrieval (PAIR) in a single interface. The Office has also made progress on the continued development and deployment of the PTAB End-to-End (PTAB E2E) IT capabilities, which will expand the use of intelligent data to support appeal decisions and process *inter partes* review (IPR) proceedings, post-grant review (PGR) proceedings, covered business method review (CBM) proceedings, and derivation (DER) proceedings. Other IT efforts are underway to stabilize, modernize, or replace the USPTO's legacy systems and aging infrastructure. To this end, in FY 2019, the USPTO performed an assessment of its IT systems, infrastructure, and processes and began stabilizing and modernizing IT. One of the first improvements was to move the critical Patent Application Location Monitoring (PALM) system from an aging server to new servers that are at least 10 times more reliable, 100 times faster, and use less than half of the power consumed by the prior server.

The FY 2021 Budget does not anticipate that investments in IT modernization and stabilization costs will increase beyond levels previously foreseen. However, given the assumptions and estimates of revenue and spending found in the FY 2021 Budget, this fee increase is needed to support continuing IT investments at previously planned levels. Without an increase in the USPTO's aggregate revenue, resources available for IT investment will inevitably be curtailed.

Lastly, the USPTO has taken steps to establish and maintain operating reserves to facilitate execution of multi-year plans. Using fee setting authority and other tools, the USPTO continuously refines its multi-year planning and budgeting. The fee setting authority prescribed in the AIA, as amended by the SUCCESS Act, allows the Office to effectively engage the stakeholder community on fee adjustments; fully recover the aggregate costs of its planned operations, including the development and maintenance of sufficient operating reserves; invest in strategic agency initiatives; and respond to changing market needs and other external factors.

Research has shown that large fee-funded, business-like agencies without an operating reserve are at risk of cash flow stress. The USPTO's operating reserves enable the Office to mitigate this risk. For instance, in FY 2019, certain federal government departments and agencies, including the Department of Commerce, shut down as a result of a lapse in appropriations. The USPTO was able to remain open using funds available from the operating reserves. This allowed the USPTO to continue operations, thus preventing a significant degradation in service levels, such as patent pendency time frames. This example provides an ongoing, compelling case for the operating reserves' significant value. Both external factors and internal decisions impacting the spending and revenue projections mentioned above have affected the Office's ability to grow the operating reserve to the levels anticipated in the January 2018 Final Rule. The USPTO assesses risk annually and determines the minimum level of reserves necessary to shield core operations against known financial risks. The Office also establishes optimal operating reserve targets, which are reviewed at least biennially, based on an assessment of the likelihood and severity of an array of risks. Based on the cost and revenue assumptions found in the FY 2021 Budget, the USPTO's patent operating reserve is projected to remain above the minimum level and gradually build toward the optimal level, due to the impact of this Final Rule. Absent this fee increase, the USPTO's patent operating reserve will fall below the minimum level in FY 2021 and be exhausted by the end of FY 2022, which will leave the Office vulnerable to changes in the economy that reduce annual revenue, government-wide fiscal events, unexpected cost increases, and a number of other financial risks.

The USPTO also acutely recognizes that fees cannot simply increase for every improvement the Office deems desirable. The USPTO has a responsibility to stakeholders to pursue strategic opportunities for improvement in an efficient, cost-conscious manner. The Office's financial advisory board (FAB) focuses on financial risk management and determining what expenses are truly necessary. Each year the FAB reviews multiple scenarios to determine what level of fee collections are expected and what the hiring and spending levels should be in order to effectively carry out the Office's mission. The FAB also regularly reviews USPTO activities to identify opportunities for cost savings and resources that can be redirected to higher-priority efforts. As a result of the USPTO's careful financial management and prudent use of fee setting authority, Congress recognized the Office as a good steward of fee setting authority and extended that authority through the SUCCESS Act.

In order to continue building on the progress made over the past several years, and consistent with the USPTO's biennial fee review policy, the final patent fee schedule detailed herein continues to focus on the fundamental purpose of the USPTO, which is to foster innovation, competitiveness, and job growth by recognizing and securing IP rights through the delivery of high-quality and timely patent examination and review proceedings in order to produce reliable and predictable IP rights. This Final Rule seeks to provide the USPTO sufficient financial resources to facilitate the effective administration of the U.S. IP system. This Final Rule includes targeted fee adjustments, and an approximately 5 percent across-the-board adjustment to all patent fees that are not covered by the targeted adjustments or that are discontinued. This Final Rule is needed because critical costs to the Office continue to increase. Based on the assumptions and estimates found in the FY 2021 Budget, the fees set forth in this Final Rule will help replenish and grow the patent operating reserve and maintain the USPTO's finances, enabling the Office to deliver reliable and predictable service levels, even in times of financial fluctuations. A more robust patent operating reserve will also position the Office to identify and continue to undertake capital improvements, such as adapting to an ever-increasing technological future. The operating reserve will be managed carefully; if the projected operating reserve were to exceed the targeted optimal level by 10 percent for two consecutive years, it is USPTO policy to examine the contributing factors and determine whether it would be advisable to lower fee rates. The fees set or adjusted in this Final Rule intend to position the Office well to deliver on

known commitments and address unknown risks in the future.

C. Summary of Costs and Benefits of This Action

This Final Rule is economically significant and results in a need for a Regulatory Impact Analysis (RIA) under Executive Order 12866 (Regulatory Planning and Review) (Sept. 30, 1993). The Office prepared a RIA to analyze the costs and benefits of the Final Rule over a five-year period, FY 2020–FY 2024. The RIA includes an analysis of four alternatives and shows how well they aligned with the Office's rulemaking strategies and goals, which include strategic priorities (goals, objectives, and initiatives) from the Strategic Plan and the Office's fee setting policy factors. From this conceptual framework, the Office assessed the absolute and relative qualitative costs and benefits of each alternative. Consistent with the Office of Management and Budget (OMB) Circular A–4, ''Regulatory Analysis,'' this rule involves a transfer payment from one group to another. The Office recognizes that it is very difficult to precisely monetize and quantify social costs and benefits resulting from deadweight loss of a transfer rule such as this Final Rule. The costs and benefits that the Office identifies and analyzes in the RIA are strictly qualitative. Qualitative costs and benefits have effects that are difficult to express in either dollar or numerical values. Monetized costs and benefits, on the other hand, have effects that can be expressed in dollar values. The Office did not identify any monetized costs and benefits of this Final Rule but found that this Final Rule has significant qualitative benefits with no identified costs.

The qualitative costs and benefits that the RIA assesses are: (1) Fee schedule design—a measure of how well the fee schedule aligns with the key fee setting policy factors; and (2) securing aggregate revenue to recover aggregate cost—a measure of whether the alternative provides adequate revenue to support the core mission and strategic priorities based on assumptions and estimates found in the FY 2021 Budget and described in the Final Rule, Strategic Plan, and FY 2021 Budget. Based on the costs and benefits identified and analyzed in the RIA, the fee schedule detailed in this Final Rule offers the highest net benefits. As described throughout this document, the final patent fee schedule maintains the existing balance of below-cost entry fees (*e.g.,* filing, search, and examination) and above-cost maintenance fees as one approach to foster innovation. Further, as detailed in Part V: Individual Fee Rationale, the fee changes are targeted in support of one or more fee setting policy factors. Lastly, this Final Rule secures the aggregate revenue needed to achieve the strategic priorities encompassed in the rulemaking goals and strategies (*see* Part III: Rulemaking Goals and Strategies). The final patent fee schedule allows for optimizing patent quality and timeliness. This significantly increases the value of patents by advancing commercialization of new technologies sooner and reducing uncertainty regarding the scope of patent rights, which fosters innovation and has a positive effect on economic growth. The RIA explains the results in more detail at *https://www.uspto.gov/FeeSettingAndAdjusting.*

II. Legal Framework

A. Leahy-Smith America Invents Act—Section 10

The Leahy-Smith America Invents Act was enacted into law on September 16, 2011. *See* Public Law 112–29, 125 Stat. 284. Section 10(a) of the Act authorizes the director of the Office to set or adjust by rule any patent fee established, authorized, or charged under title 35, U.S.C., for any services performed by, or materials furnished by, the Office. Fees under title 35 of the U.S.C. may be set or adjusted only to recover the aggregate estimated cost to the Office for processing, activities, services, and materials related to patents, including administrative costs to the Office with respect to such patent operations. *See* 125 Stat. at 316. Provided that the fees in the aggregate achieve overall aggregate cost recovery, the director may set individual fees under section 10 at, below, or above their respective cost. Section 10(e) of the Act requires the director to publish the final fee rule in the **Federal Register** and the Official Gazette of the USPTO at least 45 days before the final fees become effective. Section 10(i) terminates the director's authority to set or adjust any fee under section 10(a) upon the expiration of the seven-year period that began on September 16, 2011.

B. The Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018

The Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act), was enacted into law on October 31, 2018. *See* Public Law 115–273, 132 Stat. 4158. Section 4 of the SUCCESS Act amended section 10(i)(2) of the AIA by striking ''7-year'' and inserting ''15-year'' in reference to the expiration of fee setting authority. Therefore, the updated section 10(i) of the AIA, as amended, terminates the director's authority to set or adjust any fee under section 10(a) upon the expiration of the 15-year period that began on September 16, 2011, and ends on September 16, 2026.

C. Small Entity Fee Reduction

Section 10(b) of the AIA requires the Office to reduce by 50 percent the fees for small entities that are set or adjusted under section 10(a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

D. Micro Entity Fee Reduction

Section 10(g) of the AIA amended 35 U.S.C. ch. 11 by adding section 123 concerning micro entities. The Act provides that the Office must reduce by 75 percent the fees for micro entities for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. Micro entity fees were implemented through the January 2013 Final Rule, and the Office will maintain this 75 percent micro entity discount for the appropriate fees and will implement micro entity fees for additional services as appropriate.

E. Patent Public Advisory Committee Role

The Secretary of Commerce established the PPAC under the American Inventors Protection Act of 1999. 35 U.S.C. 5. The PPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of patent operations.

When adopting fees under section 10 of the Act, the director must provide the PPAC with the proposed fees at least 45 days prior to publishing the proposed fees in the **Federal Register**. The PPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold public hearing(s) on the proposed fees. The PPAC must make available to the public a written report of the comments, advice, and recommendations of the committee regarding the proposed fees before the Office issues any final fees. The Office considers and analyzes any comments, advice, or recommendations received from the PPAC before finally setting or adjusting fees.

Consistent with this framework, on August 8, 2018, the director notified the PPAC of the Office's intent to set or adjust patent fees and submitted a

preliminary patent fee proposal with supporting materials. The preliminary patent fee proposal and associated materials are available at *https://www.uspto.gov/FeeSettingAndAdjusting.* The PPAC held a public hearing in Alexandria, Virginia, on September 6, 2018. Transcripts of the hearing are available for review at *https://www.uspto.gov/sites/default/files/documents/PPAC_Hearing_Transcript_20180906.pdf.* Members of the public were invited to the hearing and given the opportunity to submit written and/or oral testimony for the PPAC to consider. The PPAC considered such public comments from this hearing and made all comments available to the public via the Fee Setting and Adjusting section of the USPTO website, *https://www.uspto.gov/FeeSettingAndAdjusting.* The PPAC also provided a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the preliminary proposed fees. The report regarding the preliminary proposed fees was released on October 29, 2018, and can be found online at *https://www.uspto.gov/sites/default/files/documents/PPAC_Fee_Setting_Report_Oct2018_1.pdf.*

The Office considered and analyzed all comments, advice, and recommendations received from the PPAC before publishing the notice of proposed rulemaking (NPRM) Setting and Adjusting Patent Fees during Fiscal Year 2020. The NPRM and associated materials are available at *https://www.uspto.gov/FeeSettingAndAdjusting.* Likewise, before issuing this Final Rule, the Office considered and analyzed all comments, advice, and recommendations received from the public during the 60-day comment period. The Office's response to comments received is available in Part VI: Discussion of Comments.

III. Rulemaking Goals and Strategies

A. Fee Setting Strategy

The overall strategy of this Final Rule is to establish a fee schedule that generates sufficient multi-year revenue to recover the aggregate cost of maintaining USPTO patent-related operations and accomplishing the USPTO's patent-related strategic goals in accordance with the authority granted to the USPTO by AIA section 10, as amended by the SUCCESS Act. The overriding principles behind this strategy are to operate within a sustainable funding model to avoid disruptions caused by fluctuations in financial operations and to enable the USPTO to continue strategic improvements, such as optimizing patent application pendency; issuing highly reliable patents; fostering innovation through business effectiveness; enhancing operations of the PTAB; and optimizing the speed, quality, and cost effectiveness of information technology delivery to achieve business value.

In addition to the overriding principles outlined above, as discussed earlier in this document the Office assesses its alignment with the four key fee setting policy factors: (1) Promoting innovation strategies, (2) aligning fees with the full cost of products and services, (3) facilitating the effective administration of the U.S. patent system, and (4) offering patent processing options to applicants. Each factor promotes a particular aspect of the U.S. patent system. Promoting innovation strategies seeks to ensure barriers to entry into the U.S. patent system remain low, and innovation is incentivized by granting inventors certain short-term exclusive rights to stimulate additional inventive activity. Aligning fees with the full cost of products and services recognizes that as a fully fee-funded entity, the Office must account for all of its costs, even as it elects to set certain fees below, at, or above cost. This factor also recognizes that some applicants may use particular services in a much more costly manner than other applicants (*e.g.,* patent applications cost more to process when more claims are filed). Facilitating effective administration of the patent system seeks to encourage patent prosecution strategies that promote efficient patent prosecution, resulting in compact prosecution and a reduction in the time it takes to obtain a patent. Finally, the Office recognizes that patent prosecution is not a one-size-fits-all process; therefore, where feasible, the Office endeavors to fulfill its fourth policy factor of offering patent processing options to applicants.

B. Fee Setting Considerations

The balance of this sub-section presents the specific fee setting considerations the Office reviewed in developing the final patent fee schedule. Specific considerations are: (1) Historical costs of patent operations and investments to date in meeting the Office's strategic goals; (2) the balance between projected costs to meet the Office's operational needs and strategic goals and the projected future year fee collections; (3) fee schedule design; (4) sustainable funding; and (5) the comments, advice, and recommendations offered by the PPAC on the Office's initial fee setting proposal and the public comments received in response to the July 2019 NPRM. The Office carefully considered the comments, advice, and recommendations offered by the PPAC and public. Collectively, these considerations informed the Office's chosen rulemaking strategy.

(1) Historical Cost. To ascertain how to best align fees with the full cost of products and services, the Office considers unit cost data provided by the USPTO's activity based information (ABI) program. Using historical cost data and forecasted application demands, the Office can align fees with the costs of specific patent products and services. The document entitled ''Setting and Adjusting Patent Fees during Fiscal Year 2020—Activity Based Information and Patent Fee Unit Expense Methodology,'' available at *https://www.uspto.gov/FeeSettingAndAdjusting,* provides details on the Office's costing methodology in addition to four years of historical cost data. Part IV of this Final Rule details the Office's methodology for establishing fees. Additionally, Part V describes the reasoning for setting some fees at cost, below cost, or above cost such that the Office recovers the aggregate cost of providing services through fees.

(2) Projected Costs and Revenue. In developing this Final Rule, the USPTO considered estimates of future year workload demands, fee collections, and costs to maintain core USPTO operations and meet the Office's strategic goals, all of which can be found in the FY 2021 Budget. The FY 2021 Budget and the Strategic Plan highlight the priorities of: optimizing patent application pendency; issuing highly reliable patents; fostering innovation through business effectiveness; enhancing operations of the PTAB; optimizing the speed, quality, and cost effectiveness of IT delivery to achieve business value; and ensuring financial sustainability to facilitate effective USPTO operations. This also enables the USPTO to continue to leverage nationwide talent to build, retain, and effectively manage the highly educated and talented workforce it needs to properly serve its stakeholder community and the country.

(a) Updated Revenue Estimates. As is discussed in more detail in Part IV: Fee Setting Methodology, when setting fees at appropriate levels to recover aggregate costs, the USPTO must estimate future year demand for its products and services through a careful analysis of economic conditions, potential changes in the legal and policy

environment, and operational efficiency and productivity. Many of these factors fall outside the USPTO's control. Since the time that the USPTO published the January 2018 Final Rule, new information has become available that has resulted in adjustments to several of the assumptions underlying the Office's revenue projections. The result of this change is a lowering of revenue expectations under the existing fee schedule. This reduction is due to a number of factors, including a reduction in the estimates for request for continued examination (RCE) submissions over several years and maintenance fee collections. These assumptions and estimates are found in the FY 2021 Budget.

Despite increases in serialized filings in FYs 2017 through 2019, the rate of RCE submissions during that same time period was much less than expected. In particular, 2018 and 2019 saw a 10 percent decrease in the number of RCEs filed compared to the number projected, and RCE projections for FY 2020 and beyond have been reduced accordingly (as found in the FY 2021 Budget). This reduction of RCEs enables USPTO examining staff to re-allocate more of their time to examine an increased number of serialized filings, thereby reducing our unexamined inventory. While the USPTO considers the reduction in RCE submissions to be a generally positive development, it has resulted in the FY 2020 and FY 2021 revenues being lower than expected when the January 2018 Final Rule was published.

In FYs 2017 through 2019 maintenance fee collections, particularly the most expensive third stage collections, were lower than projected. As a result, the refreshed forecast included in the FY 2021 Budget has been lowered.

Absent the increase in fees or an unsustainable reduction in operating costs, the USPTO will be forced to draw down its operating reserves and take on higher levels of financial risk.

(b) Quality, Backlog, and Pendency. The strategic goal to ''optimize patent quality and timeliness'' recognizes the importance of innovation as the foundation of American economic growth and national competitiveness. Through this goal, the Office will continually improve patent quality, particularly the predictability and reliability of issued patents. The USPTO is also committed to improving pendency to better ensure the timely delivery of innovative goods and services to market and the related economic growth and creation of new or higher-paying jobs.

The Office will continue to diligently make progress toward pendency targets and quality expectations to issue predictable and reliable patents while also addressing the anticipated growth in application filings. The Office will work to optimize patent examination time frames within the framework of patent term adjustment (PTA) while continuing to monitor and report traditional pendency measures. This includes engaging customers to identify optimal pendency and examination time frames and making sure that the Office has the appropriate number of examiners to generate the level of production to meet those time frames. This Final Rule will produce revenues adequate to continue the USPTO's progress towards attaining its strategic goal to optimize patent quality and timeliness.

The Office recognizes the importance of issuing high-quality patents that provide reliable and predictable intellectual property protection. If the USPTO is to achieve its strategic objective of issuing highly reliable patents, patent examiners must be afforded sufficient time to conduct a thorough and complete examination of each application. In the time since fees were last adjusted, the USPTO has completed a comprehensive analysis of examination time, known as ETA, the result of which determined a need for updates to the allotment of examination time.

In the past, allotment of examination time for a particular application was determined by the most comprehensive claim and could not account for multi-disciplinary inventions. Sometimes, patent applications of similar technologies would receive disparate time for examination as a result. This, together with significant changes in patent prosecution that have occurred since examination time goals were established over 40 years ago—such as advancements in the technological complexities of applications, a growing volume of prior art, and a changing legal landscape—has brought about the need for updates to the allotment of examination time. The time examiners are given to examine applications is the critical link between pendency and quality. These updates reflect internal and external stakeholders' priorities and experiences as they relate to examination time, quality, and application complexity, and also enable optimal pendency and quality levels.

In addition to the changing legal landscape, increasing technical complexities of applications, and the growing volume of prior art to be searched during examination, updates to examination time will also take into account the full scope of technology recited in an application as well as the particular attributes of the application, such as the number of claims, the size of the specification, and the number of references cited in any filed information disclosure statement. Based on technology examined, examiners who currently receive the least amount of time for examination will generally see the largest increases in examination time, and conversely, examiners who currently receive the highest amount of time may see little, if any, increase in examination time. Further, all examiners will be provided additional examination time based on the specific attributes of the application. Together, these changes improve the calibration of the time needed to conduct a thorough examination, position the Office to better adjust time in the future as needed, and provide stakeholders increased confidence in the certainty of any resultant patent rights.

Separate from the ETA findings, analysis of the patent staffing model indicates an incremental decrease in examiners' average net output over time, resulting in higher core patent examination costs than in previous estimates. One possible explanation for this reduction in output may be that the percentage of examiners receiving production awards has dropped, and a larger number of examiners are forgoing promotions and staying at lower grades. Additionally, applicants' increased use of programs like the after final consideration pilot (AFCP) and interviews, along with increased training needs due to changes in the legal landscape and examination practices, has increased the amount of non-examination time used by examiners, also leading to productivity losses.

Another area where essential operating costs have increased is the PTAB. The PTAB, as it currently exists, was established by the AIA in September 2012. The PTAB manages pendency for three different activities: AIA trials, which, by statute, must be adjudicated within one year of filing; re-examination petitions, which, by statute, must be completed with ''special dispatch''; and *ex parte* appeals. The PTAB is committed to resolving appeals and *inter partes* matters within statutory or USPTO time frames, while streamlining processes and procedures throughout the PTAB. This entails retaining and leveraging nationwide talent. As the Office institutes operational changes at the PTAB to comply with the *SAS* decision and implements other improvements, as

detailed in Part V: Individual Fee Rationale, the average workload associated with each trial is increasing.

(c) Business Effectiveness. Given the estimates of costs and revenue found in the FY 2021 Budget and absent efforts to boost future revenue, funding for other USPTO and stakeholder priorities, like IT stabilization and modernization and other business improvement initiatives, will need to be reduced to well below planned levels in the coming years. To this end, revenue generated from the final patent fee schedule will enable the USPTO to focus on how the Patents organization operates to foster business effectiveness. In fulfilling this objective, the Office will listen to customers and employees and then take patent-specific actions that will position the Office to meet expectations.

The USPTO will provide the cutting-edge tools that employees and customers need to efficiently and effectively accomplish their tasks, particularly through the continued implementation of Patents End-to-End. For example, this could entail the use of artificial intelligence or machine-learning efforts. Another key initiative that will enhance the work capabilities of both employees and customers is to improve searchable (text) access to domestic and international patent applications, including access to non-patent literature and prior art, and Office actions.

(3) Fee Schedule Design. The final fee schedule was designed to set individual fees to further key policy considerations while taking into account the cost of the particular service. To encourage innovators to take advantage of patent protection, the Office continues its longstanding practice of setting basic ''front-end'' fees (*e.g.,* filing, search, and examination) below the actual cost of carrying out these activities. Additionally, new fees are set, and existing fees are adjusted, in order to facilitate the effective administration of the patent system. Part IV of this Final Rule details the Office's methodology for establishing fees, and Part V describes the reasoning for setting and adjusting individual fees, including fee schedule design benefits. The RIA, available at *https://www.uspto.gov/FeeSettingAndAdjusting,* also discusses fee schedule design benefits.

(4) Sustainable Funding. A major component of sustainable funding is the creation and maintenance of a viable patent operating reserve that allows for effective management of the U.S. patent system and responsiveness to changes in the economy, unanticipated production workload, and revenue changes. As a fee-funded agency, the USPTO uses its reserves to mitigate the variability in its spending and revenue streams that can create volatility in patent operations and threaten the Office's ability to support mission operations.

The USPTO aims to manage the operating reserve within a range of acceptable balances and evaluates its options when projected balances fall either below or above that range. Minimum planning targets are assessed annually and are intended to address immediate unplanned changes in the economic or operating environments as the Office builds its reserve to the optimal level. The optimal reserve target, which is reviewed at least biennially, is established based on an assessment of the likelihood and severity of an array of financial risks. A 2019 evaluation of the patent operating reserve relative to the financial risk environment, revalidated the optimal reserve level of three months' operating expenses as the appropriate long-range target given various risk factors, such as the high percentage of fixed costs in the Patent business and recent and potential changes in the legal, judicial, and policy environments. For the Patent business line's operating reserve, a minimum planning level of approximately $300 million—just over one month's operating expenses—has been established. The USPTO's annual budget delineates prospective spending levels (aggregate costs) to execute core mission activities and strategic initiatives. In the FY 2021 Budget, the USPTO estimated that its aggregate patent operating costs for FY 2021, including administrative costs, would be $3.3 billion, and aggregate estimated patent fee collections and other income would be $3.4 billion, with the difference being added to the operating reserve. The health of the operating reserve is a key consideration as the USPTO sets its fees. Aided by the increased fees detailed in this Final Rule, future year projections are anticipated to gradually build the operating reserve toward the optimal level of three months' operating requirements while maintaining the minimum operating reserve balance during the five-year period. The projections found in the FY 2021 Budget are based on point-in-time estimates and assumptions that are subject to change. For instance, the budget includes assumptions about filing levels, renewal rates, whether the president will authorize or Congress will mandate employee pay raises, the productivity of the workforce, and many other factors. A change in any of these factors could have a significant cumulative impact on reserve balances. For example, the legally mandated 2019 and 2020 pay raises added a cumulative cost of $445 million (from FY 2020 to FY 2024) to patent operations. As seen in Table 2, set forth in Part IV: Fee Setting Methodology, over a five-year planning horizon the operating reserve balance can change significantly, underscoring the Office's financial vulnerability to various risk factors and the importance of fee setting authority.

The USPTO will continue to assess the patent operating reserve balance against its target balance annually, and at least every two years, the Office will evaluate whether the optimal target balance continues to be sufficient to provide the stable funding the Office needs. Per the Office's operating reserve policy, if the operating reserve balance is projected to exceed the optimal level by 10 percent for two consecutive years, the Office will consider fee reductions. Under the new fee structure, as in the past, the Office will continue to regularly review its operating budgets and long-range plans to ensure the USPTO uses patent fees prudently.

(5) Comments, Advice, and Recommendations from the PPAC and the Public. As detailed in the NPRM, in the report prepared in accordance with AIA fee setting authority, the PPAC conveyed support for the USPTO in seeking the revenues it needs to increase the reliability and certainty of patent rights, provide timely examination, improve and secure its IT infrastructure, and adequately fund its operating reserve. Specifically, the report stated, ''As a general matter, we believe that increased revenue for the USPTO will be important to fulfill its Strategic Plan and implement the recommendations of the PPAC.'' Patent Pub. Advisory Comm., Fee Setting Report (2018). The Office considered and analyzed the comments, advice, and recommendations received from the PPAC before publishing this Final Rule.

Likewise, the Office considered and analyzed the comments, advice, and recommendations received from the public during the 60-day comment period before publishing this Final Rule. The Office's response to comments received is available in Part VI: Discussion of Comments.

C. Summary of Rationale and Purpose of the Final Rule

The Office estimates that the patent fee schedule in this Final Rule will produce aggregate revenues to recover the aggregate costs of patent operations, including the implementation of its strategic and mission support goals,

objectives, and initiatives in FY 2020 and beyond. Using the Strategic Plan as a foundation, the Final Rule will provide sufficient aggregate revenue to recover the aggregate cost of patent operations, including optimizing patent application pendency; issuing highly reliable patents; fostering innovation through business effectiveness; enhancing the operations of the PTAB; optimizing the speed, quality, and cost-effectiveness of information technology delivery to achieve business value; and ensuring financial sustainability to facilitate effective operations.

IV. Fee Setting Methodology

The Office carried out three primary steps in developing the final patent fee schedule:

Step 1: Determine the prospective aggregate costs of patent operations over the five-year period, including the cost of implementing new initiatives to achieve strategic goals and objectives.

Step 2: Calculate the prospective revenue streams derived from the individual fee amounts (from Step 3) that will collectively recover the prospective aggregate costs over the five-year period.

Step 3: Set or adjust individual fee amounts to collectively (through executing Step 2) recover projected aggregate costs over the five-year period, while furthering key policy factors.

These three steps are iterative and interrelated. The following is a description of how the USPTO carries out these three steps.

Step 1: Determine Prospective Aggregate Costs

Calculating prospective aggregate costs is accomplished primarily through the annual USPTO budget formulation process. The budget is a five-year plan (that the Office prepares annually) for carrying out base programs and new initiatives to implement the USPTO's strategic goals and objectives.

The first activity performed to determine prospective aggregate costs is to project the level of demand for patent products and services. Demand for products and services depends on many factors that are subject to change, including domestic and global economic activity. The USPTO also takes into account overseas patenting activities, policies and legislation, and known process efficiencies. Because filing, search, and examination costs are the largest share of the total patent operating costs, a primary production workload driver is the number of patent application filings (*i.e.,* incoming work to the Office). The Office looks at indicators such as the expected growth in real gross domestic product (RGDP), the leading indicator of incoming patent applications, to estimate prospective workload. RGDP is reported by the Bureau of Economic Analysis (*www.bea.gov*) and is forecasted each February by the OMB (*www.omb.gov*) in the Economic and Budget Analyses section of the Analytical Perspectives and twice annually by the Congressional Budget Office (CBO) (*www.cbo.gov*) in the Budget and Economic Outlook. A description of the Office's methodology for using RGDP can be found in Appendix III: Multi-year Planning by Business Line, of the FY 2021 Budget. The expected change in the required production workload must then be compared to the current examination production capacity to determine any required staffing and operating cost (*e.g.,* salaries, workload processing contracts, and publication) adjustments. The Office uses a patent pendency model that estimates patent production output based on actual historical data and input assumptions, such as incoming patent applications and overtime hours. An overview of the model, including a description of inputs, outputs, key data relationships, and a simulation tool is available at *https://www.uspto.gov/patents/stats/patent_pend_model.jsp.*

The second activity is to calculate the aggregate costs to execute the requirements. In developing its budget, the Office first looks at the cost of status quo operations (the base requirements). The base requirements are adjusted for OMB-directed pay increases and inflationary increases for the budget year and four out-years (detailed calculations and assumptions for this adjustment can be found in the FY 2021 Budget). The Office then estimates the prospective cost of expected changes in production workload and new initiatives over the same period of time (refer to ''Program Changes by Sub-Program'' sections of the FY 2021 Budget). The Office reduces cost estimates for completed initiatives and known cost savings expected over the same five-year horizon. Finally, the Office estimates its three-month target operating reserve level based on this aggregate cost calculation for the year to determine if operating reserve adjustments are necessary.

Based on the assumptions and estimates found in the FY 2021 Budget, during FY 2020, patent operations will cost $3.256 billion (*see* Appendix II of the FY 2021 Budget), including $2.221 billion for patent examining; $92 million for patent trial and appeals; $167 million for patent information resources; $28 million for activities related to IP protection, policy, and enforcement; and $754 million for general support costs necessary for patent operations (*e.g.,* the patent share of rent; utilities; legal, financial, human resources, and other administrative services; and Office-wide IT infrastructure and support costs). In addition, the Office will transfer $2 million to the Department of Commerce Inspector General for audit support. The Office also estimates collecting $34 million in other income associated with recoveries and reimbursable agreements (offsets to spending).

A detailed description of the operating requirements and related aggregate costs is located in the FY 2021 Budget. Table 1 below provides key underlying production workload projections and assumptions from the FY 2021 Budget used to calculate aggregate costs. Table 2 (*see* Step 2) presents the total budgetary requirements (prospective aggregate costs) for FY 2020 through FY 2024 and the estimated collections and operating reserve balances that will result from the adjustments contained in this Final Rule. As the FY 2021 Budget notes, these projections are based on point-in-time estimates and assumptions that are subject to change. There is considerable uncertainty in out-year budgetary requirements. A number of risks could materialize over the next several years (*e.g.,* those associated with the re-compete of major contracts, including property leases, changing assumptions about presidentially authorized or congressionally mandated employee pay raises, etc.) that could increase the USPTO's budgetary requirements in the short- to medium-term. These estimates are refreshed annually in the production of the USPTO's Budget.

TABLE 1—PATENT PRODUCTION WORKLOAD PROJECTIONS—FY 2020–FY 2024

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Utility, Plant, and Reissue (UPR):					
Applications *	632,400	632,100	642,700	652,900	662,500

TABLE 1—PATENT PRODUCTION WORKLOAD PROJECTIONS—FY 2020–FY 2024—Continued

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Application Growth Rate	1.9%	0.0%	1.7%	1.6%	1.5%
Production Units	604,300	589,500	607,700	626,400	642,600
Unexamined Patent Application Backlog	559,600	571,600	569,300	557,600	538,400
Examination Capacity **	8,451	8,780	9,094	9,395	9,684
Performance Measures (UPR):					
Avg. First Action Pendency (Months)	15.5	15.5	15.4	15.0	14.5
Avg. Total Pendency (Months)	23.7	23.9	24.0	23.7	23.2

* In this table, the patent application filing data includes requests for continued examination (RCEs).
** In this table, Examination Capacity is the UPR Examiners On-Board at End-of-Year, as described in the FY 2021 Budget.

Step 2: Calculate Prospective Aggregate Revenue

As described above in Step 1, the USPTO's FY 2020 requirements in the FY 2021 Budget include the aggregate prospective costs of planned production, anticipated new initiatives, and a contribution to the patent operating reserve required for the Office to maintain patent operations and realize its strategic goals and objectives for the next five years. The aggregate prospective costs become the target aggregate revenue level that the new fee schedule must generate in a given year and over the five-year planning horizon. To calculate the aggregate revenue estimates, the Office first analyzes relevant factors and indicators to calculate or determine prospective fee workloads (*e.g.,* number of applications and requests for services and products), growth in those workloads, and resulting fee workload volumes (quantities) for the five-year planning horizon.

The Office considers economic activity when developing fee workloads and aggregate revenue forecasts for its products and services. Major economic indicators include the overall condition of the U.S. and global economies, spending on research and development activities, and investments that lead to the commercialization of new products and services. The most relevant economic indicator that the Office uses is the RGDP, which is the broadest measure of economic activity. At the time the FY 2021 Budget was developed, CBO anticipated RGDP to grow around 2.2 percent in FY 2020 and 1.9 percent in FY 2021.

These indicators correlate with patent application filings, which are key drivers of patent fees. Economic indicators also provide insight into market conditions and the management of IP portfolios, which influence application processing requests and post-issuance decisions to maintain patent protection. When developing fee workload forecasts, the Office considers other influential factors, including overseas activity, policies and legislation, court decisions, process efficiencies, and anticipated applicant behavior.

Anticipated applicant behavior in response to fee changes is measured using an economic principle known as elasticity, which, for the purpose of this Final Rule, measures how sensitive applicants and patentees are to changes in fee amounts. The higher the elasticity measure (in absolute value), the greater the applicant response to the relevant fee change. If elasticity is low enough (*i.e.,* demand is *inelastic,* or the elasticity measure is less than one in absolute value), a fee increase will lead to only a relatively small decrease in patent activities, and overall revenues will still increase. Conversely, if elasticity is high enough (*i.e.,* demand is *elastic,* or the elasticity measure is greater than one in absolute value), a fee increase will lead to a relatively large decrease in patenting activities such that overall revenues will decrease. When developing fee forecasts, the Office accounts for how applicant behavior will change at different fee amounts projected for the various patent services. The Office analyzed elasticity for nine broad patent fee categories: filing/search/examination fees, excess independent claims fees, excess total claims fees, application size (excess page) fees, issue fees, RCE fees, appeal fees, AIA trial fees, and maintenance fees, including distinctions by entity size where applicable. Additional details about the Office's elasticity estimates can be found in ''Setting and Adjusting Patent Fees during Fiscal Year 2020—Description of Elasticity Estimates,'' available at *https://www.uspto.gov/FeeSettingAndAdjusting.*

Summary of Step 2

Patent fees are collected for patent-related services and products at different points in the patent application examination process and over the life of the pending patent application and granted patent. Approximately half of all patent fee collections are from maintenance fees, which subsidize the cost of filing, search, and examination activities. Changes in application filing levels immediately impact current year fee collections, because fewer patent application filings means the Office collects fewer fees to devote to production-related costs. The resulting reduction in production activities also creates an out-year revenue impact because less production output in one year results in fewer issue and maintenance fee payments in future years.

The USPTO's five-year estimated aggregate patent fee revenue, based on assumptions found in the FY 2021 Budget, (*see* Table 2) is based on the number of patent applications it expects to receive for a given fiscal year, work it expects to process in a given fiscal year (an indicator of future patent issue fee workload), expected examination and process requests for the fiscal year, and the expected number of post-issuance decisions to maintain patent protection over that same fiscal year. Within the iterative process for estimating aggregate revenue, the Office adjusts individual fee rates up or down based on cost and policy decisions (*see* Step 3: Set Specific Fee Amounts), estimates the effective dates of new fee rates, and then multiplies the resulting fee rates by appropriate workload volumes to calculate a revenue estimate for each fee. To calculate the aggregate revenue for the FY 2021 Budget, the Office assumed that all Final Rule fee rates would become effective on July 10, 2020, except for the new non-DOCX filing surcharge fee, which was assumed to become effective on January 1, 2021. The effective dates of all Final Rule fee rates have since been delayed from those original assumptions as USPTO further assessed the impact of the

pandemic on the economy and stakeholders. Using these figures, the USPTO summed the individual fee revenue estimates, and the result is a total aggregate revenue estimate for a given year (*see* Table 2). Additional details about the Office's aggregate revenue, including projected workloads by fee, can be found in ''Aggregate Revenue Tables, Final Patent Rule Schedule'' available at *https://www.uspto.gov/FeeSettingAndAdjusting.*

Table 2 shows the available revenue and operating reserve balances by fiscal year, including the Final Rule fee rates in the projected fee collections. The estimates in the table can be found in the FY 2021 Budget and were developed in late calendar year 2019, prior to the COVID–19 outbreak. Under current circumstances, it is difficult to predict what the actual numbers will be.

TABLE 2—PATENT FINANCIAL OUTLOOK—FY 2020–FY 2024

	Dollars in millions				
	FY 2020	FY 2021*	FY 2022	FY 2023	FY 2024
Projected Fee Collections	3,400	3,251	3,709	3,744	3,861
Other Income	34	34	34	34	34
Total Projected Fee Collections and Other Income	3,435	3,285	3,743	3,778	3,895
Budgetary Requirements	3,256	3,455	3,601	3,681	3,800
Funding to (+) and from (−) Operating Reserve	179	(170)	141	97	95
EOY Operating Reserve Balance	587	417	558	656	751
Over/(Under) $300M Minimum Level	287	117	258	356	451
Over/(Under) Optimal Level	(227)	(447)	(342)	(265)	(200)

* The assumed effective date for the Final Patent Fee Schedule shifts some projected collections from FY 2021 to FY 2020, due to the expectation that patentees who are eligible will submit maintenance fee payments prior to the effective date of the Final Rule.

Step 3: Set Specific Fee Amounts

Once the Office finalizes the annual requirements and aggregate prospective costs through the budget formulation process, the Office determines specific fee amounts that, together, will derive the aggregate revenue required to recover the estimated aggregate prospective costs during the five-year budget horizon. Calculating individual fees is an iterative process that encompasses many variables and policy factors. These are discussed in greater detail in Part V: Individual Fee Rationale.

One of the variables the USPTO considers to inform fee setting is the historical cost estimates associated with individual fees. The Office's ABI provides historical costs for an organization's activities and outputs by individual fees using the activity based costing (ABC) methodology. ABC is commonly used for fee setting throughout the federal government. Additional information about the methodology, including the cost components related to respective fees, can be found in the document entitled ''Setting and Adjusting Patent Fees during Fiscal Year 2020—Activity Based Information and Patent Fee Unit Expense Methodology'' available at *https://www.uspto.gov/FeeSettingAndAdjusting.* The USPTO provides data for FY 2016–FY 2019 because the Office finds that reviewing the trend of ABI historical cost information is the most useful way to inform fee setting. The underlying ABI data are available for public inspection at the USPTO upon request.

When the Office implements a new process or service, historical ABI data is typically not available. However, the Office will use the historical cost of a similar process or procedure as a starting point to estimate the full cost of a new activity or service.

V. Individual Fee Rationale

Based on assumptions and estimates found in the FY 2021 Budget, the Office projects that the aggregate revenue generated from the new patent fees will recover the prospective aggregate cost of its patent operations including contributions to the operating reserve, per the strategic initiative to ensure financial sustainability to facilitate effective USPTO operations. As detailed previously, the PPAC supports this approach, stating that, ''The PPAC supports the USPTO in seeking the revenues it needs to increase the reliability and certainty of patent rights, provide timely examination, improve and secure its IT infrastructure and adequately fund its operating reserve'' Patent Pub. Advisory Comm., Fee Setting Report [2] (2018).

It is important to recognize that each individual fee is not necessarily set equal to the estimated cost of performing the activities related to the fee. Instead, as described in Part III: Rulemaking Goals and Strategies, some of the individual fees are set at, above, or below their unit costs to balance several key fee setting policy factors: Promoting innovation strategies, aligning fees with the full cost of products and services, facilitating effective administration of the patent system, and offering patent processing options to applicants. For example, many of the initial filing fees are intentionally set below unit costs in order to promote innovation strategies by removing barriers to entry for innovators. To balance the aggregate revenue loss of fees set *below cost,* other fees must be set *above cost* in areas where it is less likely to reduce inventorship (*e.g.,* maintenance).

For some fees in this Final Rule, such as excess claims fees, the USPTO does not typically maintain individual historical cost data for the service provided. Instead, the Office considers the policy factors described in Part III to inform fee setting. For example, by setting fees at particular levels using the facilitating effective administration of the patent system policy factor, the USPTO aims to: (1) Foster an environment where examiners can provide and applicants can receive prompt, quality interim and final decisions; (2) encourage the prompt conclusion of prosecuting an application, resulting in pendency reduction and the faster dissemination of patented information; and (3) help recover costs for activities that strain the patent system.

The rationale for the fee changes are grouped into three major categories, discussed below: (A) Across-the-board adjustment to patent fees; (B) targeted fees; and (C) discontinued fees. The purpose of the categorization is to

identify large fee changes for the reader and provide an individual fee rationale for such changes. The categorization is based on changes in large entity fee amounts because percentage changes for small and micro entity fees that are in place today would be the same as the percentage change for the large entity, and the dollar change would be half or one quarter of the large entity change.

The Table of Patent Fees includes the current and Final Patent Fee Schedule fees for large, small, and micro entities as well as unit costs for the last four fiscal years. Part VII: Discussion of Specific Rules contains a complete listing of fees that are set or adjusted in the patent fee schedule in this Final Rule.

A. Across-the-Board Adjustment to Patent Fees

In order to both keep the USPTO on a stable financial track and allow for the advancement of policies and practices that enhance the country's innovation ecosystem, the Office is adjusting all patent fees not covered by the targeted adjustments as discussed in section B, or to be discontinued as discussed in section C, by approximately 5 percent. Given the time that has passed between the implementation date of the last fee adjustments and this Final Rule, a 5 percent increase is similar to fees increasing by 2 percent annually to help USPTO keep up with the cost of inflation and other cost increases, such as mandatory pay raises not planned for in previous budgets. Individual fees, above $50, are rounded to the nearest $10 [1] by applying standard arithmetic rules. For fees that have small and micro entity fee reductions, the large entity fee is rounded up or down to the nearest 20 dollars by applying standard arithmetic rules. The resulting fee amounts are more convenient to patent users and permit the Office to set small and micro entity fees at whole dollar amounts when applying the applicable fee reduction. Therefore, some smaller fees will not be changing, since a 5 percent increase would round down to the current fee, while other fees would change by slightly more or less than 5 percent, depending on rounding. The fee adjustments in this category are listed in the Table of Patent Fees.

The 5 percent across-the-board adjustment strikes an appropriate balance between projected aggregate revenue and aggregate costs based on the assumptions used to develop the point-in-time estimates that support this Final Rule. The underlying cost and revenue estimates in this Final Rule, which are supported by the FY 2021 Budget, show that fees are set at levels that secure aggregate cost recovery while ensuring a reasonable pace for operating reserve growth.

B. Targeted Fees

For those fees targeted for specific adjustments in this Final Rule, the individual fee rationale discussion is divided into two categories: (1) Adjustments to existing fees, and (2) new fees.

Adjustments to existing fees are further divided into subcategories according to the function of the fees, including: (a) Maintenance fee surcharge, (b) request for the expedited examination of a design application fee, (c) utility and reissue issue and maintenance fees, and (d) AIA trial fees. New fees are further divided into subcategories according to the function of the fees, including: (a) Non-DOCX filing surcharge fee, and (b) *pro hac vice.* As discussed further below and in USPTO's responses to public comments, the USPTO has considered public feedback on the proposed (c) annual active patent practitioner fee and has decided not to proceed with implementing this fee at this time. The USPTO does plan to pursue procedures to allow patent practitioners to voluntarily certify whether they have completed a minimum amount of continuing legal education (CLE). The USPTO further expects that registered practitioners who certify that they have completed such CLE will be recognized in the online practitioner directory. In the near future, the USPTO plans to issue proposed guidelines regarding such voluntary CLE certification, with a request for public comments.

As discussed above, for purposes of comparing amounts in the individual fee rationale discussion, the Office has included the current fees as the baseline to calculate the dollar and percentage changes for new fees.

(1) Adjustments to Existing Fees

The following fees are to be increased by an amount other than the 5 percent across-the-board increase for most patent-related fees. These targeted adjustments are made for a variety of strategic reasons. A discussion of the rationale for each fee follows.

(a) Maintenance Fee Surcharge

TABLE 3—MAINTENANCE FEE SURCHARGE FEES—FEE CHANGES AND UNIT COST

Fee description	Current fees large (small) [micro] entity	Final rule fees large (small) [micro] entity	Dollar change large (small) [micro] entity	Percentage change large (small) [micro] entity	FY 2018 unit cost	FY 2019 unit cost
Surcharge—3.5 year—Late payment within 6 months	$160 ($80) [$40]	$500 ($250) [$125]	+$340 (+$170) [+$85]	+213 (+213) [+213]	n/a	n/a
Surcharge—7.5 year—Late payment within 6 months	$160 ($80) [$40]	$500 ($250) [$125]	+$340 (+$170) [+$85]	+213 (+213) [+213]	n/a	n/a
Surcharge—11.5 year—Late payment within 6 months	$160 ($80) [$40]	$500 ($250) [$125]	+$340 (+$170) [+$85]	+213 (+213) [+213]	n/a	n/a

[1] The description of the rounding rule in the NPRM incorrectly indicated that fees were rounded to the nearest $5, rather than to the nearest $10. This error has been corrected in this Final Rule. The fees proposed in the NPRM and implemented in this Final Rule were both rounded to the nearest $10 and are not affected by the error in the description.

The Office will set the surcharge for a late maintenance fee payment within six months following the due date at $500 for large entities. It is the responsibility of the patentee to ensure maintenance fees are paid timely to prevent expiration of a patent. If a maintenance fee is not paid within the first six months of the year in which it can be paid, a maintenance fee reminder notice is sent to the fee address or correspondence address on record. Failure to receive the notice does not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the USPTO. At this point, a surcharge is required in addition to the maintenance fee in order to maintain a patent. If the maintenance fee and any applicable surcharge are not paid by the end of the 4th, 8th, or 12th years after the date of issue, the patent rights lapse, and a Notice of Patent Expiration is sent to the fee address or correspondence address on record. If a fee address has not been established, the notices are sent to the correspondence address. Over 95 percent of patent renewals are paid before the due date, but some patents are renewed during the six-month period following the due date.

While still below what other IP offices charge, increasing this surcharge brings the USPTO more in line with its global counterparts. The goal of increasing this surcharge is to encourage patent holders to renew by the due date. Encouraging on-time renewals will benefit the public by increasing the understanding of which patents remain in force and which patent rights have been allowed to lapse.

The USPTO provides tools to help patent owners monitor due dates, such as the Patent Maintenance Fees Storefront, *https://fees.uspto.gov/MaintenanceFees,* where anyone can see the payment windows for all patents. Additionally, customers with *USPTO.gov* accounts (*i.e.,* MyUSPTO) can create a ''patent docket'' and add patent or application numbers in order to keep track of due dates. Also, the weekly Official Gazette notices list the range of patents for which maintenance fees are now payable. In addition, with the availability of free calendar apps, individuals can easily set up their own reminders of when maintenance fee payments are eligible for renewal (3, 7, 11 years from issue) and when they are due (3.5, 7.5, 11.5 years from issue).

(b) Request for Expedited Examination of a Design Application Fee

TABLE 4—REQUEST FOR EXPEDITED EXAMINATION OF A DESIGN APPLICATION FEE—FEE CHANGES AND UNIT COST

Fee description	Current fees large (small) [micro] entity	Final rule fees large (small) [micro] entity	Dollar change large (small) [micro] entity	Percentage change large (small) [micro] entity	FY 2018 unit cost	FY 2019 unit cost
Request for expedited examination of a design application	$900 ($450) [$225]	$1,600 ($800) [$400]	+$700 (+$350) [+$175]	+78 (+78) [+78]	$125	$97

In the NPRM, the Office proposed increasing the fee to request expedited examination of a design application to $2,000. In this Final Rule, after carefully considering comments from the PPAC and the public, the Office is increasing the fee to request expedited examination of a design application to $1,600 for a large entity. This fee was introduced at a fee rate of $900 in November 2000. The Office is increasing the fee for the first time since its inception.

Expedited examination is available to all design applicants who first conduct a preliminary examination search and file a request for expedited treatment accompanied by a fee for the expedited treatment and handling (37 CFR 1.17(k)) in addition to the required filing, search, and examination fees. This cost-based expedited treatment fulfills a particular need by affording rapid design patent protection that may be especially important where marketplace conditions are such that new designs on articles are typically in vogue for limited periods of time. The Office notes that the unit cost presented for this service only accounts for the initial processing of the request and does not include additional resources expended. The applications are individually examined with priority, and the clerical processing is conducted and/or monitored by specially designated personnel to achieve expeditious processing through initial application processing and the design examining group. For a patentable design application, the expedited treatment is a streamlined filing-to-issuance procedure. This procedure further expedites design application processing by decreasing clerical processing time as well as the time spent routing the application between processing steps. Specially designated personnel are required to conduct and/or monitor the expedited clerical processing. Also, expedited design applications may be individually treated throughout the examination process where necessary for expedited treatment, whereas normally, the search phase of design application examination is conducted in groups.

For the first few years following the introduction of this program, requests for expedited examination of a design application were less than 1 percent of total design filings. In recent years, requests have increased to over 2 percent of total filings. As discussed in the NPRM, the increase in demand for this service forced the Office to choose to cap the program (*i.e.,* impose limits on the number of expedited examinations it will undertake in a given fiscal year), end the program, or increase the fee. Increasing this optional fee will allow the USPTO to better manage staffing to match the demand for this service, while still keeping the service available as an option for those who may benefit from this program. The USPTO believes that this new fee amount, as well as the associated small and micro entity discounts, will provide the Office the ability to continue offering this service to applicants.

(c) Utility and Reissue Patent Issue and Maintenance Fees

TABLE 5—UTILITY AND REISSUE PATENT ISSUE AND MAINTENANCE FEES—FEE CHANGES AND UNIT COST

Fee description	Current fees large (small) [micro] entity	Final rule fees large (small) [micro] entity	Dollar change large (small) [micro] entity	Percentage change large (small) [micro] entity	FY 2018 unit cost	FY 2019 unit cost
Utility issue fee	$1,000 ($500) [$250]	$1,200 ($600) [$300]	+$200 (+$100) [+$50]	+20 (+20) [+20]	$325	$319
Reissue issue fee	$1,000 ($500) [$250]	$1,200 ($600) [$300]	+$200 (+$100) [+$50]	+20 (+20) [+20]	325	319
For maintaining an original or any reissue patent, due at 3.5 years	$1,600 ($800) [$400]	$2,000 ($1,000) [$500]	+$400 (+$200) [+$100]	+25 (+25) [+25]	n/a	n/a
For maintaining an original or any reissue patent, due at 7.5 years	$3,600 ($1,800) [$900]	$3,760 ($1,880) [$940]	+$160 (+$80) [+$40]	+4 (+4) [+4]	n/a	n/a
For maintaining an original or any reissue patent, due at 11.5 years	$7,400 ($3,700) [$1,850	$7,700 ($3,850) [$1,925]	+$300 (+$150) [+$75]	+4 (+4) [+4]	n/a	n/a

The Office is adjusting the issue fees by 20 percent and first stage maintenance fees by 25 percent. These adjustments will mark the first time maintenance fee rates have changed since 2013. The total package of fees in this Final Rule does not significantly impact the balance between front-end and back-end fees. The USPTO continues to set front-end fees below the cost to the Office to provide those services in order to encourage innovation. Front-end fees for a utility patent with one RCE and lifetime maintenance will continue to be about 18 percent of the total fees paid over the life of a patent (*see* Table 6). However, as certain technology lifecycles grow shorter, it is important that the USPTO not rely too heavily on fees paid late in the life of a patent. Therefore, the Office is slightly rebalancing the back-end fees to recover the initial search and examination costs earlier in the life of the patent.

TABLE 6—FRONT-END AND BACK-END FEE BALANCE

Fee group	Fee title	Current			Final rule		
		Large entity fee	Percent of total	Group's percent of total	Large entity fee	Percent of total	Group's percent of total
Front-End Fees	Filing	$300	2	18	$320	2	18
	Search	660	4		700	4	
	Examination	760	4		800	4	
	1st RCE	1,300	8		1,360	8	
Back-End Fees	Issue	1,000	6	16	1,200	7	18
	1st Stage Maintenance	1,600	10		2,000	11	
	2nd Stage Maintenance	3,600	22	66	3,760	21	64
	3rd Stage Maintenance	7,400	44		7,700	43	
Total		16,620	100	100	17,840	100	100

The issue fee for utility and reissue patents is increasing from $1,000 to $1,200, and the first stage maintenance fee is increasing from $1,600 to $2,000. As a result, the combined fees paid for issue and first stage maintenance is increasing from 16 percent to 18 percent of the total fees paid for a utility patent with one RCE and lifetime maintenance.

However, second and third stage maintenance fees are only increasing by 4 percent—less than the across-the-board adjustment—with second stage increasing from $3,600 to $3,760 and third stage increasing from $7,400 to $7,700.

The Office determined elasticity estimates for the three maintenance payments for both large and small entities. For all point estimates and confidence intervals, maintenance fees were found to be inelastic, with the first stage being the least elastic of these fees. More detailed information on elasticity estimates can be found at *https://www.uspto.gov/FeeSettingAndAdjusting* in the document entitled ''Setting and Adjusting Patent Fees during Fiscal Year 2020—Description of Elasticity Estimates.''

(d) AIA Trial Fees

TABLE 7—AIA TRIAL FEES—FEE CHANGES AND UNIT COST

Fee description	Current fees large (small) [micro] entity	Final rule fees large (small) [micro] entity	Dollar change large (small) [micro] entity	Percentage change large (small) [micro] entity	FY 2018 unit cost	FY 2019 unit cost
Inter partes review request fee—Up to 20 claims	$15,500	$19,000	+$3,500	+23	$15,016	$17,887
Inter partes review post-institution fee—Up to 15 claims *	15,000	n/a	n/a	n/a	25,490	27,376
Inter partes review post-institution fee—Up to 20 Claims *	n/a	22,500	n/a	n/a	n/a	n/a
Inter partes review request of each claim in excess of 20	300	375	+75	+25	n/a	n/a
Inter partes post-institution request of each claim in excess of 15 *	600	n/a	n/a	n/a	n/a	n/a
Inter partes post-institution request of each claim in excess of 20 *	n/a	750	n/a	n/a	n/a	n/a
Post-grant or covered business method review request fee—Up to 20 claims	16,000	20,000	+4,000	+25	21,465	26,296
Post-grant or covered business method review post-institution fee—Up to 15 claims *	22,000	n/a	n/a	n/a	29,842	40,791
Post-grant or covered business method review post-institution fee—Up to 20 claims *	n/a	27,500	n/a	n/a	n/a	n/a
Post-grant or covered business method review request of each claim in excess of 20	375	475	+100	+27	n/a	n/a
Post-grant or covered business method review post-institution request of each claim in excess of 15 *	825	n/a	n/a	n/a	n/a	n/a
Post-grant or covered business method review post-institution request of each claim in excess of 20 *	n/a	1,050	n/a	n/a	n/a	n/a

* The post-institutional threshold for paying claims fees will increase from 15 to 20.

On April 24, 2018, the U.S. Supreme Court issued its decision in *SAS Institute Inc.* v. *Iancu,* 138 S. Ct. 1348 (2018). As required by the decision, the PTAB will institute a trial as to all claims or none. Previously, the PTAB instituted a trial on just some claims. This has increased the amount of time spent per case post-institution. The Office has also modified its pre-institution practice to take into account the impacts of the *SAS* decision. For example, prior to *SAS,* the PTAB did not generally address all arguments at institution. Post-*SAS,* for purposes of deciding whether to institute trial on a petition, the Office's policy is to provide details to the parties to the extent practicable, including responding to arguments in a patent owner's preliminary response that were not the basis for the decision whether or not to institute. This has increased the amount of time spent per case pre-institution. These changes related to the *SAS* decision have increased the average cost to conduct each proceeding.

Other implementations, such as providing automatic sur-replies and pre-hearing conferences, were made to help provide additional fairness and certainty to the parties and public while continuing the PTAB's practice of rendering high-quality decisions within the statutory time limits applicable to AIA trial proceedings; however, these changes, too, have increased the average cost of conducting each proceeding.

The post-institutional threshold for paying excess claim fees is increasing from 15 to 20 claims so as to match the PTAB's request threshold, reflecting the fact that, following the Supreme Court decision in *SAS,* the PTAB is required to institute all claims or none. The NPRM proposed fees based on the Office's best estimates at that time, taking into consideration the cost increases already experienced, plus future inflationary cost growth. Since then, the Office has collected and analyzed the additional cost data available through the end of FY 2019. In addition, the Office has taken into account uncertainties resulting from changes in the way in which AIA trials are conducted.

While the unit cost data (*see* Table 7) shows that post-institution costs have increased more than pre-institution costs, pre-institution costs have also increased. These costs have increased in response to the Supreme Court's *SAS* decision, as discussed above.

In addition, in response to feedback from stakeholders, the Office has modified its approach to concurrent petitions challenging the same patent or patents in the same family filed by the same petitioner. Specifically, the Board now considers whether to exercise its discretion to limit the number of these parallel petitions that may, if the threshold is met, be instituted. Similarly, the Board has undertaken a closer review of petitions to determine whether they raise issues that were considered by the examiner during *ex parte* prosecution or during other proceedings before the Office. To evaluate these requests the Board must make close comparisons between the challenges to determine whether it should exercise its discretion and institute a trial. Such comparisons require analyzing the prior art cited in the petitions and evaluating the reasons given by the petitioners for filing additional petitions. As this development in AIA trial practice is relatively recent (within the last 12 months), the Office does not yet have an accurate model to predict how many requests it will receive and how much additional effort will be necessary to evaluate them. To account for these uncertainties, it is necessary to set the pre-institution fees for *inter partes* reviews at $19,000. This 23 percent increase is less than the 25 percent increase proposed in the NPRM but above the FY 2019 unit cost. The pre-institution fee is set at more than the FY 2019 unit cost to take into account the uncertainties outlined above that arose

in that year and are expected to continue in FY 2020 and beyond.

The post-institution fee is set to $22,500 for *inter partes* review, which is above the increase proposed in the NPRM but considerably lower than the FY 2019 actual unit cost. As a result of the *SAS* and *Arthrex Inc.* v. *Smith & Nephew, Inc.,* 941 F.3d 1320 (Fed. Cir. 2019) decisions, there has been an increase in the number of remands to the PTAB, which has increased the post-institution amount of work and costs. At this time, it remains unclear whether the post-institution costs will remain at the current level or decrease after the *SAS* and *Arthrex* remands have been fully addressed. Accordingly, the post-institution fee is set above the proposed NPRM fee, which is above the pre-*SAS* FY 2017 unit costs but below the post-*SAS* FY 2019 unit costs. The Office continues to evaluate the data as it becomes available to better understand the long-term impact of *SAS* on post-institution costs.

Post-grant review and covered business method review fees will be maintained at the rates proposed in the NPRM, at $20,000 for pre-institution and $27,500 for post-institution. These fee rates are above the respective *inter partes* review fees, due to the additional work involved with post-grant and covered business method reviews, but below the FY 2019 actual unit costs for post-grant reviews and covered business method reviews due to uncertainties about future costs. Specifically, post-grant reviews and covered business method reviews may raise additional issues beyond those raised in *inter partes* reviews, such as patent eligibility, written description, enablement, indefiniteness, and public use. Further, given the additional issues that may be raised, post-grant reviews and covered business method reviews provide 33 percent higher word limits for petitions, patent owner responses, and preliminary responses. While the actual unit costs for post-grant and covered business method reviews have typically been higher than the unit costs for *inter partes* reviews for these reasons, it is harder to determine the precise cost of post-grant and covered business method reviews. Due to a relatively small number of trials (approximately 60 post-grant reviews or covered business method reviews annually), the data on actual unit costs can vary from year to year. Therefore, it is unclear whether the post-*SAS* costs will remain at the current levels. The Office will continue to evaluate data as it becomes available to better understand the long-term impact of *SAS* on post-grant review and covered business method review costs.

This rulemaking will help the PTAB continue to maintain the appropriate level of judicial and administrative resources to continue to provide high-quality and timely decisions for AIA trials.

(2) New Fees

(a) Non-DOCX Filing Surcharge Fee

TABLE 8—NON-DOCX FILING SURCHARGE FEE—FEE CHANGES AND UNIT COST

Fee description	Current fees large (small) [micro] entity	Final rule fees large (small) [micro] entity	Dollar change large (small) [micro] entity	Percentage change large (small) [micro] entity	FY 2018 unit cost	FY 2019 unit cost
Surcharge—non-DOCX filing	New	$400 ($200) [$100]	+$400 (+$200) [+$100]	n/a (n/a) [n/a]	n/a	n/a

The Office is implementing a new fee for utility non-provisional applications filed under 35 U.S.C. 111 and submitted in a format other than DOCX (structured text). This surcharge applies to filings that are submitted in an electronic document, such as a PDF, that is not saved in the DOCX format. It also applies to filings that are submitted non-electronically, in addition to the existing paper filing surcharge. The surcharge is being introduced for specifications, claims, and abstracts. The submission in DOCX format will facilitate improvements in the efficiency of patent operations. After careful consideration of public comments, the Office has decided to delay the implementation of the non-DOCX filing surcharge, and it will become effective on January 1, 2022. Over the next several months, the Office will continue with its outreach efforts, addressing customer concerns and providing ample time for applicants to transition to this new process.

Using EFS-Web, anyone with a web-enabled computer can file patent applications and documents without downloading special software or changing document preparation tools and processes. Registering as an EFS-Web eFiler allows enhanced filing, follow-on processing, saved submissions, and more. EFS-Web registered eFilers have been able to file specification, abstract, and claims in DOCX for utility non-provisional filings since August 2017.

Launched in 2015, the eCommerce Modernization (eMod) Project aims to improve the electronic application process for patent applicants by modernizing the USPTO's filing and viewing systems. Recent improvements include implementing structured text functionalities. Structured text allows applicants to more easily submit their documents as text-based documents rather than having to create PDF documents. This streamlines the application and publication processes. The Office tested the capabilities of structured text within EFS-Web and PAIR with the eMod Text Pilot Program, which ran from August 2016 until September 2017. The pilot was successful, and many improvements were made based on feedback from applicants, including independent inventors, law firms, and corporations. Structured text features are now available to all EFS-Web-registered and Private PAIR users and give applicants the ability to file structured text via EFS-Web and access structured text submissions, structured text Office actions, and Extensible Markup Language (XML) downloads via Private PAIR. Additional information can be found in the associated DOCX quick start guide available on the USPTO website, *https://www.uspto.gov/patents-application-process/checking-application-status/quick-start-guides.* For more information on filing in DOCX, please visit *https://www.uspto.gov/patent/docx.*

To encourage the filing of more applications in structured text, the required fee surcharge applies to application filings that do not include the specification, claims, and abstract in DOCX format. This will accelerate the

adoption of DOCX to realize a variety of benefits. Both the USPTO and applicants will see increased efficiencies, over the lifetime of an application, from encouraging DOCX filings. Based on a USPTO survey, over 80 percent of applicants author their patent applications in DOCX in the normal course of business. Filing in structured text allows applicants to submit their specifications, claims, and abstracts in text-based format and eliminates the need to convert structured text into a PDF for filing. Applicants can access examiner Office actions in text-based format, which makes it easy to copy and paste when drafting responses. The availability of structured text also improves accessibility for sight-impaired customers who use screen reading technology.

DOCX filing provides opportunities to increase efficiency in the Office. It enables the development of software to provide automated initial reviews of applicant submissions to help reduce the effort required by the Office. The automated reviews can tell applicants up front if potential problems exist and allow them to make changes prior to or at the time of submission. This also improves validation based on content, such as claims validation for missing claim numbering or abstract validation for word count and paragraph count.

Increased DOCX filing will also lead to higher data quality by reducing system conversion errors. It provides a flexible format with no template constraints. It also improves data quality by supporting original formats for chemical formulas, mathematical equations, and tables. DOCX filing also improves document identification by automatic detection, allows for greater reuse of content, and provides improved searching for patent applications and submissions. The originally submitted structured text document is available in Private PAIR, allowing easy retrieval of original DOCX files.

Structured text usage also helps streamline the application process and provides benefits for the USPTO. The Office converts image-based filings (*e.g.,* PDF documents) into text-based format for internal processing. Text-based filings will allow the Office to skip this time-consuming and costly step. Optical character recognition (OCR) of image-based filings costs the Office approximately $3.15 per new submission. In addition to the initial submission, the use of image-based PDFs incurs many costs over the lifetime of an application. There are large costs associated with the USPTO's systems and personnel—from pre-examination, examination, and publication—due to the need to apply OCR to convert image-based PDFs into structured text that can be leveraged by downstream systems. The surcharge is applied not only to account for these inefficiencies, but also to address rising expenses. Encouraging text-based filings will decrease the Office's costs. If, in the future, the program were extended to additional application documents besides specifications, claims, and abstracts, the potential savings could reach as much as $9.0 million annually.

XML generated from DOCX files complies with the international World Intellectual Property Office (WIPO) Standard ST.96 from intake through display and use in examination tools. Receiving filings through structured text makes documents automatically available to examiners in almost real-time. DOCX filing also improves examination consistency by using automated tools to analyze text, increases the accuracy of examiner formalities reviews and tools (*i.e.,* claims tree generators and document comparison), and improves results in automated pre-search and future analytics (*i.e.,* section 112(b) and (f) evaluations) by using text supplied by applicants. DOCX submission contributes to the USPTO's plan to begin the automation of publication processes, which will lead to large cost reductions in the production of patent artifacts (grants and pre-grant publications), and contributes to the USPTO's plan to begin the automation of processes to assist in formalities reviews, classification, and routing, which leads to improved patent quality, reduced pendency, and greater consistency.

(b) Pro Hac Vice Fee

TABLE 9—PRO HAC VICE FEE—FEE CHANGES AND UNIT COST

Fee description	Current fees large (small) [micro] entity	Final rule fees large (small) [micro] entity	Dollar change large (small) [micro] entity	Percentage change large (small) [micro] entity	FY 2018 unit cost	FY 2019 unit cost
Fee for non-registered practitioners to appear before the Patent Trial and Appeal Board	New	$250	+$250	n/a	n/a	n/a

In this Final Rule, the Office is implementing a fee to appear *pro hac vice* in an AIA trial proceeding. The non-registered practitioner fee is for each proceeding that a non-registered practitioner requests admission to practice. If a non-registered practitioner requests admission to multiple AIA trial proceedings, multiple requests and fees will be required, one for each proceeding. Once a request is granted, the counsel is admitted for the entire duration of a proceeding, which may extend for several years, (*e.g.,* when an *inter partes* review proceeds to final written decision, and, after appeal to the Federal Circuit, is remanded back to the PTAB for further proceedings). By instituting the *pro hac vice* fee, the Office will be able to shift the cost of the service of processing these requests from the overall AIA trial fees to the requesting, non-USPTO registered counsel.

(c) Annual Active Patent Practitioner Fee

In the NPRM, the USPTO proposed a new fee called the annual active patent practitioner fee, and an associated fee structure, under 37 CFR 1.21 and 11.8, so that patent practitioners, who directly benefit from registration, would bear the costs associated with maintaining the integrity of their profession, including the costs of OED's register maintenance and disciplinary functions. The fee collections were proposed to shift the costs of the services OED provides patent practitioners in administering the disciplinary system and register maintenance from patent applicants and owners to the patent practitioners. The annual active patent practitioner fee was proposed to be $340, with a $100 annual fee discount for those who certified completion of a certain number of CLE. In addition, the Office proposed that registered practitioners who are endorsed on the register as voluntarily

inactive would be liable for a fee of $70 per year to cover OED's administrative costs in maintaining the register and updating their information. Finally, a new emeritus status was proposed for active patent practitioners who have been registered for ten or more years to elect emeritus status, subject to certain conditions.

However, during the public comment period, the USPTO received a number of comments expressing concerns over the proposed new fee. Having further considered the public feedback on this proposal, the USPTO has determined that it will not at this time implement the annual active patent practitioner fee, the proposed new voluntarily inactive fee, or the proposed emeritus status. The Office continues to recognize the value of CLE in maintaining and enhancing patent practitioners' legal skills. In addition, the Office recognizes that it is beneficial to provide information regarding a registered practitioner's CLE status to the public. Thus, while completion of CLE remains voluntary, the USPTO intends to recognize patent practitioners who certify completion of six hours of CLE in the preceding 24 months, including five hours of patent law and practice and one hour of ethics credit, in the online practitioner directory. In the near future, the USPTO intends to issue proposed CLE guidelines, with a request for public comment on them. It is anticipated that the proposed guidelines will address the types of CLE courses that may qualify for recognition and the form of recognition for patent practitioners who certify that they have completed the CLE.

Registration Statement

Although the USPTO is not implementing the annual active patent practitioner fee in this Final Rule, the Office intends to communicate with practitioners on a periodic basis for register maintenance. Thus, biennially, registered practitioners, as well as individuals granted limited recognition under 37 CFR 11.9(b), will be required to file a registration statement with the OED director. Notice will be provided to patent practitioners at least 120 days in advance of the due date for the filing of the registration statement, electronically, through the USPTO's online system. The registration statement takes the place of the practitioner survey, which is administered on paper. The USPTO anticipates that patent practitioners will first be required to submit a registration statement in the spring of 2022. Registered practitioners will not be required to pay any fee at the time the registration statement is filed.

Failure to file the registration statement by the due date may result in the registered practitioner being subject to a delinquency fee and possible administrative suspension, as was the case for a patent practitioner who failed to respond to the practitioner survey. Specifically, if a registered practitioner, or a person granted limited recognition pursuant to 37 CFR 11.9(b), fails to file the registration statement by the due date, the OED director will publish and send a notice to the registered practitioner advising them of the failure to file the registration statement, the consequence of being administratively suspended, and the requirements for reinstatement. The notice will request filing of the registration statement within 60 days after the date of such notice.

If a patent practitioner fails to comply with the notice within the time allowed, the OED director will then publish and send to the practitioner a Rule to Show Cause why his or her registration or recognition should not be administratively suspended. The OED director shall file a copy of the Rule to Show Cause with the USPTO director. The practitioner will be given 30 days from the date of the Rule to Show Cause to file a response with the USPTO director. The response should address any factual and legal bases why the practitioner should not be administratively suspended. Within 10 days of receiving a copy of the response, the OED director may file a reply with the USPTO director. The USPTO director will enter an order either dismissing the Rule to Show Cause or administratively suspending the practitioner. The aforementioned is the same procedure currently used when a registered practitioner fails to timely respond to the practitioner survey.

Reinstatement

The sections referring to reinstatement from administratively inactive status remain unchanged from the current regulations. The reinstatement sections relating to other statuses are set forth below.

Administratively Suspended

Under this Final Rule (37 CFR 11.11(f)(1)), any registered practitioner, or person granted limited recognition, who has been administratively suspended for less than five years may be reinstated on the register provided the patent practitioner is not a party to a disciplinary proceeding. Thus, the Final Rule eliminates the requirement that a registered practitioner who is administratively suspended for more than two years (but less than five years) take and pass the registration examination in order to be reinstated. To apply for reinstatement, the practitioner will need to submit an application form supplied by the OED, demonstrate compliance with the provisions of § 11.7(a)(2)(i), submit a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the patent laws and the rules of practice before the Office, and pay the fees set forth in § 1.21(a)(9)(i) and (ii).

However, under this Final Rule, any administratively suspended registered practitioner or person granted limited recognition who seeks reinstatement more than five years after the effective date of administrative suspension, also shall be required to file a petition to the OED director requesting reinstatement and providing objective evidence that they continue to possess the necessary legal qualifications to render valuable service to patent applicants. The objective evidence may include taking and passing the registration examination.

Resigned

Any registered practitioner who has been resigned for less than five years may be reinstated on the register provided the practitioner is not the subject of a disciplinary investigation or a party to a disciplinary proceeding. Thus, the Final Rule eliminates the requirement that a registered practitioner who was resigned for more than two years (but less than five years) take and pass the registration examination in order to be reinstated. To apply for reinstatement, the practitioner will need to submit an application form supplied by the OED, demonstrate compliance with the provisions of § 11.7(a)(2)(i), submit a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the patent laws and the rules of practice before the Office, and pay the fees set forth in § 1.21(a)(9)(i) and (ii).

However, under this Final Rule any registered practitioner who seeks reinstatement after having been in resigned status for five years or more also shall be required to file a petition to the OED director requesting reinstatement and providing objective evidence that they continue to possess the necessary legal qualifications to render valuable service to patent applicants. The objective evidence may include taking and passing the registration examination.

C. Discontinued Fees

This section describes fees that are being discontinued. The purpose of this action is to help streamline the patent fee schedule while also focusing USPTO workforce efforts on producing products that benefit the general public rather than producing outputs for individual customers.

TABLE 10—DISCONTINUED FEES

Fee description	Current fees large (small) [micro] entity	Final rule fees large (small) [micro] entity	Dollar change large (small) [micro] entity	Percentage change large (small) [micro] entity	FY 2018 unit cost	FY 2019 unit cost
Copy of Patent Technology Monitoring Team (PTMT) patent bibliographic extract and other DVD (optical disc) (currently at § 1.19(j))	$50	Discontinued	−$50	n/a	n/a	n/a
Copy of U.S. patent custom data extracts (currently at § 1.19(k))	100	Discontinued	−$100	n/a	n/a	n/a
Copy of selected technology reports, miscellaneous technology areas (currently at § 1.19(l))	30	Discontinued	−30	n/a	n/a	n/a
For USPTO-assisted recovery of ID or reset of password for the Office of Enrollment and Discipline Information System (currently at § 1.21(a)(6)(i))	70	Discontinued	−70	n/a	15	18

In January 2018, to comply with Executive Order 13681 (Improving the Security of Consumer Financial Transactions), select computer service fees were discontinued and the services made free. The three changes to the fees at 37 CFR 1.19 follow that trend. The service fees in § 1.19 will be eliminated, and the Office will instead provide these services in a slightly modified form (*i.e.,* electronic) for free.

The first fee being discontinued is the current 37 CFR 1.19(j) fee for a copy of the Patent Technology Monitoring Team (PTMT) patent bibliographic extract and other DVDs. PTMT patent bibliographic data is currently available online for free, curtailing the need for the USPTO to send out extracts on disc.

The second fee being discontinued is the current 37 CFR 1.19(k) fee for a copy of U.S. patent custom data extracts. With the elimination of this service fee, the USPTO will create the common customizations and release them online, free to the public, at the same time the data is released. Further customizations will be discontinued. Additionally, PatentsView (*http://www.patentsview.org*), while not an official USPTO data source, meets many of the needs of those requesting custom data extracts at no charge to the consumer.

The third fee being discontinued is the current 37 CFR 1.19(l) fee for a copy of selected technology reports in miscellaneous technology areas. Selected technology reports are currently available online for free, curtailing the need for the USPTO to send out paper copies of the reports.

Upon consideration of public comments, a fourth fee being discontinued is the fee for the USPTO-assisted recovery of ID or reset of password for the Office of Enrollment and Discipline Information System. This fee is being removed, as it is unnecessary.

VI. Discussion of Comments

Comments and Responses

The USPTO published a proposed rule on July 31, 2019, soliciting comments on the proposed fee schedule. In response, the USPTO received comments from four intellectual property organizations and 40 individuals, attorneys, law firms, corporations, and other associations. These comments are posted on the USPTO's website at *https://www.uspto.gov/FeeSettingAndAdjusting.*

The summaries of comments and the Office's responses to the written comments follow.

General Fee Setting Approach

Comment 1: One commenter stated support for the proposed patent fee schedule. The commenter noted that the USPTO must continue to focus on reducing pendency and backlogged applications. Increased fees result in increased revenues, which allow for additional examiners to be hired. The commenter expressed that an increase in funding for examining allows applications to be processed faster and reduces the current backlog. Further, the focus on increasing up-front fees allows the USPTO to collect fees for the most cost-intensive operations.

Response: The USPTO appreciates the feedback from the commenter and is committed to achieving the goals developed in consultation with the stakeholder community as set forth in the Strategic Plan. The USPTO has carefully considered the balance of front-end and back-end fees. In this Final Rule, the balance between front-end and back-end fees is not significantly impacted. However, as certain technology lifecycles grow shorter, it is important that the USPTO not rely too heavily on fees paid late in the life of a patent. Therefore, the Office is slightly rebalancing the fees to recover the initial search and examination costs earlier in the life of the patent.

Comment 2: Several commenters expressed support for the Office's work to ensure adequate funding. They are supportive of the goals of this fee setting, especially recovering aggregate estimated costs of patent operations and optimizing patent timeliness and quality.

Response: The USPTO appreciates the feedback from the commenter and is committed to pursuing the goals in the Strategic Plan in a fiscally responsible manner.

Comment 3: One commenter expressed support for the operating reserve, its goals, and the detailed supporting information contained in the NPRM.

Response: The USPTO appreciates the feedback from the commenter. The operating reserve is an important tool that helps mitigate financial and operational risks and facilitate execution of multi-year plans in order to achieve the goals set forth in the Strategic Plan. The operating reserve also allowed the USPTO to remain open

and operational during the 35-day lapse in appropriations during FY 2019.

Comment 4: One commenter stated that the USPTO should continue to prioritize patent quality, and if fee increases are needed, the increased resources should be devoted to ensuring examiners receive the time and resources they need to assess each application and all the relevant prior art. The commenter noted it is important that patent policy be crafted to limit the possibility that low-quality patents get in the way of technical and economic progress.

Response: The Office's strategic goal to optimize patent quality and timeliness recognizes the importance of innovation as the foundation of American economic growth and competitiveness. Through this goal, the Office diligently works to balance timely examination with improvements in patent quality, particularly the reliability of issued patents. Based on assumptions and estimates found in the FY 2021 Budget, the fee schedule in this Final Rule will recover the aggregate estimated costs of patent operations, including achieving the Office's strategic goals.

Comment 5: One commenter suggested that the Office consider phasing in fee increases to provide patentees adequate time to prepare for and adapt to the increased costs.

Response: The Office realizes that higher fees will affect budgets. In the same way, the USPTO is experiencing an increase in aggregate costs, and the fee increases are necessary in order to deliver on the priorities listed in the Strategic Plan. The Office notes the time frame associated with the fee setting process inherently provides for the phasing in of fee changes. For example, this fee setting process began with a proposal presented to the PPAC in August 2018, and the fee schedule in this Final Rule will not take effect until fall 2020, with the non-DOCX filing surcharge effective January 2022. As part of the fee setting process, the public had two opportunities to review and comment on the fee proposals. The public and PPAC feedback allowed the USPTO to refine the fee proposal in both the NPRM and this Final Rule.

Comment 6: One commenter noted stakeholder concerns about the increasing uncertainty of patent rights and encouraged the USPTO to carefully consider whether excessive fee increases might have the unintended consequence of discouraging filings.

Response: The Office appreciates the commenter's concern and carefully considered the fee schedule in this Final Rule. The Office undertook an elasticity analysis (*i.e.,* an assessment of the degree to which changes in fee rates may affect demand for services) as part of this rulemaking, and a description of elasticity estimates can be found at *https://www.uspto.gov/FeeSettingAndAdjusting.*

Comment 7: One commenter expressed support for the reduction in fees based on organization size.

Response: The USPTO appreciates the feedback from the commenter and is committed to providing, as allowed by statute, fee reductions for small and micro entity innovators to facilitate access to the patent system.

Comment 8: Multiple commenters noted the need for the USPTO to consider smaller entities when raising fees. Some noted that fee increases are prohibitive for *pro se* inventors, small entities, and micro entities and feel they will be disproportionately affected by these fee increases.

Response: The USPTO appreciates the concern about increasing fees. For small businesses and individual filers, the fees for small and micro entity rates are tiered, with small entities at a 50 percent discount and micro entities receiving a 75 percent discount on the fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. Small or micro entity discounts are available for those who are eligible in 86 of the 125 large entity fee rates being set or adjusted in this Final Rule.

Comment 9: One commenter requested that the USPTO carefully consider whether further reductions in the fees are possible for small entities, and especially micro entities, while maintaining the legitimate goals articulated in the fee proposal. Similarly, another commenter suggested that, instead of increasing the fees, the USPTO could provide more financial assistance to individual inventors who can prove their individual inventor status.

Response: The Office does not have the legal authority to provide further reductions in the fees for small and micro entities or to provide direct financial assistance. However, the USPTO notes that under the fee structure included in this Final Rule, an indirect financial assistance to small and micro entities is provided in the form of subsidizing the cost of patent application prosecution. For example, the costs to the Office, from filing through issue, exceed the fees paid by a micro entity who maintains a patent through the full term. Further, small entity fees only cover the costs to the Office if a patent is maintained for the full term. Therefore, maintenance fees paid by large entity patentees and small entity patentees who maintain their patent for a full term are used in part to subsidize the filing, search, and examination costs for all applicants, including small and micro entities.

Comment 10: One commenter questioned what the Office could do to encourage greater participation by small and micro entities in obtaining and maintaining patents.

Response: Helping small businesses and independent inventors with limited resources is important to the USPTO. It has several free or reduced fee programs to assist independent inventors and small businesses in securing patent protection for their inventions, such as the Patent Pro Bono Program, Pro Se Assistance Program, and Law School Clinic Certification Program. More information on these programs can be found on the USPTO website:

- *https://www.uspto.gov/ProBonoPatents*
- *https://www.uspto.gov/ProSePatents*
- *https://www.uspto.gov/LawSchoolClinic*

Another advantage that the USPTO offers for small and micro entities is reduced fees. An applicant who meets the micro entity requirements is eligible for a 75 percent reduction on most fees, and small entity status offers a 50 percent fee reduction.

Comment 11: One commenter stated that it is important to keep barriers to entry (fees) low enough that startups can obtain patents (*e.g.,* application and examination fees), maintain them (*e.g.,* maintenance fees), and challenge others' low-quality patents that should not have been issued in the first place (*e.g.,* AIA trial fees). The commenter stated it is essential for startups to be able to reap the benefits at each stage.

Response: The USPTO agrees that it is important to keep front-end fees low enough so as not to prevent entry into the patent system. The USPTO also designs the fee structure so that fees to obtain and maintain a granted patent increase only as the age of the patent increases to minimize the financial impact early in the life of a patent application or patent. In this Final Rule, the balance between front-end and back-end fees is not significantly impacted. The USPTO continues to set front-end fees below the cost to the Office to provide those services, in order to encourage innovation. While this Final Rule increases the issue and first stage maintenance fees, the fee schedule continues to maintain those fees below second stage maintenance fees and keeps the balance of front-end and back-end fees substantially the same. The

USPTO also maintains small and micro entity discounts for the fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

Comment 12: One commenter suggested that the Office should reduce the cost of filing certain patent applications by allowing an applicant to defer payment of some fees without penalty.

Response: In the future, the USPTO may consider changes to the timing of fee payments for search and examination. Currently, however, except for provisional applications, each application for a patent requires the appropriate search and examination fees in addition to the patent application filing fees. Deferring payment of some fees would require a large enough operating reserve to sustain operations during the period in which fee collections would be lower due to the delayed payment of fees. The adjusted fee schedule set forth in this rulemaking will help replenish and grow the patent operating reserve to position the USPTO for future changes, such as those suggested by the commenter.

Comment 13: One commenter noted the USPTO's tendency to follow or align with patent practices in other countries, in fee structure and other aspects of the patent system. The commenter hopes the leaders and government agencies of our country are aware of the long-term consequences of the actions they take.

Response: The Office and the administration carefully analyze all policy decisions before implementation. This includes considering best practices of other countries' IP systems. When appropriate, the Office may implement practices similar to other national IP offices.

Changes to policies are considered after public comments have been reviewed and a cost-benefit analysis has been performed (Regulatory Impact Analysis). Enactment of policy change occurs if generally supported by public comment and the corresponding cost-benefit analysis displays a positive, long-term impact.

Across-the-Board Adjustment to Patent Fees

Comment 14: One commenter stated the fee increase should only reflect a cost-of-living increase to keep pace with inflation.

Response: The USPTO appreciates the concern about rising fees and continuously evaluates its processes and costs to ensure the Office is achieving the optimal value from the resources used to carry out operations. Despite that, the USPTO must adjust fees to recover the aggregate estimated cost to the Office for processing, activities, services, and materials relating to patents, including cost-of-living increases and administrative costs of the Office with respect to such patent fees over a multi-year period.

Comment 15: One commenter expressed that the fee for the USPTO-assisted change of address should be eliminated.

Response: The USPTO would like to remind customers that they are able to perform this process online as a self-service option free of charge. The change of address fee is only charged if it is requested that the USPTO perform this task instead of the customer utilizing the self-service options. The USPTO is not targeting this fee for a specific increase. Instead, this fee is increasing as part of the group of fees subject to the 5 percent across-the-board adjustment to patent fees. This fee was set in a previous rulemaking, and that structure is not changed in this Final Rule.

Comment 16: One commenter expressed that the fee for the USPTO-assisted recovery of ID or reset of password should be eliminated.

Response: The fee for USPTO-assisted recovery of ID or reset of password for registered practitioners has been removed as unnecessary.

Comment 17: One commenter noted that the NPRM does not state a rationale for the second and subsequent RCE fee to be different than the RCE fee for a first request.

Response: The individual RCE fees were set at different amounts in a previous rulemaking, the January 2013 Final Rule (which set forth the rationale for the difference in those fees), and that structure is not changed in this Final Rule. The USPTO is not targeting these fees for a specific increase. Instead, the fees for RCEs—both for the first request and for second and subsequent requests—are being adjusted by the across-the-board adjustment to patent fees.

Comment 18: One commenter wrote that the increase in the second and subsequent RCE fee would hurt small entity applicants and small entity law firms. The Initial Regulatory Flexibility Analysis offered no explanation justifying that differential effect on small entities.

Response: The USPTO is not targeting the RCE fees for a specific increase. Instead, the fees for RCEs—both for the first request and for the second and subsequent requests—are being adjusted by the across-the-board adjustment to patent fees. The USPTO would like to note that small and micro entity applicants will continue to receive the small and micro entity discounts, which set the fee rates significantly below cost to examine second and subsequent RCE filings. Additionally, the Regulatory Flexibility Analysis analyzed applicants' sensitivity to changes in fee rates by entity size, including RCE fees for small entities. This impact is also included in the RIA completed for this rulemaking, which is available at *https://www.uspto.gov/FeeSetting AndAdjusting.*

Comment 19: One commenter stated that the methodology for calculating the unit cost for second and subsequent RCE filings is not in the Activity Based Information and Patent Fee Unit Expense Methodology document.

Response: The commenter can find this information in the ''Setting and Adjusting Patent Fees during Fiscal Year 2020—Activity Based Information and Patent Fee Unit Expense Methodology'' document, on page 22, before Table 2. ''Similarly, the same incremental approach is used to determine the expense of the second and subsequent RCE. The two scenarios presented to determine incremental expense for the second RCE are slightly different than for the first RCE, but the same basic method applies. The scenarios are: (1) The expense of a single application that has already performed one RCE, and (2) the expense of a single application that has completed a second RCE. All other calculation methods remain the same.'' Additionally, the detail on the exact calculations for FYs 2016, 2017, and 2018 can be found on page 41 of the ''USPTO Fee Unit Expense Calculation Detail'' document under the heading ''Latest patent fee setting information.'' Both documents can be found at *https://www.uspto.gov/FeeSetting AndAdjusting.*

Comment 20: One commenter suggested that the proposed fee for submission of an information disclosure statement (IDS) is too high and may discourage prompt disclosure of material references. The commenter suggested that if the fee is increased, the Office could consider a tiered rate structure with a discounted IDS fee for submitting an IDS with fewer than five or 10 references, or below a certain page count for non-patent literature.

Response: There is no fee for filing of an IDS if it is filed before the mailing of a first Office action. The USPTO is not targeting these fees for a specific increase. Instead, the fee for submission of an IDS is increasing as part of the group of fees subject to the 5 percent across-the-board adjustment to patent fees that is being set to help the USPTO

keep pace with inflationary cost increases. The single IDS fee was set in a previous rulemaking, and that structure is not changed in this Final Rule. The USPTO will consider the commenter's suggestions for changes to the structure and fee amount for IDS fees for future fee adjustments.

Comment 21: One commenter suggested the proposed increase to the fee for extension of time for response within the first month is too high. The commenter stated the increased fee makes it more difficult for practitioners to provide a thorough response, especially for complex issues where input and review may be required from multiple inventors, licensees, and/or owners. The commenter indicated that the need for extensions of time may be outside of the applicant's control when extensions are required to maintain pendency after a response to a final Office action.

Response: The Office recognizes that there are instances in which an applicant would need to extend the time period for responding to an Office action. However, an applicant may file a first after final reply within two months of the final rejection to avoid some of the costs associated with maintaining pendency after a reply to a final Office action. The USPTO is not targeting these fees for a specific increase. Instead, all fees for extensions of time for response are being increased as part of the 5 percent across-the-board adjustment to patent fees that are being set to help USPTO keep the pace with inflationary cost increases. Differences in the rate of increase result from rounding (the rounding rules are discussed in Part V: Individual Fee Rationale, A. Across-the-Board Adjustment to Patent Fees).

Comment 22: One commenter suggested that increases in fees for extensions of time for response will fall disproportionately on small firms and solo practitioners. The commenter noted that fees for extensions of time for response beyond the third month are greater than the filing fees for a new application. The commenter believes that, with essentially no cost to the USPTO, this appears to be a penalty, not a reasonable fee increase.

Response: These fees were set in a previous rulemaking, and the structure is not changed in this Final Rule. The USPTO is not targeting these fees for a specific increase. Instead, the increase in fees for extensions of time for response is part of the across-the-board adjustment to patent fees that is being set to help the USPTO keep pace with inflationary cost increases. Extension of time fees are intended to encourage early submission of an applicant's response to facilitate compact prosecution.

Comment 23: One commenter stated that the increases in the notice of appeal fee and fee for forwarding an appeal in an application or *ex parte* reexamination proceeding to the Board should take into account the rate of reversal, in that the applicant should not bear the entirety of the cost of what could be interpreted as an error made by the Office.

Response: The Office appreciates the feedback. Regardless of the outcome, the cost to render a decision on the appeal remains the same. The Office has limited the increase in both the notice of appeal fee and the fee for forwarding an appeal in an application or *ex parte* reexamination proceeding to the Board to the 5 percent across-the-board adjustment to patent fees. As a matter of policy, the Office has set the combined notice of appeal and fee for forwarding an appeal in an application or *ex parte* reexamination proceeding to the Board to less than half of the unit cost for deciding an appeal.

Targeted Fee Adjustments

Maintenance Fee Surcharge

Comment 24: One commenter asked what information the USPTO had about the use of the maintenance fee grace period and the consequences. The commenter was concerned that higher fees could lead to greater conflict possibilities between clients and attorneys. A commenter suggested that the Office initiate procedures to notify patentees, by United States Postal Service (USPS) mail and email to all registered email addresses, of both the due date for the maintenance fees to be paid and entrance into the grace period.

Response: The USPTO continuously monitors maintenance fee payments, including payments made during the grace period. While over 95 percent of maintenance fee payments are made in the six-month payment window prior to the grace period, the Office does recognize that a patentee may need the additional six-month grace period to make a decision on renewing their patent rights. Therefore, the Office lowered the proposed maintenance surcharge fee to $500 for large entities in the NPRM, compared to the initial proposal of $1,000.

It is the responsibility of the patentee to ensure that maintenance fees are paid in a timely manner to prevent the expiration of a patent. Patentees are expected to maintain their own record and docketing systems. The Office does provide some notices as reminders that maintenance fees are due, but the notices, errors in the notices or in their delivery, or the lack or tardiness of notices in no way relieve a patentee from the responsibility to make timely payment of each maintenance fee to prevent the patent from expiring by operation of law. The notices provided by the Office are courtesies in nature and intended to aid patentees. The Office's provision of notices in no way shifts the burden of monitoring the time for paying maintenance fees on patents from the patentee to the Office.

Comment 25: One commenter stated that those who delay payment of a maintenance fee include small entities, micro entities, and independent inventors, for whom the payment of a maintenance fee is often a significant investment. Forcing such entities to pay a higher surcharge fee does not appear to be justified in this circumstance.

Response: The Office recognizes that the maintenance fee surcharge during the grace period affects small and micro entities as well as independent inventors. The Office lowered the proposed maintenance fee surcharge to $500 for large entities in the NPRM, compared to the USPTO's initial proposal to PPAC of $1,000. Additionally, small and micro entity discounts apply to the maintenance fee surcharge as well as to the maintenance fees themselves.

Comment 26: One commenter noted that no cost to the public of the six-month grace period was identified in the NPRM. Additionally, the commenter noted that a competitor would still need to wait until the expiration of the grace period to know that the maintenance fee has not been paid.

Response: This rulemaking does not modify the maintenance fee grace period, nor does it change the timeline for submitting maintenance fee payments. The rulemaking simply adjusts the surcharge fee for submitting a maintenance fee payment during the six-month grace period, which provides patentees the option for an additional six months to submit maintenance fee payments. It is not anticipated that this fee adjustment will have a significant impact on patentees, since more than 95 percent of patent holders submit maintenance fee payments prior to the grace period. The impact of the fee adjustment to the maintenance fee grace period is included in the cost-benefit analysis provided in the RIA, available at *https://www.uspto.gov/FeeSettingAndAdjusting.* The Office cannot provide individuals legal advice on the status of a patent. The Office's provision of notices of maintenance fee payments in no way shifts the burden of

monitoring the time for paying maintenance fees on patents from the patentee or other relevant stakeholders to the Office.

Comment 27: One commenter wanted to know what other IP offices have late payment surcharges for maintenance fees, along with more information on those offices' maintenance/annuity schedules.

Response: The USPTO allows for payment of maintenance fees up to six months prior to the payment due date and up to six months after the due date (grace period) if accompanied with a surcharge. This practice is similar to other national or regional IP offices like the European Patent Office and the Japan Patent Office. Both of these offices impose a substantial surcharge for late payment of such fees, which, in the case of Japan, is a 100 percent surcharge for late payment.

Each national or regional IP office has its own maintenance/annuity schedule, which can be found on its website. Below are links to two of the national/regional IP offices' fee schedules, which include maintenance/annuity fees:

European Patent Office:

- *Fee Schedule: https://my.epoline.org/portal/classic/epoline.Scheduleoffees*
- *About Renewal Fees: https://www.epo.org/law-practice/legal-texts/html/guidelines/e/a_x_5_2_4.htm*

Japan Patent Office:

- *Fee Schedule: https://www.jpo.go.jp/e/system/process/tesuryo/hyou.html*
- *About Renewal Fees: https://www.jpo.go.jp/e/faq/yokuaru/fees.html#anchor4-3*

Comment 28: One commenter stated that charging surcharge fees for late payments on patent maintenance filings and encouraging earlier payment defies Congress. In the commenter's opinion, Congress determined that the public should have clear notice of the expiration of a patent on the 4th, 8th, and 12th anniversaries of it being issued. The commenter believed the USPTO's proposal suggests the public should know on the 3½, 7½, and 11½ anniversaries. The commenter suggested there is no statutory delegation noted by the USPTO of the authority to hold such an opinion, let alone act on it.

Response: The USPTO has specific statutory authority to charge fees under title 35 of the U.S.C. and the Trademark Act of 1946. The USPTO also has specific authority to set and adjust those fees as in the current rulemaking under section 10 of the AIA. This Final Rule does not modify the maintenance fee grace period, which is set in 35 U.S.C. 41(b)(2), nor does it change the timeline for submitting maintenance fee payments. The rulemaking simply adjusts the surcharge fee for submitting a maintenance fee payment during the six-month grace period. The Office cannot provide legal advice to individuals on the status of a patent, but a higher surcharge may encourage more patent holders to pay maintenance fees before the grace period begins.

Request for Expedited Examination of a Design Application Fee

Comment 29: Several commenters stated that the increase has not been adequately justified as based on the cost of recovery or value to the recipient, noting that while the fee had not increased since November 2000, an increase of 1.6 percent annually would only put the fee at $1,256 in 2021. They further stated that the NPRM only opaquely describes the Office's need without any calculation or demonstration of burden hours and threatens to close the program without the full increase, improperly discouraging applicant behavior. Commenters asked for further justification from the Office for the amount of the proposed increase. One commenter also suggested the Office may consider removing the requirement of a pre-examination search, which would help applicants by alleviating some of the financial burden associated with filing a request for expedited examination.

Response: The Office received numerous comments that the fee increase to $2,000 was too great and would deter applicants from using the service. These comments were considered, and in response, the Office has chosen not to implement the proposed fee of $2,000. Instead, the non-discounted fee for an application will be set at $1,600. Discounts for small and micro entities will continue to be available.

Applicants who wish to have the examination of their design applications expedited must file a request for expedited examination and comply with the other requirements set forth in 37 CFR 1.155. The Office notes that the unit cost presented for this service only accounts for the initial processing of the request and does not include additional resources expended. From the time a request for expedited examination is filed in a design application, the application is expedited at every touch point during its prosecution. This includes initial processing, deciding the request to expedite, search and examination, publication, and any appeal that may be taken to the Board. The pendency for these applications, from granting of the request to expedite until first Office action, is currently just over one month. Expediting each step of the process for these applications causes the Office to expend resources that increase its costs with respect to these applications. Further, the Office needs to account not only for the increase in costs over the past twenty years, but also the anticipated costs of providing this service into the future, even with maintaining the requirement for a pre-examination search. Accordingly, the Office determined that the fee for this service needs to be increased if the service is to be continued. The USPTO believes that this new fee amount, as well as the associated small and micro entity discounts, will provide the Office the ability to continue offering this service to applicants. Further, the Office notes this is an optional fee paid only by those who wish to receive the benefit of a faster decision on their application.

Comment 30: A few commenters noted that design applications are limited to a single claim, meaning the proposed increase would cause applicants to pay roughly twice as much to expedite the examination of four design patent claims as they would to expedite the examination of four utility patent claims.

Response: The Office acknowledges that design applications are limited to a single claim. The process of examining a design application differs from the process of examining a utility application. Based on the lifetime costs of expediting a design application, the Office has determined that the fee for this service needs to be increased if the service is to be continued. However, the Office has carefully considered all of the comments and, in response, has chosen not to implement the proposed fee of $2,000. Instead, the non-discounted fee for an application will be set at $1,600. The USPTO believes that this new fee amount, as well as the associated small and micro entity discounts, will provide the Office the ability to continue offering this service to applicants.

Comment 31: Multiple commenters stated that the proposed increase in the request for expedited examination of a design application fee would disproportionately harm individual inventors and small entities.

Response: The Office has carefully considered all of the comments and, in response, has chosen not to implement the proposed fee of $2,000. Instead, the non-discounted fee for an application will be set at $1,600. The Office will continue to offer the 50 percent small entity discount and the 75 percent

micro entity discount, which should not disproportionately harm individual inventors and small entities. The fees set in this Final Rule make the fee for small entities $800 and the fee for a micro entity $400. Further, the Office notes this is an optional fee paid only by those who wish to receive the benefit of a faster decision on their application.

Comment 32: A few commenters noted that the process to obtain design protection in the U.S. is significantly longer than in many countries. Not all applicants and circumstances can wait for the normal lengthy U.S. examination process to be completed. The Office should not impose further barriers to obtaining timely design protection for those applicants who may need it.

Response: The process to obtain a design patent in the U.S. takes longer than in some other countries because, unlike some other patent systems, the USPTO performs an examination for design patent applications. The Office agrees that expedited examination can be a benefit to applicants in numerous situations. As a result, the Office will continue to offer expedited examination for design applications. Additionally, the Office has chosen not to raise the fee for expedited examination of design applications to $2,000. Instead, the large entity fee for an application is being raised to only $1,600. The Office will continue to offer the 50 percent small entity discount and the 75 percent micro entity discount.

Comment 33: One commenter noted that some industrial designs can be protected through copyright law but stated that designs that do not qualify for copyright protection should have an affordable expedited procedure to obtain IP rights. The commenter also noted that copyright law might not always be effective for protection of designs.

Response: An applicant should determine what forms of IP protection are appropriate for each design. For those inventions where an applicant has determined that design patent protection is warranted, the applicant may expedite the examination of an application, when needed, as the Office will continue to offer the service. Based on comments received, the Office has chosen not to raise the fee for expedited examination of design applications to $2,000. Instead, the large entity fee for an application is being raised to only $1,600. The Office will continue to offer a discount for small and micro entities.

Utility and Reissue Issue and Maintenance Fees

Comment 34: One commenter noted that a stated rationale for the proposed substantial increases to issue and first stage maintenance fees is that ''technology lifecycles [have grown] shorter,'' and, therefore, ''It is important that the USPTO not rely too heavily on fees paid late in the life of a patent.'' The commenter argued that in many industries, including telecommunications and pharmaceuticals, this is not necessarily true. Therefore, the commenter did not believe that shifting the burden of fee increases to the issue and first maintenance fees is warranted.

Response: In accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the USPTO cannot differentiate IP policy by technology. Therefore, the Office must structure its fee schedule to align with the technology lifecycles of all industries and cannot establish different fee schedules for different technologies.

While many technologies have not experienced a change in their lifecycle, for others there have been significant changes. Additionally, the aggregate average patent lifecycle is impacted by changes in the composition of patents granted by the USPTO. To account for these changes, the USPTO is increasing the issue and first stage maintenance fees. There has not been an adjustment to these fees since 2013.

Comment 35: One commenter noted that it is important to set fees so that, during the entire lifecycle of a patent, a patentee can pay fees at points in time where sufficient information is available to make an appropriate decision about the commercial merits of obtaining/maintaining a patent.

Response: The fees over the life of a patent begin low and then gradually increase. The USPTO carefully considered the balance of front-end and back-end fees. In this Final Rule, the balance between front-end and back-end fees is not significantly impacted. The Office is slightly rebalancing the back-end fees to recover the initial search and examination costs earlier in the life of the patent.

AIA Trial Fees

Comment 36: Several commenters stated that the Office should finish collecting and analyzing costs before increasing the AIA trial request fee and the post-institution fee. One commenter indicated that pre-institution costs may decrease due to higher settlement rates and lower institution rates. Other commenters indicated that most of the additional work after *SAS Institute Inc.* v. *Iancu,* 138 S. Ct. 1348 (2018) (*SAS*) occurs post-institution. Accordingly, the commenters propose that the increase should be limited to the post-institution fee.

Response: The USPTO is committed to maintaining the PTAB's ability to provide fair, timely, and high-quality decisions. The *SAS* decision significantly affected the operations of the PTAB by increasing the amount of time spent per case and, thereby, increasing costs in both pre- and post-institution stages. The NPRM proposed fees based on the Office's best estimates, taking into consideration the cost increases already experienced, plus future inflationary cost growth. Since then, the Office has collected and analyzed the additional cost data available through the end of FY 2019. In addition, the Office has taken into account uncertainties resulting from changes in the way in which AIA trials are conducted. These uncertainties are discussed further below.

While the unit cost data shows that post-institution costs have increased more than pre-institution costs, pre-institution costs have also increased. The Office has modified its pre-institution practice to take into account the Supreme Court's *SAS* decision. For example, prior to *SAS,* the PTAB did not always address all arguments at institution. Post-*SAS,* for purposes of deciding whether to institute trial on a petition, the Office has committed to provide details to the parties to the largest extent practicable, including responding to arguments in a patent owner's preliminary response that were not the basis for the decision whether or not to institute.

In addition, in response to requests from stakeholders, the Office has modified its approach to concurrent petitions challenging the same patent or patents in the same family filed by the same petitioner. Specifically, the Board now considers whether to exercise its discretion to limit the number of these parallel petitions that may, if the threshold is met, be instituted. Similarly, the Board has undertaken a closer review of petitions to determine whether they raise issues that were considered by the examiner during *ex parte* prosecution or during other proceedings before the Office. To evaluate these requests, the Board must make close comparisons between the challenges to determine whether the Board should exercise its discretion and institute a trial. Such comparisons require analyzing the prior art cited in the petitions and evaluating the reasons given by the petitioners for filing additional petitions. As this development in AIA trial practice is relatively recent (within the last 12 months), the Office does not yet have an

accurate model to predict how many requests it will receive and how much additional effort will be necessary to evaluate them. To account for these uncertainties, it is necessary to set the pre-institution fees for *inter partes* reviews at $19,000. This 23 percent increase is less than the 25 percent increase proposed in the NPRM but above the FY 2019 unit cost. The pre-institution fee is set at more than the FY 2019 unit cost to take into account the uncertainties outlined above that arose in that year and are expected to continue in FY 2020 and beyond.

The post-institution fee has been set at $22,500 for *inter partes* review, which is above the increase proposed in the NPRM but considerably lower than the FY 2019 actual unit cost. As a result of the *SAS* decision, there has been an increase in the number of remands to the PTAB, which has increased the post-institution amount of work and costs. At this time, it is unclear whether the post-institution costs will remain at the current level or will decrease after the *SAS* remands have been fully addressed. Accordingly, the post-institution fee is set above the proposed NPRM fee, which is above the pre-*SAS* FY 2017 unit costs but below the post-*SAS* FY 2019 unit costs. The Office continues to evaluate the data as it becomes available to better understand the long-term impact of *SAS* on post-institution costs.

Post-grant review and covered business method review fees will be maintained at the rates proposed in the NPRM, at $20,000 for pre-institution and $27,500 for post-institution. These fee rates are above the respective *inter partes* review fees, due to the additional work involved with post-grant and covered business method reviews, but below the FY 2019 actual unit costs for post-grant reviews and covered business method reviews due to uncertainties about future costs. Specifically, post-grant reviews and covered business method reviews may raise additional issues beyond those raised in *inter partes* reviews, such as patent eligibility, written description, enablement, indefiniteness, and public use. Further, given the additional issues that may be raised, post-grant reviews and covered business method reviews provide 33 percent higher word limits for petitions and patent owner responses and preliminary responses. While the actual unit costs for post-grant and covered business method review have typically been higher than the unit costs for *inter partes* reviews for these reasons, it is harder to determine the precise cost of post-grant and covered business method reviews. Due to a relatively small number of trials (approximately 60 post-grant reviews or covered business method reviews annually), the data on actual unit costs can vary from year to year. Therefore, it remains unclear whether the post-*SAS* costs will remain at the current levels. The rates proposed in the NPRM will be implemented, and the Office will continue to evaluate data as it becomes available to better understand the long-term impact of *SAS* on post-grant review and covered business method review costs.

Comment 37: One commenter stated that the USPTO's elasticity data fails to capture whether small entities react differently than large entities to changes in the AIA trial fees. The commenter suggested the USPTO should study this before instituting a significant increase in fees.

Response: AIA trial fees are not subject to small or micro entity discounts under section 10(b) of the AIA. Therefore, reliable data is not available to properly measure the impact of changes to AIA trial fees on small or micro entities. However, the AIA trial proceedings have been popular with some stakeholders because they provide a less expensive and faster alternative to district court litigation. As a result, the PTAB workload has increased significantly since the institution of AIA trials. The increase in AIA trial proceeding fees will help the PTAB maintain the level of judicial, legal, and administrative staff necessary to sustain the quality and timeliness of PTAB decisions.

Comment 38: One commenter stated that, for AIA trial fees, the Office should consider a fee reduction or waiver for small and micro entities sued for infringement.

Response: Under section 10(b) of the AIA, the Office is permitted to reduce fees for small and micro entities in six categories: ''filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.'' AIA trial fees do not fall into any of those categories. Therefore, absent a change in statutory authority, AIA trial fees are not eligible for discounts or for waiver.

Comment 39: Two commenters stated that the Office should reduce the excess claim threshold for an AIA trial request fee from 20 claims to between three and six claims, and also increase the excess claims fee. The commenters make similar proposals for post-institution AIA trial fees.

Response: The fee increases are based on cost data collected and analyzed using current excess claims thresholds. The Office does not have sufficient data to evaluate the effect of reducing the excess claim threshold and increasing the excess claims fee. Additionally, the current excess claims fee threshold of 20 for the AIA trial request fee is the same as the threshold for excess claims for patent applications.

Comment 40: One commenter indicated that the Office should raise fees significantly higher and charge more if the petitioner has not been sued.

Response: 35 U.S.C. 311(a) and 321(a) require fees for AIA trial proceedings be ''reasonable, considering the aggregate costs of the review.'' Raising fees significantly higher for petitioners that have not been sued has been considered but, bearing in mind the aggregate costs of the review, has not been deemed reasonable at this time.

Comment 41: One commenter indicated that raising fees runs counter to Congress's intent to make cost-efficient proceedings.

Response: 35 U.S.C. 311(a) and 321(a) indicate that fees for AIA trial proceedings are to be ''reasonable, considering the aggregate costs of the review.'' The Office is always looking for, and open to considering, ways to make AIA trial proceedings more cost-efficient.

Non-DOCX Filing Surcharge Fee

Comment 42: Several commenters expressed the opinion that the Office's DOCX submission tools are not ready for implementation for a number of reasons. The DOCX submission process is only available for some submissions. The publicly available DOCX submission process is cumbersome. It is too soon to require a penalty (fee surcharge) of $400 for non-DOCX submissions. Before such a large penalty is enacted for failure to use DOCX submissions, applicants must be granted more time to adapt their processes to take advantage of the new capability. Commenters suggested an alternative approach of permitting submission of both a record copy and a searchable copy of an application that would provide a viable mechanism to help applicants transition to these new capabilities without prematurely penalizing them, especially in situations where the available tools may not be ready or able to accommodate special cases involving complicated submissions.

Response: These comments were considered, and the Office has chosen to delay implementation of the non-DOCX filing surcharge until January 1, 2022. Over the next several months, the Office will continue with its outreach efforts, addressing customer concerns and

providing ample time for applicants to transition to this new process.

Comment 43: One commenter questioned the statement made by the USPTO Acting Deputy Director in the September 2018 PPAC Fee Setting Hearing that ''fees for search and examination are set below cost,'' and wondered whether this was true when considering the paper filing surcharge and proposed non-DOCX filing surcharge.

Response: Under the adjusted fee schedule, the combined fees for filing, search, and examination will continue to be below the cost to the Office to provide those services, even for filers who pay both the paper filing and non-DOCX surcharges. A large entity that pays both surcharges would pay $2,620 for filing, search, and examination. A small entity would pay $1,310, and a micro entity would pay $755. The cost to the USPTO to provide these services was a combined $4,970 in FY 2018.

Comment 44: One commenter wrote that they understand that a non-DOCX surcharge cannot be applied to PCT filings because copies of the PCT publication automatically route into the U.S. national stage application in PDF form. However, the commenter stated that this highlights the unwarranted nature of the non-DOCX surcharge. If a relatively moderate increase in price for PCT national stage entry applications is believed to be fiscally sustainable within the proposed fee structure, then the same should be true of regular non-provisional application filings, and the imposition of a new non-DOCX filing surcharge fee for one and not the other is thus inconsistent.

Response: Processing DOCX in national stage applications presents additional challenges and burdens on the Office and applicants that are not encountered with a standard utility application. Further investigation is needed as to the possibility of alternative means for obtaining text data (*i.e.,* via the International Bureau) that would not burden applicants. This is being considered for the future.

Comment 45: One commenter stated that filing in DOCX is a wonderful idea in theory, but says that bugs have not been worked out of the process. The commenter writes that EFS-Web should stop removing ''text ornaments.'' Until it stops doing this, and until a DOCX filing will reliably result in an identical PDF document, there should be no penalty for filing PDF specifications or other application elements.

Response: ''Text ornaments,'' or text decorations, may not be presented in a form that allows direct reproduction of readily legible copies. *See* CFR 1.52. Therefore, they will continue to be automatically removed, and a warning will be provided.

To date, the Office has not received notifications of any issues resulting from the filing of applications in DOCX format. If there is an instance in which an error occurs, the Electronic Business Center (EBC) should be contacted for investigation at 1–866–217–9197 (toll-free), 571–272–4100 (local), or *ebc@uspto.gov.* The EBC is open from 6:00 a.m. to 12:00 midnight ET, Monday through Friday.

Comment 46: Multiple commenters opposed the $400 surcharge for filing in non-DOCX format, suggesting it was unreasonable given the USPTO's own cost figures, to apply optical character recognition (OCR) to convert a patent application submitted in PDF format. One commenter stated that the proposed benefits do not appear to justify the costs of the rule, and there does not appear to have been consideration of approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

Response: The use of image-based PDFs incurs many costs over the lifetime of an application. There are large costs associated with the USPTO's systems and personnel, from pre-examination, examination, and publication, due to the need to apply OCR to convert image-based PDFs into structured text that can be leveraged by downstream systems. The surcharge is applied not only to account for these inefficiencies, but also to address rising expenses.

As a part of the DOCX intake process, preliminary validation is performed on DOCX documents at the time of upload. The system immediately detects and supplies the applicant with useful error and warning messages, allowing for adjustments to patent applications earlier in the process. This saves time, reduces potential costs, and prevents delays in processing by minimizing notices of missing parts or incomplete applications from the Office of Patent Application Processing (OPAP).

As patent applications have become increasingly complicated, the non-DOCX surcharge is an effective measure to recover the cost of converting PDFs to text. The text is essential for efficient examination and maintaining the quality of patents issued. According to surveys conducted by the USPTO, the majority of applicants use word-processing software, such as Microsoft Office and LibreOffice, to author applications in DOCX format. These applicants will now be able to submit applications in this same format to the USPTO, therefore avoiding the new non-DOCX surcharge. Furthermore, the fee is reduced by 50 percent for small entities and 75 percent for applicants that qualify as micro entities.

The Office recognizes the need for freedom of choice to file in different formats. Therefore, image-based PDFs will continue to be accepted for customers who opt to continue to file in that format.

Comment 47: Two commenters requested that the Office continue to accept PDF filings at no charge.

Response: The use of image-based PDFs incurs many costs over the lifetime of an application. Receiving most applications in DOCX format will provide savings across USPTO systems, enabling efficient examination. Rising expenses make it prohibitive for the USPTO to continue allowing PDF filings with no associated fee to cover the costs of creating structured text that can be leveraged by downstream systems.

Comment 48: Many commenters have suggested the USPTO should make a provision for the practitioner to be able to provide a PDF version of the patent application being filed, along with the DOCX file. The PDF version would serve as the controlling version in the event of any discrepancy in the USPTO's rendering of the DOCX file.

Response: Many applications are originally created in DOCX and subsequently converted to PDF by applicants prior to submission. An advantage of submitting in DOCX format directly is that submitted files from all applicants are validated and converted to PDF by USPTO systems in a consistent manner. This eliminates the unnecessary step for applicants to generate and attach their own PDF documents. The generated PDF is available pre-submission to provide the applicant an opportunity to review the document before selecting the submit button.

As a part of the DOCX intake process, preliminary validation is performed on DOCX documents at the time of upload. The system immediately detects and supplies the applicant with useful error and warning messages, allowing for adjustments to patent applications early in the process. This saves time, reduces potential costs, and prevents delays in processing by minimizing notices of missing parts or incomplete applications from the Office. Furthermore, the USPTO continuously performs rigorous testing to ensure that document integrity is preserved.

Comment 49: One commenter asked whether the surcharge would be waived if an applicant filed on paper because the electronic filing system was not

functioning and a DOCX version was later filed within a certain time period.

Response: The current policy regarding significant unplanned electronic business system outages is available at: *https://www.federalregister.gov/documents/2018/08/30/2018-18897/filing-patent-applications-electronically-during-designated-significant-outages-of-the-united-states.* The USPTO will post a notice on its website in the event of a designated significant unplanned electronic business system outage and indicate the dates during which the alternative electronic filing means are available due to such an outage. An application filed via the alternative electronic means during a designated significant unplanned electronic business system outage will be considered to have been filed by the USPTO's electronic filing system and thus will not incur the non-DOCX surcharge or the fee required by section 10(h) of the AIA for a patent application not filed by the USPTO's electronic filing system.

Comment 50: One commenter stated that PDF format is the best and safest format for ensuring that no text becomes garbled or otherwise corrupted by the USPTO system.

Response: There have been cases where an applicant submitted PDF documents that have been corrupted or garbled that were traced back to specific PDF creation software. By submitting in text format, the extra step to convert to a PDF copy is no longer necessary, which eliminates issues associated with that conversion process.

Another advantage of submitting in DOCX format directly is that submitted files from applicants are validated and converted to PDF by USPTO systems in a consistent manner. The USPTO continuously performs rigorous testing to ensure that document integrity is preserved.

Comment 51: One commenter wrote that PDF files are easier to manage when filing, are better for long-term archival use, can be generated in text-searchable form, will not require fragmented filings using both PDF and DOCX files, carry fewer concerns with respect to malware and viruses, and carry no licensing concerns. The commenter expressed that the DOCX file format is intended for facile editing and by design is not suited for archival purposes, will require fragmented filing with different file formats, will require archiving of files in multiple file formats, carries increased risk of malware and viruses, is no better than other editable file formats, and carries some uncertainty regarding licensing status.

Response: DOCX is a word-processing file format that is part of Office Open XML (OOXML), an XML-based open standard approved by the Ecma International® consortium and subsequently by the ISO/IEC joint technical committee.

For more information about the OOXML standard, please see:

- ECMA–376 at *http://www.ecma-international.org/publications/standards/Ecma-376.htm*
- ISO/IEC 29500 at *https://www.iso.org/committee/45374/x/catalogue/*
- NIST votes for US. Approval of OOXML at *https://www.nist.gov/news-events/news/2008/03/nist-votes-us-approval-modified-office-open-xml-standard*

The USPTO conducted a yearlong study of the feasibility of processing text in PDF documents. The results showed that searchable text data is available in some PDFs, but the order and accuracy of the content could not be preserved. With DOCX, the Office is able to use the text directly and pass it on to USPTO downstream systems, which results in increased data accuracy and a more streamlined patent process.

PDFs are not immune to viruses or hidden malware. However, the USPTO filing system is equipped with malware and virus detection.

DOCX is supported by many popular word-processing applications, such as Microsoft Word, Google Docs, Pages, and LibreOffice.

Comment 52: One commenter asked if the USPTO has facts to support the statement that the DOCX to PDF conversion process will work flawlessly 100 percent of the time. If not, the commenter asserted that moving to DOCX is simply not justifiable from a technical perspective.

Response: By submitting in DOCX format directly to USPTO systems, submitted files from all applicants are validated and converted to PDF by USPTO systems in a consistent manner. The USPTO continuously performs rigorous testing to ensure that document integrity is preserved. To date, the Office has not received notifications of any issues resulting from the filing of applications in DOCX format. If there is an instance in which an error occurs, the EBC should be contacted for investigation at 1–866–217–9197 (toll-free), 571–272–4100 (local), or *ebc@uspto.gov.* The EBC is open from 6:00 a.m. to 12:00 midnight ET, Monday through Friday.

Comment 53: One commenter asked about a situation in which the USPTO's rendering engine has changed the result relative to what the practitioner saw on a word processor. The commenter expressed concerns about how to rectify such a situation and stated that knowing that there is a problem and being able to fix the problem in a timely manner may be two completely different things.

Response: If there is an instance in which an error occurs, the EBC should be contacted for investigation at 1–866–217–9197 (toll-free), 571–272–4100 (local), or *ebc@uspto.gov.* The EBC is open from 6:00 a.m. to 12:00 midnight ET, Monday through Friday.

Comment 54: A few commenters noted that the USPTO places the responsibility on the practitioner to check the generated PDF for accuracy. One commenter wanted to confirm that the authoritative document will be the USPTO-generated PDF rather than the DOCX that was submitted. Another commenter felt that USPTO-generated PDFs remove the applicant's ability to control accuracy, and applicants who choose to guarantee accuracy by filing a self-generated PDF should not be penalized with increased fees.

Response: The authoritative document will be the PDF that the USPTO systems generate from the DOCX. The filer has always been responsible for the accuracy of the documents being submitted. According to surveys conducted by the USPTO, the majority of applicants use word-processing software, such as Microsoft Office and LibreOffice, which can produce a DOCX file.

Currently, most applicants convert their DOCX documents to PDF and review the PDF documents before submission. Allowing applicants the ability to upload the specification, claims, and abstract in DOCX format reduces the applicants' burden to convert the document to PDF. With this new and improved process, applicants have the ability to upload DOCX documents directly to the USPTO filing system, which will automatically generate PDF documents for the uploaded DOCX files. At this time, applicants are encouraged to review the PDF documents before submission. The step of applicants reviewing their self-generated PDF is being replaced with their review of the USPTO-generated PDF document. The amount of time required by an applicant to review the self-generated PDF is comparable to the time to review the USPTO-generated PDF.

As a part of the DOCX intake process, preliminary validation is performed on DOCX documents at the time of upload. The system immediately detects and supplies the applicant with useful error and warning messages, allowing for adjustments to patent applications early

in the process. This saves time, reduces potential costs, and prevents delays in processing by minimizing notices from the Office of missing parts or incomplete applications.

The USPTO continuously performs rigorous testing to ensure that document integrity is preserved. To date, the USPTO has not received notifications of any issues resulting from the filing of applications in DOCX format. If there is an instance in which an error occurs, the EBC should be contacted for investigation at 1–866–217–9197 (toll-free), 571–272–4100 (local), or *ebc@uspto.gov.* The EBC is open from 6:00 a.m. to 12:00 midnight ET, Monday through Friday.

Comment 55: One commenter wrote that instead of DOCX, applicants could upload most of their submissions as text-based PDFs. The commenter further stated that, currently, the USPTO's computer systems degrade files to flatten them to unstructured bitmaps. The commenter contends the problem is caused by the USPTO.

Response: The USPTO conducted a yearlong study of the feasibility of processing text in PDF documents. The results showed that searchable text data is available in some PDFs, but the order and accuracy of the content could not be preserved. With DOCX, the Office is able to use the text directly and pass it on to USPTO downstream systems, which results in increased data accuracy and a more streamlined patent process.

Comment 56: One commenter stated that for lengthy, complex specifications, the 60-minute timeout in EFS-Web would preclude effective review. In the case of a timeout, the subsequent re-submission would still require the filer to review the entire conversion result from the beginning.

Response: This concern can be mitigated by keeping a session active. The timeout process complies with National Institute of Standards and Technology (NIST) guidelines.

Comment 57: One commenter recommended that no surcharge would be due if a substitute specification is filed after payment of a surcharge for filing a non-DOCX specification, claims, and/or abstract. Further, the commenter recommended only charging this fee once per application to avoid burdening those individuals who are unable to file DOCX documents.

Response: Substitute specifications are considered follow-on documents to an existing application and would not be assessed the non-DOCX surcharge. There will only be one fee per application because the surcharge only applies to initial filings of the non-provisional utility application filed under 35 U.S.C. 111.

Comment 58: One commenter suggested that this surcharge be limited to filing of utility applications and not be extended to the filings of additional documents (*e.g.,* responses, amendments, etc.) to avoid it unduly burdening small businesses and independent inventors by charging this surcharge every time a non-DOCX document is filed.

Response: At this time, the surcharge only applies to initial filings of the non-provisional utility application filed under 35 U.S.C. 111.

Comment 59: Two commenters stated that there is no single DOCX standard to which Microsoft Word and the other word processors are all compliant.

Response: DOCX is a word-processing file format that is part of Office Open XML (OOXML), an XML-based open standard approved by the Ecma International® consortium and subsequently by the ISO/IEC joint technical committee.

For more information about the OOXML standard, please see:

- ECMA–376 at *http://www.ecma-international.org/publications/standards/Ecma-376.htm*
- ISO/IEC 29500 at *https://www.iso.org/committee/45374/x/catalogue/*
- NIST votes for U.S. Approval of OOXML at *https://www.nist.gov/news-events/news/2008/03/nist-votes-us-approval-modified-office-open-xml-standard*

Comment 60: A few commenters were concerned that DOCX files that contain mathematical equations, chemical formulas, tables, or special fonts would get corrupted by the USPTO system.

Response: When a DOCX file is uploaded to the USPTO filing system, a PDF equivalent document is generated for applicant review. The USPTO performs continuous testing of DOCX format files, including sample files that include mathematical equations, chemical formulas, tables, and special fonts. The past results have shown no issues with the conversion of these data types. The Office is working on advanced solutions so that complicated structures in chemical and biochemical patent applications are properly captured in DOCX format.

After submission, applicants have the opportunity to download the associated XML of the submission document, which contains mathematical markup language (MathML) of the mathematical formulas and the content and structure of tables. The USPTO continuously performs rigorous testing to ensure that document integrity is preserved.

To date, the Office has not received notifications of any issues resulting from the filing of applications in DOCX format. If there is an instance in which the mathematical formulas or tables are corrupted in the DOCX and PDF generated by USPTO systems, the EBC should be contacted for investigation at 1–866–217–9197 (toll-free), 571–272–4100 (local), or *ebc@uspto.gov.* The EBC is open from 6:00 a.m. to 12:00 midnight ET, Monday through Friday. The USPTO's DOCX support web page located at *https://www.uspto.gov/patent/docx* contains a complete list of approved fonts. If there is a font that is not supported, the EBC should be contacted. Pending thorough analysis of the proposed font, it may be added to the supported font list as allowable.

Comment 61: A few commenters suggested that requiring a subscription to Microsoft Word to produce DOCX files or payment of a significant surcharge would especially impact individual inventors and start-ups, who are the least able to afford it.

Response: Microsoft Word is not required to file in DOCX format. Listed below are word-processing applications that can be used to file in DOCX format.

- Microsoft Word 2007 or higher
- Google Docs
- Office Online
- LibreOffice
- Pages for Mac

Comment 62: One commenter stated that the USPTO's current DOCX system breaks page numbering and other automatic formatting features provided by Word because it splits a single document into three documents: The specification, claims, and abstract. The commenter further stated that the shift from PDF to DOCX will affect applicants' recordkeeping requirements and costs. The commenter contends the USPTO's Paperwork Reduction Act of 1995 (PRA) analysis fails to consider this and similar costs.

Response: The USPTO considered the impact of the conversion to DOCX, including the aspects raised by the commenter. Applicants can submit one single DOCX document for the specification, including the written description, claims, and abstract. Alternatively, they can submit three separate DOCX documents (specification, claims, abstract). Regardless, this will not affect page numbering or recordkeeping. Therefore, the Office does not believe that this will increase the overall burden and/or costs to applicants.

Comment 63: One commenter wrote that in the NPRM, the USPTO claims that over 80 percent of applicants draft

their patent applications in DOCX. The commenter wishes to understand where this data originated and submits that this does not eliminate document integrity issues with the USPTO receiving DOCX filings properly.

Response: A survey was conducted by the USPTO to obtain this data. An advantage of submitting in DOCX format directly is that submitted files from all applicants are validated and converted to PDF by USPTO systems in a consistent manner. The USPTO continuously performs rigorous testing to ensure that document integrity is preserved.

Comment 64: One commenter stated that no reliable process exists in which errors introduced by EFS-Web in its rendering of DOCX files into PDF files may be corrected without being subject to the risk of rejection for new matter.

Response: Applicants are encouraged to review the PDF documents generated by the USPTO filing system before submission. The step of applicants reviewing their self-generated PDF is being replaced with their review of the USPTO-generated PDF document. The amount of time required by the applicant to review the self-generated PDF is comparable to the time to review the USPTO-generated PDF.

To date, the Office has not received notifications of any issues resulting from the filing of applications in DOCX format. If there is an instance in which an error occurs, the EBC should be contacted for investigation at 1–866–217–9197 (toll-free), 571–272–4100 (local), or *ebc@uspto.gov.* The EBC is open from 6:00 a.m. to 12:00 midnight ET, Monday through Friday.

Comment 65: One commenter suggested that the USPTO could extract the convenience text from PDF documents, which, as in current practice, are uploaded by filers without penalty and are intended to be the ''official'' filing artifacts. Almost all PDF files directly produced from word-processing software contain extractable text. (The USPTO states in the NPRM that more than 80 percent of filings use DOCX authoring tools; it is reasonable to extrapolate that a high fraction of non-drawing PDF files uploaded to EFS-Web could be directly produced by word-processing software and could contain extractable text.) Many PDF files created by other means also contain extractable text.

Response: The USPTO conducted a yearlong study of the feasibility of processing text in PDF documents. The results showed that searchable text data is available in some PDFs, but the order and accuracy of the content could not be preserved. With DOCX, the Office is able to use the text directly and pass it on to USPTO downstream systems, which results in increased data accuracy and a more streamlined patent process.

Comment 66: One commenter suggested modifying the filing system so that if a DOCX document contains a discrepancy, it can be corrected after the filing date without losing priority to the filing date.

Response: The ability for correction after the filing date depends on whether it was an applicant error or Office error. If the applicant makes an error, there is the potential to lose priority to the filing date depending on the type of correction. For example, for applications filed on or after September 16, 2012, if there is a discrepancy between the information submitted in an application data sheet and the information submitted elsewhere in the application, the application data sheet will control except for the naming of inventors. The naming of the inventorship is governed by 37 CFR 1.41, and changes to inventorship or the names of inventors is governed by 37 CFR 1.48. In addition, for applications filed on or after September 16, 2012, the most recent application data sheet in compliance with 37 CFR 1.76 will govern with respect to foreign priority claims or domestic benefit claims. *See* 37 CFR 1.76(d) and MPEP § 601.05(a). If it is the Office's error, applicants are encouraged to contact the Patent Electronic Business Center (*ebc@uspto.gov*) or file a petition.

Comment 67: One commenter suggested that the Office should reduce fees for those who file an ISO 19005–1-compliant PDF/A document, which is fully text searchable and accessible. The commenter also suggested that the Office could further reduce fees for those who file a DOCX version of the application with a certification of its accuracy in addition to their own PDF. The supplemental DOCX file would provide the Office with the structured text without jeopardizing the official application filed in PDF.

Response: The USPTO conducted a yearlong study of the feasibility of processing text in PDF documents. The results showed that searchable text data is available in some PDFs, but the order and accuracy of the content could not be preserved. The USPTO has determined that increased data accuracy and a more streamlined patent process will result from DOCX submissions.

Comment 68: One commenter suggested that the USPTO reduce the surcharge to reflect the true cost to the Office of processing non-DOCX applications (the current cost of OCR of approximately $3.15 per new submission) or offer a rebate for applicants filing in DOCX.

Response: The cited cost only covers the initial OCR. The use of image-based PDFs incurs many costs over the lifetime of an application. There are large costs associated with the USPTO's systems and personnel, from pre-examination, examination, and publication, due to the need to apply OCR to convert image-based PDFs to structured text that can be leveraged by downstream systems. The surcharge is applied not only to account for these inefficiencies, but also to address rising expenses. Alternatively, to achieve these goals, the filing fee could be increased by $400 and a $400 rebate could be offered for filing in DOCX, but a lower filing fee with a non-DOCX surcharge makes the fee schedule more streamlined than a higher fee with a rebate.

Comment 69: Several commenters asked how the Office will handle metadata retention to assure applicants' interests will not be harmed. A commenter wanted to know whether metadata would be irretrievably removed upon filing or if the Office would maintain multiple versions of an application.

Response: Generally, applicants remove metadata from their applications prior to submission. However, if metadata is still contained in the document when uploaded, EFS-Web (and the next generation Patent Center tool) will automatically remove unnecessary document properties such as author, last modified by, etc. The only metadata that remains part of the document is the size, number of pages, and word count. The pre-scrubbed document will not be stored by the USPTO. Only submitted documents are stored in the USPTO repository.

Comment 70: One commenter was concerned that the process for submitting a DOCX file is uncertain and unclear. When the user uploads a DOCX file, the USPTO system runs it through a rendering engine to yield a PDF file. Further, while the DOCX web page indicates that the submission of a DOCX file generates a unique hash based on the content of the file to ensure that the DOCX file cannot be changed post-submission, there is no indication as to when and how this hash is checked to determine whether a document has been modified or whether it would matter if it had been modified, as the converted PDF document is the official record. Because the converted PDF document is the official record, it appears that any discrepancies discovered after submission cannot be corrected.

Response: The message digest (hash) is generated to ensure non-repudiation of the DOCX. The benefit of this generated message digest to the applicant is that they can verify that the submitted DOCX is identical to the file in their records. Additionally, the applicant is given an opportunity to review the generated PDF to verify that it is accurate prior to submission. If there is an instance in which an error occurs, the EBC should be contacted for investigation at 1–866–217–9197 (toll-free), 571–272–4100 (local), or *ebc@uspto.gov.* The EBC is open from 6:00 a.m. to 12:00 midnight ET, Monday through Friday.

Comment 71: One commenter wanted the USPTO to consider the effects of breaking up sections of a single-source document (this is presently required of applicants who submit DOCX files, but the USPTO will do it in the future when it allows a single specification/claims/abstract file to be uploaded).

Response: The next generation Patent Center tool will be available to the public before the non-DOCX surcharge is implemented and will support the ability to upload a single file that contains all three application parts: Specification, claims, and abstract.

Comment 72: One commenter wrote that the USPTO stated ''Applications filed using DOCX will be more accessible in future searches of publication materials.'' The commenter wanted to know what this statement meant, relative to OCR.

Response: Structured text coming directly from DOCX submissions can be used for future initiatives to help streamline the patent process. The current publication process involves human intervention and text OCR'ed from images, which may contain errors. The goal is to leverage the structured text submitted by applicants, which will be more accurate than OCR'ed text, in downstream business processes.

Comment 73: One commenter asked if the non-DOCX filing surcharge will apply to divisional and continuation applications.

Response: Yes, the surcharge applies to divisional and continuation applications.

Comment 74: One commenter wanted to know if the non-DOCX surcharge fee can be avoided in continuing applications by ''filing by reference,'' as provided in MPEP 601.01(a)(III).

Response: No, the surcharge cannot be avoided by filing by reference in a continuing application.

Comment 75: One commenter asked if the surcharge will apply to PCT applications at national stage entry.

Response: No, the surcharge does not apply to a PCT application at national stage entry.

Comment 76: One commenter wanted to know if the surcharge applies to any other filings beyond filing the initial application (such as: Office action responses, preliminary amendments, a response with a replacement specification, etc.).

Response: No, the surcharge will not apply at this time.

Comment 77: One commenter questioned whether the surcharge will apply if, at filing, the applicant included both a DOCX and a PDF version of the application.

Response: Applicants should not file both the DOCX and a PDF version of the application, as this may delay the processing of their application. The copy of the specification not filed in DOCX would require the surcharge, as the entire application capable of being filed in DOCX was not filed in DOCX.

Comment 78: One commenter wanted to know whether the non-DOCX surcharge would be imposed in addition to the paper-filing surcharge for an application filed on paper.

Response: Yes, both surcharges would be imposed.

Comment 79: One commenter noted that plant patent applications have been required to be filed on paper and wondered whether the non-DOCX surcharge would apply to all plant patent applications.

Response: No, the non-DOCX filing surcharge would not apply to plant patent applications. At this time, the surcharge only applies to initial filings of non-provisional utility applications filed under 35 U.S.C. 111.

Pro Hac Vice

Comment 80: One commenter requested that the Office clarify the specifics of the fee to request *pro hac vice* admission in an AIA trial proceeding.

Response: The *pro hac vice* admission fee is per attorney, per AIA trial proceeding. Once the request is granted, the attorney is admitted for the entire duration of the AIA trial proceeding, which may extend for several years. Individuals not seeking to be recognized as an attorney of record in the AIA trial proceeding, such as expert witnesses, are not required to pay the fee.

Annual Active Patent Practitioner Fee

Comment 81: Multiple commenters oppose any practitioner fee. Three of the commenters stated that the USPTO should be able to fund itself, including the costs of OED, with other revenue sources such as patent fees, and not practitioner fees. One of the commenters suggested that the USPTO cut costs elsewhere to compensate for the costs to be covered by the proposed annual active patent practitioner fee. One other commenter opposed funding OED through an annual active patent practitioner fee as established in the NPRM. Another commenter asserted that the justification provided for the fee is inadequate.

Response: The USPTO received a number of comments on the proposed annual active patent practitioner fee. As discussed above, having further considered the public feedback on this proposal, the USPTO has determined that it will not implement the proposed annual active patent practitioner fee at this time.

Comment 82: One commenter suggested the materials provided by the USPTO identify no statutory authorization. The commenter contended § 41(d)(2)(A) permits the director to ''establish fees for all other processing, services, or materials,'' but the USPTO has failed to identify a specific ''processing, service, or material'' that is provided. The commenter also contended § 2(a)(2)(D) authorizes the director to ''govern recognition and conduct of agents [and] attorneys,'' but no fee is authorized as part of § 2(a)(2)(D).

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 83: Two commenters wanted the USPTO to remove the annual active patent practitioner fee and CLE discount from the NPRM and to issue one or more separate NPRMs for any proposed annual active patent practitioner and CLE discount or requirement. A commenter argued that as a new fee, the newly proposed practitioner fee (and rules) likely must be implemented, if at all, only after issuing a **Federal Register** notice under the Administrative Procedures Act (APA).

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 84: One commenter stated that section 3(b)(1) of Executive Order (E.O.) 12866 (Regulatory Planning and Review) requires that the USPTO ''identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.'' The commenter

further stated that the APA requires a statement of rationale at the proposal stage.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 85: One commenter stated that the annual active patent practitioner fee is not in compliance with E.O. 12866, in part, because the NPRM did not include an estimate of either costs or benefits of the intended regulation and thus no balancing against the status quo. Another commenter similarly stated that the USPTO has not quantified and monetized the benefits and costs and evaluated non-quantified and non-monetized benefits and costs as required by OMB Circular A–4.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 86: One commenter wrote that the USPTO must analyze costs for all patent agents and patent attorneys who do not have an existing CLE requirement that would overlap with any USPTO requirement.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. Under this Final Rule, completion of CLE remains voluntary. However, the Final Rule provides that patent practitioners who have completed six credits of CLE within the preceding 24 months may certify such completion to the OED director. The USPTO intends to issue proposed CLE guidelines, with a request for public comment on the proposed guidelines.

Comment 87: One commenter claimed the Regulatory Flexibility Analysis must analyze the effect of the annual active patent practitioner fee on small entities because a great number of practitioners work for small entities.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 88: One commenter stated the USPTO must be able to certify that the annual active patent practitioner fee requirement is ''necessary for the proper performance of the functions of the agency.'' 44 U.S.C. 3506(c)(3)(A).

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 89: One commenter stated that the USPTO must be able to certify that the annual active patent practitioner fee requirement is implemented in ways ''consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond,'' including those attorneys in states that do not have existing CLE requirements, and for all agents.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. Under the Final Rule, completion of CLE remains voluntary.

Comment 90: One commenter argued the statement in 84 FR 37422 at col. 1 that, ''The USPTO proposes to add paragraph (d) to § 11.8 to establish a new fee to be paid annually by practitioners'' and the statement in E.O. 13771 certification, at 84 FR 37430 that states ''this proposed rule is expected to involve a transfer payment'' cannot both be true. The commenter contended the annual active patent practitioner fee does not fit any of the applicable definitions of ''transfer payment.''

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 91: One commenter claimed the USPTO's proposed $100 annual fee discount, as well as recognition on OED's public practitioner search page for completed CLE, are encouragements that make the annual active patent practitioner fee an unconstitutional tax.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. In addition, under the Final Rule, completion of CLE remains voluntary. However, practitioners may be recognized in the online practitioner directory if they certify completion of six credit hours of CLE (five in patent law and practice; one in legal ethics) in the preceding 24 months.

Comment 92: One commenter stated that the USPTO needs to account for the costs of reporting and recordkeeping and other compliance costs for the annual active patent practitioner fee under the PRA, including a discussion of the lowest burden alternative, and that the public benefit is in the same range. The commenter suggested that the annual fee must be the least costly way to achieve the benefit.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 93: One commenter stated that the USPTO does not specify in the NPRM what the ''qualitative benefits'' are for the annual active patent practitioner fee.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 94: A few commenters requested that the USPTO identify the statutory authority allowing for defraying the patent-related costs of operating OED by imposition of an annual active patent practitioner fee and also for the CLE requirement. One of the commenters stated that the NPRM is not explicit about the basis for setting the fee but that it is suggested that it is being set under the ''Other fees'' provisions of 35 U.S.C. 41(d)(2)(A). The commenter requested the USPTO explain how the proposed fees involve a service to the person being charged the fee in accordance with 31 U.S.C. 9701 (specifying that user fees must be set based on ''the value of the service or thing to the recipient''). One of the commenters stated that section 10 of the AIA prohibits the creation of new fees, such as the annual active patent practitioner fee.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. Under the Final Rule, completion of CLE remains voluntary.

Comment 95: One commenter requested that the Office consider approving USPTO CLE courses for on-duty training of patent examiners. Another two commenters requested that the Office consider making the USPTO CLE courses required for Office employees, including patent examiners. One of these commenters requested that the USPTO have employees pay an annual employee fee as a pilot program prior to instituting the Final Rule to at least partially fund the USPTO.

Response: Patent examiners receive extensive on-duty training for the performance of their official duties on a continual basis. Patent examiner training is specifically tailored to the requirements of the position and includes examiner guidance based on changes in the law and regulations. However, CLE courses offered by the USPTO are generally available to employees, just as they are available to other members of the public. The USPTO is not requiring that any member of the patent bar complete CLE and will not be requiring CLE of USPTO

employees who happen to be members of the patent bar.

Comment 96: One commenter suggested that the first three to five years of the annual active patent practitioner fee be waived to alleviate the cost burden for those who become registered patent practitioners before attending law school.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 97: A few commenters suggested that the annual active patent practitioner fee is a tax, specifically a tax on innovation. Two of these commenters and three other commenters stated the annual active patent practitioner fee would particularly affect smaller law firms or part-time practitioners who represent smaller entities and independent inventors. The commenters further asserted that if individuals are deterred from patent practice, some patent applicants may be priced out of legal services. It is postured that this would increase the volume of *pro se* filings, inefficiency, cost, and use of USPTO resources.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 98: One commenter suggested that the annual active patent practitioner fees will be siphoned off to Treasury funds, disincentivizing innovation by misallocating funds. Another two commenters questioned what the funds collected from the annual active patent practitioner fee would be used for. One of these commenters requested that the funds collected be used to fund *pro se* services.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 99: Two commenters stated that the new annual active patent practitioner rules seem to require unneeded CLE where state bar associations already provide ample training. One commenter inquired whether the CLE reporting period would align with the reporting periods used by state bars.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. In addition, under the Final Rule, completion of CLE remains voluntary. However, patent practitioners who certify completion of six credit hours of CLE in the preceding 24 months, including five hours of patent law and practice and one hour of ethics, may be recognized in the online practitioner directory. Generally, the same types of courses and activities that qualify for CLE credit for a state bar will qualify for credit for purposes of the CLE recognition in the online practitioner directory, so long as it covers the appropriate topics. It is expected that these CLE reporting periods will not align with all state bar reporting periods, as they vary from state to state. Each CLE certification for the purposes of recognition in USPTO's online practitioner directory should be supported by the completion of different CLE courses. In other words, practitioners may not use the same courses to certify to the USPTO more than once that they have completed the six credits of CLE.

Comment 100: One commenter stated that there was no explanation in the NPRM for the: (1) Manner of collecting the payment for the annual active patent practitioner fee, (2) different classes of practitioners having different fee requirements, (3) penalties for non-compliance, and (4) options for reinstatement. Another commenter inquired as to the process for reinstatement.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 101: One commenter stated that once the annual active patent practitioner fee is imposed, the fee will be increased over time, which will change the dynamics of practicing in patent matters before the USPTO.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 102: One commenter stated that, regarding the annual active patent practitioner fee, taxpayers, not patent practitioners, should pay for the Patent Pro Bono Program because taxpayers benefit from the program. Additionally, the commenter stated that there are already *pro bono* programs operated by law schools and non-governmental organizations that address this need.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 103: A few commenters stated that, regarding the annual active patent practitioner fee, as attorneys, they already pay state bar dues and attend CLE, and the USPTO needs to account for those costs when charging the fee. One additional commenter stated that the USPTO must analyze costs for all patent attorneys who are admitted to the bars of any state that does not impose an existing CLE requirement that would overlap with any USPTO CLE requirement.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. The Office appreciates that CLE is required by other state bar organizations. Under this Final Rule, completion of CLE remains voluntary, but in taking six hours of CLE, practitioners may be recognized in the online practitioner directory. Additionally, practitioners may avoid duplicate expenses, as some or all of the CLE courses attended by practitioners as required by their state bar membership may count toward the six hours of CLE necessary to qualify for the USPTO CLE recognition.

Comment 104: One commenter inquired about the implications of an administratively suspended or voluntarily suspended practitioner giving advice on a patent matter versus signing documents before the Office, and whether giving advice on a patent matter would be considered practice before the Office.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. However, the Final Rule requires patent practitioners to biennially file a registration statement. If a patent practitioner fails to timely file a registration statement, the patent practitioner may be administratively suspended, as is the case for patent practitioners who fail to respond to the practitioner survey. 37 CFR 11.5(b)(1) states, in part, that, ''Practice before the Office in patent matters includes, but is not limited to . . . consulting with or giving advice to a client in contemplation of filing a patent application or other document with the Office.'' Thus, practice before the Office is not limited to signing documents. An administratively suspended practitioner is under the disciplinary jurisdiction of the Office. *See* 37 CFR 11.19(a). Those who engage in the practice of patent law before the Office without being in active status may be engaging in the unauthorized practice of law and can be subject to discipline. *See* 37 CFR 11.10, 11.11(a)(6), and 11.505. Under this Final Rule, there is no ''voluntarily

suspended'' status. Voluntary inactive status, which is currently governed by 37 CFR 11.11(d), is unchanged by this Final Rule.

Comment 105: Two commenters inquired if an administratively suspended or voluntarily suspended patent agent will lose attorney-client privilege due to their suspended status.

Response: Under this Final Rule, there is no voluntary suspended status. All practitioners, including suspended patent agents, must comply with the USPTO Rules of Professional Conduct, including those pertaining to confidentiality of information. *See* 37 CFR 11.106. Attorney-client privilege is an evidentiary rule regarding communications. *See e.g.,* Fed. R. Evid. 501. The right to assert attorney-client privilege belongs to the client, and the privilege exists for the client's benefit. *See e.g., Magnetar Techs. Corp.* v. *Six Flags Theme Park Inc.,* 886 F.Supp.2d 466 (D. Del. 2012). Patent agents are not attorneys in that they are not active members in good standing of the bar of the highest court of any state. *See* 37 CFR 11.1. The scope of the privilege as it applies to communications between clients and patent agents has been discussed or determined by some tribunals. *See e.g., In re Queen's Univ. at Kingston,* 820 F.3d 1287 (Fed. Cir. 2016); *In re Silver,* 540 SW3d 530 (Tex. 2018); and Privilege for Patent Practitioners, 37 CFR 42.57. The scope of the privilege as it applies to communications between a client and an administratively suspended attorney, in general, is a matter of state law and has been addressed by some courts. *See, e.g., Gucci America, Inc.* v. *Guess?, Inc.,* No. 09 Civ. 4373, 2011 WL 9375 (S.D.N.Y. Jan. 3, 2011); *Safety Mgmt. Sys.* v. *Safety Software Ltd.,* No. 10 Civ. 1593, 2011 WL 4898085 (S.D.N.Y. Oct. 5, 2011); Restatement (Third) of the Law Governing Lawyers § 72, cmt. e, reporter's note cmt. e (2000) (citing cases).

Comment 106: Two commenters stated that the statuses for patent practitioners discussed in the NPRM, including administratively suspended, suspended due to discipline, voluntary inactive, emeritus, and resigned, are too numerous and complex for section 10 of the AIA fee setting authority and should be implemented in a separate rule package because each status has separate fee and reinstatement requirements.

Response: No new statuses for patent practitioners are created by this Final Rule.

Comment 107: Two commenters inquired why someone would opt for voluntary suspension status over emeritus status, as there are no fees for emeritus status and reactivation is easier.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner this fee. Accordingly, emeritus status has been eliminated from the Final Rule. Furthermore, no ''voluntary suspension status'' was proposed by the NPRM or included in the Final Rule.

Comment 108: One commenter inquired if the Office considered that an inadvertently administratively suspended attorney may need to report the suspension to their state bar.

Response: If a patent practitioner is a member of a state bar, it is expected that the practitioner comply with the USPTO Rules of Professional Conduct, as well as any applicable state ethics rules, which may include any applicable reporting requirements in state bar rules.

Comment 109: A few commenters stated that the CLE discount is not much of an incentive, given the cost of CLE programs, including out-of-pocket expenses and lost productivity, and it is likely that practitioners will choose not to make the certification and instead pay the undiscounted annual active patent practitioner fee. One commenter concluded that the discount therefore seems to be a tax. Another commenter stated that if the proposed discount and online recognition are meant to encourage CLE, then the proposal constitutes a tax that is being used to set policy.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time, and thus, there is no CLE discount in this Final Rule. Under this Final Rule, completion of CLE remains voluntary. However, this rule provides that practitioners may be recognized in the online practitioner directory for completing six credits of CLE in the preceding 24 months, including five credits in patent law and practice and one credit in ethics. CLE comports with the goal and spirit of 37 CFR 11.101: The USPTO requires the practitioner to be competent in the legal, scientific, and technical knowledge and skills reasonably necessary for client representation. This rule also provides that practitioners may obtain up to two of the five credits in patent law and practice by completing patent *pro bono* work.

Comment 110: A few commenters stated that the annual active patent practitioner fee would disproportionately affect patent agents because they do not currently have a CLE requirement, and they would therefore incur an extra expense as compared to patent attorneys. Two of these commenters additionally stated that publication of the CLE certification status of practitioners by the OED director may be equivalent to a public shaming of those patent practitioners who do not have a state CLE requirement or who opt to pay the full fee, resulting in unfair prejudice toward those who do not certify completion of CLE and essentially making CLE mandatory.

Response: In this Final Rule, there is no active patent practitioner fee, and thus there is no CLE discount. In addition, under the Final Rule completion of CLE remains voluntary. Separately, this rule provides for publication of a patent practitioner's CLE certification status, which is intended to encourage patent practitioners to participate in CLE and provide information to the public regarding the patent practitioner's CLE status. The USPTO also intends to provide additional free CLE courses to patent practitioners, thus alleviating the financial burden of obtaining CLE credits.

Comment 111: Two commenters stated that unless the USPTO, in advance, actively commits resources to providing free, regular, and frequent qualifying CLE courses in the required areas, some practitioners, particularly solo practitioners and patent agents, will bear an additional financial burden or cost of doing business. One commenter requested that the Office explain how the USPTO will alleviate future CLE burden and cost.

Response: The USPTO intends to provide additional free CLE courses for patent practitioners.

Comment 112: One commenter inquired if, in determining a proper fee amount for the projected number of registered practitioners expected to pay each type of fee, factors such as the historical trends of active practitioner populations by registration year, including both estimated new practitioner registration as well as likely attrition rates from older subsets, were taken into consideration.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 113: One commenter stated that there is currently no mechanism for CLE to be recorded for non-attorney patent agents. This commenter inquired how patent agents would be able to avoid paying the full fee in the first year

without procedures or a mechanism established well in advance for patent agents to secure qualifying CLE credits. This commenter further inquired whether practitioners would be able to reference a training or workshop they attended even if they were not able to receive CLE credits at the time of participation.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time, thus, there is no CLE discount. However, patent practitioners who wish to receive recognition in the online practitioner directory for the completion of CLE are responsible for tracking their own CLE course attendance and credits, regardless of the method in which such credits are recorded (or not recorded) by a state bar or other organization. In order for the CLE credit to count toward recognition in the online practitioner directory, the credit must be acquired in the 24 months preceding the certification. The USPTO intends to coordinate the delivery of CLE programs, and make the completion of CLE—whether offered by the USPTO or third parties—as convenient as possible for practitioners to complete, while enhancing practitioner access to, and opportunities for, the training necessary to stay up-to-date with current ethics and patent law and practice.

Comment 114: One commenter inquired how practitioners will be able to determine, in advance, which third-party CLE programs will be adequate for meeting the CLE requirement.

Response: Under this Final Rule, the completion of CLE is voluntary. For patent practitioners who wish to complete CLE and obtain recognition in the online practitioner directory, the USPTO intends to coordinate the delivery of CLE programs, and make the completion of CLE—whether offered by the USPTO or third parties—as convenient as possible for practitioners to complete, while enhancing practitioner access to, and opportunities for, the training necessary to stay up-to-date with current ethics and patent law and practice. Additionally, in the near future, the USPTO intends to issue proposed CLE guidelines, with a request for public comment, as to the types of CLE programs, including those offered by third parties, which may qualify for the CLE certification and the form of recognition in the online practitioner directory.

Comment 115: One commenter inquired if practitioners will be required to submit formal documentation of their CLE training on an annual basis or if each practitioner would have to maintain their own CLE documentation records to certify they have completed the CLE. Another commenter requested clarification on the recordkeeping requirements for CLE, including what type of proof is sufficient to demonstrate CLE completion. Another commenter requested clarification on what CLE would be tracked and how long it would be tracked.

Response: In the near future, the USPTO intends to issue proposed CLE guidelines, with a request for public comment on the proposed guidelines. The proposed CLE guidelines will address recordkeeping standards for practitioners who wish to certify completion of CLE and obtain recognition in the online practitioner directory. In general, it is contemplated that the proposed CLE guidelines will provide that practitioners are to retain their own CLE documentation records for a period of time.

Comment 116: Two commenters stated that they are supportive of the notion to incentivize active practitioners to enhance and maintain their ongoing legal education awareness and skills by providing a $100 discount for registered practitioners who certify completion of CLE.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. Thus, there is no discount associated with the completion of CLE. However, the Office may recognize patent practitioners in the online practitioner directory if they have completed six credits of CLE in the preceding 24 months. The Office believes that this will similarly incentivize active patent practitioners to enhance and maintain their skills.

Comment 117: Two commenters inquired if the Office considered that imposing the annual active patent practitioner fee may result in an increase in practitioner malpractice premiums, especially if the USPTO does not actively notify practitioners of their due dates by both USPS mail and email. One of these commenters suggested that notification by mail alone may be insufficient, and the Office should encourage practitioners to register multiple mailing and email addresses with OED. One other commenter encouraged OED to use both practitioners' addresses in the register and those in other USPTO databases to send out notices regarding payment, deadlines, and non-payment. The same commenter requested that OED telephone practitioners regarding non-payment of the annual active patent practitioner fee.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the active patent practitioner fee at this time. Under the Final Rule, patent practitioners are required to submit an electronic registration statement, which takes the place of the practitioner survey. Prior to this Final Rule, patent practitioners were subject to administrative suspension for failure to respond to the practitioner survey. Likewise, under the Final Rule, patent practitioners who fail to submit a registration statement are subject to administrative suspension. The Office intends to notify patent practitioners of the due date of the registration statement at least 120 days before such date. Additionally, 37 CFR 11.11(a) requires practitioners to provide OED with at least one and up to three email addresses where the practitioner receives email. Patent practitioners are encouraged to make updates in a timely manner to and ensure the accuracy of their contact information in accordance with 37 CFR 11.11(a) so that OED may timely communicate with practitioners regarding any applicable deadline.

Comment 118: Multiple commenters stated the annual active patent practitioner fee is too high. One commenter stated that the fee will deter some practitioners and add a barrier to entry. One commenter suggested setting the fee to the CLE discount level and providing a discount to solo practitioners, or patent practitioners employed by a small law firm, non-profit, and/or the government because, otherwise, payment of the fee may become prohibitively expensive. Another commenter stated that instead of providing the CLE discount, the Office should provide a discount to practitioners who provide *pro bono* services via the Patent Pro Bono Program. The commenter also stated that the annual active patent practitioner fee is substantially higher than some state bar fees. One of these commenters concluded the fee was too high to just cover administrative costs and aiding the *pro bono* programs. Additionally, the commenter would like the CLE discount to be greater than $100. The other commenter stated that most practitioners do not work in large city firms and therefore cannot afford the fee. Another commenter stated that the annual active patent practitioner fee should only be high enough to maintain the roster and should not be used to administer CLE, *pro bono* activities, or outreach, such as speaking engagements, as there are already

mandatory fee schedules in place (*i.e.,* small entity and micro entity) to aid financially under-resourced inventors. Other commenters questioned whether the annual active patent practitioner fee should be used to fund activities outside of practitioner discipline.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 119: A few commenters stated that the annual active patent practitioner fee will be passed on as overhead to applicants and that it is illusory to suggest that applicants will not eventually bear the cost of the fees.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 120: One commenter suggested that there should be no ''voluntary inactive'' or ''emeritus'' status because it seems to indicate that the USPTO is encouraging inactivity of practitioners who should always have a professional obligation to remain apprised of the current rules, case law, and filing procedures.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. As a result, the USPTO is not implementing the proposed emeritus status. Voluntary inactive status, which is currently available to practitioners pursuant to 37 CFR 11.11(d), is not altered by this Final Rule.

Comment 121: Multiple commenters opposed offering a discount on the annual active patent practitioner fee for completion of CLE. One of the commenters asserted that by doing so, the USPTO is implying that it is permissible not to take CLE, as long as the USPTO gets paid more money. Commenters stated that any CLE requirement should be decoupled from the annual active patent practitioner fee.

Response: This comment has been adopted in part. As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. Under this Final Rule, patent practitioners are not required to complete any CLE. However, patent practitioners may be able to obtain recognition in the online practitioner directory by certifying that they completed six credits of CLE within the 24 months prior to the certification (including five credits of patent-related CLE and one credit of ethics CLE). The Office believes that CLE serves to enhance patent practitioners' legal skills and encourages patent practitioners to enhance their knowledge in the areas of patent and ethics legal skills. Competency in these areas is expected pursuant to the USPTO Rules of Professional Conduct.

Comment 122: Two commenters questioned the value of CLE. One of these commenters questioned the statement, ''CLE serves to enhance practitioners' legal skills.'' 84 FR 37415. One of these commenters stated that the present burden on attorneys of complying with CLE requirements is already onerous.

Response: At least 46 states have implemented mandatory CLE for attorneys. Consistent with USPTO's past statements regarding the completion of CLE, the primary purposes of CLE are to ensure lawyer competence, maintain public confidence in the legal profession, and support the fair administration of justice. *See* 78 FR 20188; Report of the Standing Committee on Continuing Legal Education of the American Bar Association (February 2017); and ABA Model Rule on Continuing Legal Education, February 2017, ''Purpose.'' Recognition in the online practitioner directory will also serve to provide information to the public regarding a patent practitioner's CLE status. The USPTO intends to coordinate the delivery of CLE programs and make the completion of CLE—whether offered by the USPTO or third parties—as convenient as possible for patent practitioners to complete, while enhancing patent practitioner access to, and opportunities for, the training necessary to stay up-to-date with current ethics and patent law and practice. Thus, completion of CLE for state bar purposes may also satisfy the requirements to receive recognition in the online practitioner directory.

Comment 123: One commenter stated that the proposed practitioner fee is not in compliance with E.O. 12866, in part, because the NPRM did not include an estimate of either costs or benefits of the intended regulation and thus no balancing against the *status quo.*

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 124: One commenter stated that the USPTO needs to account for the costs of reporting and recordkeeping and other compliance costs for the annual active patent practitioner fee under the PRA, including a discussion of the lowest burden alternative and that the public benefit is in the same range. The commenters suggested that the annual active patent practitioner fee must be the least costly way to achieve the stated benefit.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 125: One commenter stated that the USPTO must be able to certify that the annual active practitioner fee requirement is implemented in ways ''consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond,'' including for those attorneys in states that do not have existing CLE requirements, and for all agents.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. Additionally, under the Final Rule, patent practitioners are not required to complete CLE.

Comment 126: One commenter stated that, regarding the annual active patent practitioner fee, the USPTO has not quantified and monetized the benefits and costs and evaluated non-quantified and non-monetized benefits and costs as required by OMB Circular A–4.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 127: Two commenters stated that the USPTO does not need to engage in activities similar to state bars because either there is no similar activity at the USPTO, or such activities would be redundant with what is provided by state bars. Another commenter stated that state bar associations provide more distinct services to member attorneys than OED provides to patent practitioners.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. However, the USPTO engages in activities that are of concern to its stakeholders, who include patent practitioners. Activities provided by state bars are generally provided to attorneys registered with the state bar or to the clients of such attorneys. Most state bars do not provide patent agents access to such activities, as they are not registered with state bars. Thus, USPTO activities governed by this Final Rule address, in part, a gap in services to practitioners and their clients. Additionally, the USPTO provides free patent legal training to practitioners, a

service that is distinct to patent practitioners.

Comment 128: Two commenters inquired whether the USPTO should impose surcharges for *pro se* applicants due to the cost of examining *pro se* applications.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 129: Two commenters stated that the USPTO has not provided an accounting of the costs of the services provided for by the proposed annual active patent practitioner fee and needs to do so. The commenter stated that without a detailed cost accounting, the annual active patent practitioner fee seems excessive to fund the current services provided by the OED, especially when considered as an increase to existing fees collected pursuant to 37 CFR 1.21(a)(1)–(10).

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 130: Two commenters stated that OED has been in existence without the annual active patent practitioner fee and has never needed the annual active patent practitioner fee, unlike state bars, which are only funded by fee revenue from practicing attorneys. One of the commenters stated the USPTO must be able to certify that the requirement is ''necessary for the proper performance of the functions of the agency.'' 44 U.S.C. 3506(c)(3)(A). One of the commenters additionally stated that it is not a valid reason to impose the fee because other jurisdictions do so. One commenter requested that the USPTO provide a justification or reasoning for why establishing an annual active patent practitioner fee is being implemented now, when a similar proposal was made and not adopted in the 2000s.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 131: Two commenters stated that ensuring the accuracy of OED's records can be accomplished by a periodic registration requirement that does not require a fee, and OED already has the authority under 37 CFR 11.11 to conduct periodic surveys of registered practitioners, which would accomplish that goal.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. The USPTO must maintain accurate records regarding the patent practitioners who practice before it for the benefit and protection of the public. Patent practitioners are required under 37 CFR 11.11(a) to update their contact information within 30 days of the date such information changed; however, many fail to do so. This provision was in effect prior to this Final Rule and continues to be in effect. Patent practitioner surveys have been conducted in the past, and many patent practitioners have failed to respond at great expense to the public and the USPTO. Thus, under this Final Rule, OED will be able to maintain accurate records by having patent practitioners electronically submit registration statements on which practitioners will indicate whether they are currently in active status and list their current contact information.

Comment 132: One commenter requested that, regarding the CLE option, the Office state (1) whether the Office feels that there exist major deficiencies in the corpus of practitioners in its practice before the Office, (2) how CLE will solve these deficiencies, and (3) any other justification for requiring CLE.

Response: This Final Rule does not require practitioners to complete any CLE.

Comment 133: One commenter requested that the Office allow the requirement to take CLE to expire after one or two years if the benefits and goals of CLE are not attained.

Response: This Final Rule does not require patent practitioners to complete CLE courses. Thus, it is left up to the individual patent practitioner to evaluate the relative costs and benefits of taking CLE courses to improve his or her patent legal skills and/or obtain recognition in the online practitioner directory for completing CLE.

Comment 134: One commenter requested that the Office offer its own free CLE programs in an electronically accessible format, such as a web-based presentation, and ensure that such CLE programs complied with each state bar's CLE requirements (for those states requiring CLE).

Response: The Office currently offers free CLE programs that qualify for state bar credit in electronically accessible format. At present, they are available under the ''Learning and Resources'' tab on the *uspto.gov* web page. The Office will endeavor, where feasible, to structure programs that would meet both the requirements for USPTO CLE credit and the traditional requirements for CLE credit in other jurisdictions.

Comment 135: Two commenters requested that, prior to instituting the annual active patent practitioner fee and CLE option, the Office analyze the option under the PRA. The commenters specifically requested that the Office analyze the technical, administrative, and paperwork burden imposed, as well as the justifications for such burdens, and that the cost of the burdens would at least equal the benefits, and that the practitioner fee is the least costly way to achieve those benefits. Additionally, the commenters noted that the NPRM states that the information collection requirements were reviewed under OMB control nos. 0651–0012, 0651–0016, 0651–0020, 0651–0021, 0651–0031, 0651–0032, 0651–0033, 0651–0059, 0651–0063, 0651–0064, 0651–0069, and 0651–0075, but none of these appear to relate to annual active patent practitioner fees or CLE requirements. One of the commenters stated that such collection requirements should be reviewed under 0651–0012, ''Admission to Practice and Roster of Registered Patent Attorneys and Agents.''

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 136: One commenter inquired whether OED is prepared to qualify seminars in the same manner that state bar associations qualify seminars for both substantive and ethics-based CLE credits. The commenter inquired whether OED will submit the materials to all 50 states and the District of Columbia for certification. One commenter inquired as to whether, like state bars, the Office intends to charge institutions for offering CLE programs that are in compliance with the expectations and requirements of the Office for CLE certification.

Response: In the near future, the USPTO intends to issue proposed CLE guidelines, with a request for public comments on them. It is anticipated that the proposed guidelines will address issues including qualification of CLE programs. However, the Office will endeavor, where feasible, to structure programs it provides in accordance with the traditional requirements for CLE credit in other jurisdictions.

Comment 137: A few commenters requested that the Office identify the statutory authority allowing for defraying the patent-related costs of operating OED by imposition of an annual active patent practitioner fee, and also for the CLE requirement. One of the commenters states that the NPRM is not explicit about the basis for setting the fee but that it is suggested that it is

being set under the ''Other fees'' provisions of 35 U.S.C. 41(d)(2)(A). The commenter requested the USPTO explain how the proposed fees involve a service to the person being charged the fee in accordance with 31 U.S.C. 9701 (specifying that user fees must be set based on ''the value of the service or thing to the recipient''). One of the commenters stated that section 10 of the AIA prohibits the creation of new fees, such as the annual active patent practitioner fee. One of the commenters opined that the annual active patent practitioner fee and CLE rules are not in compliance with E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs) (January 30, 2017). One of the other commenters opined that the Independent Offices Appropriations Act of 1952 (IOAA) prohibits fees for general operating costs and that the annual active patent practitioner fee does not meet the qualifications for a ''transfer payment.''

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 138: Two commenters requested clarification of the scope of acceptable patent and ethics CLE topics. One of these commenters inquired as to where CLE credit could be obtained, and the projected costs of attaining CLE credit. One commenter specifically inquired as to whether patent law and practice courses could include courses on estates and trusts, corporate regulation, and litigation-related topics, and whether ethics courses could include those related to substance abuse.

Response: In the near future, the USPTO intends to issue proposed CLE guidelines, along with a request for public comment on them. It is anticipated that the proposed guidelines will address the types of CLE courses that may qualify for recognition in the online practitioner directory. Generally, it is anticipated that a patent practitioner may obtain eligible patent CLE credit for courses or activities on any topic covered under 37 CFR 11.5(b)(1), including legal training which relates to: Preparation and prosecution of patent applications, patentability determinations and opinions, and drafting documents to be presented for any patent-related proceeding before the USPTO. Other topics that a practitioner may count toward the five patent CLE credits include PTAB proceedings and patent litigation. Any course or activity that is counted for ethics credit by any U.S. state or territorial bar, including those of which the practitioner is not a member, may be applied toward meeting the one hour of ethics CLE required for CLE recognition in the online practitioner directory.

Comment 139: One commenter requested clarification on whether CLE credit can be earned for giving presentations or writing an article or paper on CLE topics.

Response: In the near future, the USPTO intends to issue proposed CLE guidelines, along with a request for public comment on them. It is anticipated that the proposed guidelines will address the specific types of presentations or scholarly writing that may qualify for CLE credit that counts toward recognition in the online practitioner directory.

Comment 140: One commenter requested clarification on what is considered *pro bono* work for the purposes of CLE certification. The commenter additionally stated that *pro bono* service should not count towards any CLE requirement because the *pro bono* patent client, unlike other types of *pro bono* clients, is not facing an unaffordable hardship; rather, the client is seeking an alternate form of venture funding, and as a part of CLE, *pro bono* work does not enhance a practitioner's legal skills any more than work for hire. Another commenter stated that it is unclear how *pro bono* activities increase legal acumen in order for it to justify those activities counting as CLE credit in the CLE discount.

Response: The Final Rule provides that a registered practitioner or person granted limited recognition may earn up to two of the five hours of CLE in patent law and practice by participating in the USPTO Patent Pro Bono Program. For every three hours of *pro bono* service, a patent practitioner may earn one hour of CLE credit toward the five credits in patent law and practice required for recognition in the online practitioner directory. Section 32 of the AIA calls on the USPTO to work with and support IP law associations to establish *pro bono* programs. A *pro bono* patent client is generally not accepted into the Patent Pro Bono Program unless their gross household income is less than three times the federal poverty level guidelines. Moreover, the Patent Pro Bono Program provides valuable learning opportunities for less experienced and experienced practitioners alike by providing volunteers the ability to obtain practical patent prosecution experience representing under-resourced inventors who would otherwise be unable to prosecute their patent applications. In addition, working with patent *pro bono* clients provides an opportunity to gain experience with clients who are less sophisticated in patent practice and procedure than typical corporate clients. Under the Final Rule, taking CLE courses or performing *pro bono* services as a part of the Patent Pro Bono Program by patent practitioners is not required. Information regarding the Patent Pro Bono Program is accessible at *www.uspto.gov/probonopatents.*

Comment 141: Two commenters questioned whether the Office will audit practitioners for CLE compliance if they certify they have completed CLE and, if so, what the statute of limitations on the audit will be. One commenter opined that there is no limitation specified in the NPRM, so a practitioner presumably must keep CLE records indefinitely until retirement.

Response: The Office does not plan to audit practitioners who certify they have completed CLE. If, however, a registered practitioner's CLE compliance comes into question as part of a grievance or a disciplinary investigation, then that practitioner may be called upon to provide records of CLE completion. In the near future, the USPTO intends to issue proposed CLE guidelines, with a request for public comment on them. The proposed CLE guidelines will address recommended standards of recordkeeping for practitioners who wish to certify completion of CLE and obtain recognition in the online practitioner directory.

Comment 142: One commenter requested clarification on whether the annual active patent practitioner fee would be due on different dates for each practitioner or by one date for all practitioners.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 143: One commenter inquired whether the annual active patent practitioner fee could be paid and forms filled out by administrative assistants or if each attorney would have to complete some yet-to-be-designed electronic certification form.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. Correspondence with the Office must comply with the requirements of 37 CFR 1.4.

Comment 144: One commenter inquired as to whether administratively suspended practitioners would be locked out of accessing their files in the PAIR system or in EFS-Web or both.

Commenters also inquired whether a response or application filed during a period of non-compliance would be invalid and, if so, whether there would be a mechanism for retroactively validating the documents to prevent unintentional abandonment of applications or whether the remedy would be to file an expensive request for revival of an unintentionally abandoned application. Additionally, commenters questioned how administrative suspension of a practitioner would affect clients' rights and whether prosecution by an inadvertently suspended practitioner would cause a patent resulting from that prosecution to be invalid or unenforceable. The commenter further stated that any such corrections would be administratively burdensome on the Office and the practitioner.

Response: Administratively suspended practitioners would not be able to access their USPTO online accounts and would be advised to contact OED to resolve the suspension. Thus, if administratively suspended, a practitioner would not be able to file documents electronically. Filing documents while administratively suspended may indicate the practitioner has engaged in the unauthorized practice of law. If an application were to go abandoned due to a practitioner's inability to file documents while administratively suspended, then revival of the application may be necessary under 37 CFR 1.137. Invalidity and unenforceability of patents are matters determined by tribunals in particular litigations.

Comment 145: One commenter inquired as to what metrics indicate that the annual active patent practitioner fee would improve patent quality. Another commenter suggested that the USPTO's resources would be better spent in the interest of the patent community on issues that the USPTO is in the best position to address, such as assuring patent quality. Another commenter suggested that by practitioners passing the fee onto applicants, some applicants may reduce their reliance on patent practitioners, resulting in a decrease in patent quality.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 146: One commenter requested an explanation of how the annual active patent practitioner fee was calculated.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 147: Two commenters opined that the proposed $70 fee charged of practitioners in voluntary inactive status is too high for maintaining a database and updating it once a year and that practitioners would not get a benefit equal to the fee. Two commenters do not support charging a voluntary inactive fee. One commenter stated that imposing an inactive patent practitioner fee is bad public policy because many semi-retired practitioners volunteer to mentor younger attorneys or to advise small businesses, and the fee would discourage semi-retired practitioners from staying active in the profession.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time. Accordingly, the USPTO also will not implement the proposed fee for patent practitioners in voluntary inactive status.

Comment 148: One commenter stated that the beneficiaries of the OED disciplinary system are the Office and patent applicants, not the registered practitioners.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the proposed annual active patent practitioner fee at this time.

Comment 149: One commenter stated that the USPTO argued to be an exception to the requirements of 5 U.S.C. 500(e), not because of the need for a second disciplinary authority to regulate conduct, but by reasoning that the USPTO and patent applicants would be better served by placing additional skill requirements on patent practitioners. H.R. Rep. No. 1141, 89th Cong., 1st Sess. (1965), reprinted in 1965 U.S.C.C.A.N. 4170, 4172–74, 4176–77, 4179; William H. Sager & Leslie S. Shapiro, *Administrative Practice Before Federal Agencies,* 4 U. Rich. L. Rev. 76, 82 (1969).

Response: Pursuant to 35 U.S.C. 2(b) and 35 U.S.C. 32, the Office has statutory authority to promulgate regulations governing the conduct of patent practitioners and suspend or exclude them for misconduct.

Comment 150: One commenter stated that trademark attorneys should pay the same annual active patent practitioner fee that patent practitioners are being asked to pay because OED administers disciplinary proceedings against trademark attorneys.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the annual active patent practitioner fee at this time.

Comment 151: One commenter strongly supports an adequately and properly funded OED.

Response: The Office appreciates the comment. The patent fee adjustments in this Final Rule are intended to provide the Office with a sufficient amount of aggregate revenue to recover the aggregate cost of patent operations, including the costs of OED services related to patent matters.

Comment 152: One commenter stated that the annual active patent practitioner fee would provide increased funding to OED and would like to know what issues OED intends to address with the increased funding. The commenter also indicated that funding from the annual active patent practitioner fee should not be used to expand the role of OED *per se* to include any active investigation of practitioners that is not linked to a complaint or to a notification from a state bar association. The commenter also stated that since the annual active patent practitioner fee eliminates the need for the Office to perform surveys of practitioners, the cost of conducting the survey should be reflected as a savings to the Office and should be reflected in any cost accounting justifying the annual active patent practitioner fee.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the annual active patent practitioner fee at this time.

Comment 153: One commenter inquired whether OED could recover some of its funding by increasing the fees it already charges instead of charging the annual active patent practitioner fee. The commenter gave examples of an application fee for admission to the examination for registration, a fee for administering the registration examination, and a fee for recognition or registration after disbarment or suspension on ethical grounds.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the annual active patent practitioner fee at this time. In addition, the fees cited by the commenter are enrollment fees, which are only being adjusted by the approximately 5 percent across-the-board adjustment to patent fees. A larger targeted adjustment of enrollment fees went into effect in the January 2018 Final Rule.

Comment 154: One commenter requested that the USPTO address the specific OED services and other services that will be funded by the annual active

patent practitioner fee and how the collected funds will be applied to those services.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the annual active patent practitioner fee at this time.

Comment 155: One commenter stated that the Office estimates that the annual active patent practitioner fee will raise $10–$11 million per year and that this amount seems excessive to fund the patent-related services provided by the OED, especially when considered as an increase to the existing fees collected pursuant to 37 CFR 1.21(a)(1)–(10).

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the annual active patent practitioner fee at this time.

Comment 156: Two commenters requested details on the expenses for the Law School Clinic Certification Program and the Patent Pro Bono Program and on how the funds from the annual active patent practitioner fee will be applied to these expenses.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the annual active patent practitioner fee at this time.

Comment 157: One commenter stated that funds collected from the annual active patent practitioner fee will be used both for existing OED programs and to implement new programs and inquired to what extent would the expense of administrating the annual active patent practitioner fee take resources away from other programs.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the annual active patent practitioner fee at this time.

Comment 158: Two commenters welcomed the provision in the NPRM that states that only practitioners who have been resigned for more than two years would need to retake the registration exam.

Response: As noted in the comment, the Final Rule eliminates the requirement that a registered practitioner who is administratively suspended for more than two years take and pass the registration examination in order to be reinstated. Under the Final Rule, resigned practitioners will only have to retake and pass the registration examination if they have been resigned for more than five years and cannot provide other objective evidence that they continue to possess the necessary legal qualifications to render valuable service to patent applicants.

Comment 159: One commenter stated that many practitioners will forego the CLE discount in order to avoid determining how to comply and document CLE compliance.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the annual active patent practitioner fee at this time and thus, there is no CLE discount in this Final Rule.

Comment 160: One commenter questioned what the consequences would be for a CLE certification that does not meet OED's standards and how disagreements regarding the challenged certification would be resolved.

Response: Practitioners will self-certify their completion of six credits of CLE, including five credits of CLE in patent law and practice and one credit of CLE in ethics. In the near future, the Office plans to issue proposed CLE guidelines, with a request for public comment on them that will address what types of CLE may qualify for CLE recognition. OED does not intend to audit practitioners who certify completion of CLE or review whether courses completed by a practitioner who certified completion of CLE in fact qualify for the certification. It is anticipated that such review would only take place for cases in which OED receives a grievance alleging that a patent practitioner falsely or fraudulently certified completion of CLE or where the submission was obviously noncompliant. Registered patent practitioners and those granted limited recognition to practice before the Office in patent matters are subject to the USPTO Rules of Professional Conduct, including 37 CFR 11.804(c), which prohibits conduct that involves dishonesty, fraud, deceit, or misrepresentation.

Comment 161: One commenter questioned what effect an invalid CLE certification would have on patent validity or enforceability.

Response: It appears that the comment anticipates a scenario in which a patent practitioner claims the CLE credit but is subsequently found not to have satisfied the requirements for claiming the credit. Under the Final Rule, a practitioner may certify completion of CLE in order to obtain recognition in the online patent practitioner directory. No administrative suspension would result from an ''invalid'' or mistaken CLE certification. Thus, it is not anticipated that an ''invalid'' or mistaken CLE certification would affect patent validity or enforceability.

Comment 162: One commenter inquired how the regulatory and compliance costs of the CLE discount will affect the annual active patent practitioner fee. One commenter was concerned that the Office will use oversight of the CLE certification as justification for the annual active patent practitioner fee and any future increases thereto.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the annual active patent practitioner fee at this time.

Comment 163: One commenter is concerned that the Office's proposed model of three hours of *pro bono* service to obtain one hour of CLE credit does not sufficiently reflect the importance and value of *pro bono* service and recommends providing one hour of CLE credit for each hour of *pro bono* service in the USPTO Patent Pro Bono Program.

Response: This comment has not been adopted. According to the Standing Committee on Pro Bono & Public Service of the American Bar Association, of the states that offer CLE credit for *pro bono* service, the most common rate that is used for earning such credits is five hours of service for each CLE credit. No state offers one hour of CLE credit for each hour of *pro bono* service. Thus, one hour of CLE credit for every three hours of *pro bono* service is generally above the amount of CLE credit that states offer for *pro bono* service. In the near future, the USPTO intends to issue proposed CLE guidelines, with a request for public comments on them.

Comment 164: One commenter stated that requiring a practitioner to retake the registration examination for failure to update their information with OED is equivalent to the penalty of disbarment and therefore grossly disproportionate to the offense. Instead, the commenter requests that the penalty for failing to update contact information be an extra charge to reinstate, based on the back fees missed and extra administration costs incurred.

Response: Administratively suspended practitioners will only have to retake the examination if they have been suspended for more than five years and cannot provide other objective evidence that they continue to possess the necessary legal qualifications to render valuable service to patent applicants.

Legal Considerations

Comment 165: One commenter stated that RCE fees are governed by the IOAA, except for the one requirement that is carved out by section 10 of the AIA. Thus, the USPTO may charge actual cost, plus a proportional share of

general administrative costs, reduced by a proportional share of issue and maintenance fees, but no more than that. The excess charge for second and subsequent RCEs is unlawful.

Response: The IOAA provides federal agencies the authority to charge user fees where the agencies do not have their own specific statutory authority to charge fees. Fees collected under the IOAA are deposited in the general fund of the U.S. Treasury and not available to the charging agency for its use. OMB Circular A–25, User Charges, provides guidance on IOAA authority. This has no relevance to the fee setting authority provided to the USPTO, as the USPTO has specific statutory authority to charge fees under title 35 of the U.S.C. and the Trademark Act of 1946. The USPTO further has specific authority to set and adjust those fees as in the current rulemaking under section 10 of the AIA. Fees collected by the USPTO are made available to the USPTO through annual appropriations and are available to use for the activities that generated the fee (patent and trademark examination and proportionate administrative expenses). The general authority described in the IOAA and OMB Circular A–25 is not relevant to the USPTO's specific fee setting authority.

Comment 166: One commenter disagreed with the RIA regarding the annual active patent practitioner fee and non-DOCX surcharge fee. The commenter stated that the point of the rule is to raise fees and disagreed with findings of ''No identified costs.'' The commenter suggested comment letters sent to PPAC identified substantial costs to the public for the annual active patent practitioner fee and non-DOCX surcharge fee. The commenter further wrote that the OMB's Implementing Guidance puts the annual active patent practitioner fee and non-DOCX surcharge fee within the scope of E.O. 13771, which states: ''Regulatory actions [that] impose requirements apart from transfers . . . need to be offset to the extent they impose more than *de minimis* costs.''

Response: Guidance in OMB Circular A–4, Regulatory Analysis, and concerning RIAs provides that fees to government agencies for goods or services are considered transfer payments. The fee adjustments concern increases of fees for USPTO services, which are transfers, not costs. The non-DOCX surcharge fee is based on the services provided by the USPTO to patent applicants and, consequently, qualifies as a transfer payment under OMB's guidance. As noted in response to Comment 81 above, the USPTO has elected not to implement the annual active patent practitioner fee at this time.

Comment 167: One commenter stated that the legislative history of the AIA makes abundantly clear that the USPTO may not use fee setting as a policy lever. Fee setting may only be used to recover aggregate costs. The commenter further stated that the U.S. Constitution denies agencies the authority to set fees for anything other than cost recovery—setting fee levels to ''encourage or discourage'' is a ''tax''; agencies do not have the authority to tax, and, therefore, fees being set to incentivize, disincentivize, and ''to facilitate the effective administration of the patent and trademark systems,'' are not within the statutory authority of the USPTO.

Response: The AIA permits individual patent fees to be set or adjusted to encourage or discourage particular services, so long as the aggregate revenues for all patent fees recover the aggregate costs of the patent operation. The comment would read into the AIA limitations that do not exist and that are inconsistent with the AIA.

Comment 168: One commenter wanted to know why the USPTO has never issued any legal analysis of the AIA's legislative history. The commenter cited two examples: The removal of ''notwithstanding the fee amounts established or charged'' from the AIA and the discussion in the House report (H.R. Rep. No. 112–98), and the effect of the word ''only'' in the phrase ''only to recover the aggregate estimated costs.'' The commenter believed the legislative history makes clear that Congress intended ''only'' to apply to purpose as well as amount.

Response: A legal analysis of legislative history is unnecessary in light of the plain language of the AIA, which permits individual patent fees to be set or adjusted to encourage or discourage particular services, so long as the aggregate revenues for all patent fees recover the aggregate costs of the patent operation.

Comment 169: One commenter expressed that the fee setting efforts of the USPTO are unconstitutional because the U.S. Constitution denies agencies the authority to set fees for anything other than cost recovery—setting fee levels to ''encourage or discourage'' behavior is a ''tax,'' and agencies do not have the authority to tax (*see* §§ I.B.1 and I.C). Even with authority under the AIA, the USPTO may not ''adjust assessments to encourage or discourage a particular activity'' because the U.S. Constitution provides that the power to ''lay and collect taxes'' lies with the U.S. Congress, not the executive branch.

Response: Patent fees are paid for receiving and maintaining a patent grant. Courts have held that the payment of such fees should not be viewed as taxes but rather payments for a service.

Comment 170: One commenter wrote that the USPTO may not create new fees where no fees are ''established, authorized, or charged'' in title 35 and there is no affirmative material, service, or processing provided. Similarly, the commenter wrote that the USPTO may not re-allocate fees among the categories specified in § 41; new fees may be created only where the USPTO has a specific statutory authorization (*see* § I.B.2).

Response: The AIA permits individual patent fees to be set or adjusted to encourage or discourage particular services, so long as the aggregate revenues for all patent fees recover the aggregate costs of the patent operation. The comment would read into the AIA limitations that do not exist and that are inconsistent with the AIA.

Comment 171: One commenter stated that this rulemaking exceeds the authority of the USPTO because it overrides a policy decision made by the U.S. Congress in favor of something the USPTO prefers. The commenter contended the U.S. Congress made a policy choice: Initial filings should be cross-subsidized by maintenance fees at approximately 50 percent. The U.S. Congress (by inference) felt it important to encourage filing and allow successful patentees to cross-subsidize filing. The commenter also felt the USPTO is exceeding its authority because it is second-guessing the U.S. Congress's policy balances encoded in the appeal fee line. The commenter suggested this rulemaking relies on ''factors which Congress has not intended [the agency] to consider,'' making it an arbitrary and capricious agency action under the APA. The commenter believed the USPTO departed from the intent of the U.S. Congress in 2013 and should revert to the pre-2013 fee structure.

Response: The USPTO has specific statutory authority to charge fees under title 35 of the U.S.C. and the Trademark Act of 1946. The USPTO further has specific authority to set and adjust those fees as in this Final Rule under section 10 of the AIA. The AIA permits individual patent fees to be set or adjusted to encourage or discourage particular services, so long as the aggregate revenues for all patent fees recover the aggregate costs of the patent operation. However, the USPTO notes that the adjustments to the fee schedule

do not significantly impact the balance between front-end and back-end fees.

Comment 172: One commenter agreed in principle with the operating reserve of the USPTO but saw no statutory authorization for it. The commenter contended the operating reserve is not fairly within the text of section 10 of the AIA, which limits USPTO fee collections to ''only'' aggregate costs.

Response: The AIA permits individual patent fees to be set or adjusted to encourage or discourage particular services, so long as the aggregate revenues for all patent fees recover the aggregate costs of the patent operation. One of these aggregate costs is the growth of an operating reserve to allow effective management of the U.S. patent system and responsiveness to changes in the economy, unanticipated production workload, and revenue changes, while maintaining operations and effectuating long-term strategies.

Comment 173: One commenter stated that the NPRM for this rulemaking ignores the IOAA and OMB Circular A–25, which are the general framework statute and Presidential interpretation, respectively, for agencies that charge user fees. The commenter claimed the IOAA limits user fees to cover services to a specific ''identifiable recipient,'' at the cost of providing that service or the value to the recipient, but may not recover agency general operating costs. The commenter also stated that fees without statutory grounding are not within section 10 of the AIA and thus are either barred outright or are subject to the constraints of the IOAA. The commenter suggested that relevant Supreme Court and D.C. Circuit case law holdings—especially *Seafarers International Union of North America* v. *U.S. Coast Guard,* 81 F.3d 179, 183 (D.C. Cir. 1996)—are opposite to the position the USPTO takes in the NPRM.

Response: The IOAA provides federal agencies the authority to charge user fees where the agencies do not have their own specific statutory authority to charge fees. Fees collected under the IOAA are deposited in the general fund of the U.S. Treasury and not available to the charging agency for its use. OMB Circular A–25 provides guidance on IOAA authority. This has no relevance to the fee setting authority of the USPTO, as the USPTO has specific statutory authority to charge fees under title 35 of the U.S.C. and the Trademark Act of 1946. The USPTO further has specific authority to set and adjust those fees as in this Final Rule under section 10 of the AIA. Fees collected by the USPTO are made available to the USPTO through annual appropriations and are available to use for the activities that generated the fee (patent and trademark services and proportionate administrative expenses). The general authority described in the IOAA and OMB Circular A–25 is not relevant to the USPTO's specific fee setting authority.

Comment 174: One commenter expressed that a change undertaken in a previous rulemaking, changing ''notice of appeal'' and ''filing a brief in support of an appeal'' of § 41(a)(6), was unlawfully restructured into ''notice of appeal'' and ''forwarding an appeal to the Board'' as in 37 CFR 41.20(b)(1) and (4).

Response: The USPTO has specific authority to set and adjust fees, as in the current rulemaking, under section 10 of the AIA. The AIA permits individual patent fees to be set or adjusted so long as the aggregate revenues for all patent fees recover the aggregate costs of the patent operation.

Comment 175: One commenter wrote that section 1(b)(2) of E.O. 12866 requires the USPTO to ''examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct.'' Most of the policy goals of the fee schedule could be addressed by internal reforms to reduce costs, as an alternative to raised fees. For example, internal USPTO processes and incentives could be restructured to reduce costs to the USPTO and applicants. The commenter contends that the NPRM identifies no exemption from E.O. 12866 that permits the USPTO to forego this examination.

Response: The USPTO is in compliance with all procedural and analytical requirements of E.O. 12866. The USPTO identified no existing regulation that created or contributed to the need for this Final Rule. In this Final Rule, the USPTO is not creating any new regulation. Rather, the USPTO is setting and adjusting patent fees based on assumptions found in the FY 20201 Budget in order to recover the aggregate cost of patent operations in future years and to allow the Office to continue progress towards achieving strategic goals. Also, contrary to the assertion made in the comment, the Office is constantly considering its operations, policies, and processes to identify ways to improve its operations. As an example, the Office recently issued a Notice of Proposed Rulemaking, Removal of Regulations Governing Requests for Presidential Proclamations under the Semiconductor Chip Protection Act of 1984 and Certain Rules of Practice Relating to Registration to Practice and Discipline, 84 FR 64800 (November 25, 2019), that eliminated unnecessary regulations. To support this regulatory reform effort, the Office assembled a working group consisting of subject-matter experts from each of the business units that implement the Office's regulations. The working group considered, reviewed, and recommended ways that the regulations could be improved, revised, and streamlined so as to improve the operation of the Office. The working group reviewed existing regulations, both discretionary rules and those required by statute or judicial order. The USPTO also solicited comments from stakeholders through a web page established to provide information on the USPTO's regulatory reform efforts. These efforts led to the development of candidate regulations for removal, based on the USPTO's assessment that these regulations were not needed and/or that elimination could improve the USPTO's body of regulations. As an additional example, the Office recently implemented adjustments to examination time to improve the examination process and examination quality. These time adjustments include increasing baseline examination time and providing additional examination time based on newly developed application attributes, such as the number of claims, size of the specification, number of pages of prior art citations submitted, etc. Additional examples of how the USPTO is constantly taking steps to improve processes, increase efficiency, and reduce costs, for both applicants and the USPTO, include our international cooperation programs, such as the Electronic Priority Document Exchange Program and the Global Dossier Program. Furthermore, efficiencies and cost savings have been realized as a result of the USPTO implementing ePetitions and the Access to Relevant Prior Art Initiative.

Comment 176: One commenter stated section 1(b)(2) of E.O. 12866 directs agencies to ''examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct.'' In 2012, the USPTO requested comment on RCE practice. Several of the comment letters noted that, at least in part, extended RCE practice was driven by a breakdown of ''compact prosecution''—Office actions were less complete, less careful, and less responsive to applicants' arguments. The commenter observed no effort by the USPTO to address its ''existing regulation'' half of the problem—for example, the USPTO has not recalibrated the count system to remove

incentives for gaming by examiners or provided sound supervision to ensure completeness of Office actions. E.O. 12866 suggests that it is inappropriate to shift costs to the public for a failure of the USPTO to implement its own self-regulatory obligations.

Response: In this Final Rule, the USPTO is not creating any new regulations; rather, the USPTO is setting and adjusting patent fees in order to recover its increasing aggregate costs. Contrary to the position set forth in the comments, the Office is not shifting costs to the public. Since 2012, the Office has made considerable efforts to improve patent quality, including establishing the Office of the Deputy Commissioner for Patent Quality (DCPQ) within the Patents organization. The DCPQ is responsible for optimizing the quality of patent products, processes, and services to build a culture of process improvement and enhanced patent quality for the Patents organization. In addition to establishing this new office within the Patents organization, patent examiners have received extensive training on how to improve the quality of their Office actions. These trainings include a three-part training on how to evaluate, analyze, and respond to arguments presented by applicants. They also include training on interpreting claims, establishing a clear prosecution record in an application, and writing proper reasons for allowance. Also, contrary to the comments, the Office recently implemented adjustments to examination time to improve the examination process and examination quality. These time adjustments include increasing baseline examination time and providing additional examination time based on newly developed application attributes, such as the number of claims, size of specification, number of pages of prior art citations submitted, etc.

Comment 177: One commenter stated that the USPTO did not meet its rulemaking obligation to disclose rationale. The commenter contended that even if there is a sound cause-and-effect relationship between the proposal and the asserted benefits, it is not explained in the NPRM, making it arbitrary and capricious under the APA.

Response: The Office disagrees that it failed to disclose the rationale for the rulemaking or that the rulemaking is arbitrary and capricious under the APA. The preamble and regulatory text clearly set forth the new costs and explain the rationale for each change in compliance with the requirements of the APA.

Comment 178: One commenter disagreed with the finding that this rulemaking is a ''transfer payment from one group to another.'' The commenter wrote that the definition of ''transfer payment'' is in OMB Circular A–4 and the original definition involved cash payments to private sector actors, and the definition has grown to cover other direct cash transfers among private sector entities. The commenter continued that the NPRM calls for funds to be paid from private sector persons to government for government consumption and discusses no monetary payout to any private sector party.

Response: Guidance in OMB Circular A–4 and concerning RIAs provides that fees to government agencies for goods or services are considered transfer payments. The fee adjustments concern increases of fees for USPTO services, which are transfers, not costs. Pursuant to the requirements of E.O. 12886, the USPTO submitted both the NPRM and RIA to the OMB for review prior to publication. The OMB determined that this rulemaking consisted entirely of transfer payments from one group to another, as defined in OMB Circular A–4.

Comment 179: One commenter wondered why there was not an analysis of raising all fees proportionally from the baseline set by Congress, with deviations only where the USPTO has specific data to support a deviation. The commenter contended that this analysis is required by statute and the U.S. Constitution.

Response: The alternatives considered in the RIA are reasonable alternatives that are consistent with guidance in OMB Circular A–4. Among the alternatives considered was an across-the-board adjustment to the current baseline fee schedule.

Comment 180: One commenter stated the RIA accompanying the NPRM only considers non-starter alternatives like not raising fees at all, setting all fees at actual cost, and applying only an inflation adjustment. The commenter contended these are unrealistic strawmen, against which the USPTO's preferred alternative appears favorable. Considering only unrealistic strawmen as ''alternatives'' is not compliant with the USPTO's obligations under the letter of the law and cannot be reconciled with the ''regulatory philosophy'' or spirit of the law. Artificially narrowing the options is arbitrary and capricious per se.

Response: The alternatives considered in the RIA are reasonable alternatives that are consistent with guidance in OMB Circular A–4.

Comment 181: One commenter questioned why there was no analysis of the proportional lockstep fee hike relative to § 41 as a baseline.

Response: Among the alternatives considered in the RIA is a lockstep, across-the-board adjustment to the current baseline fee schedule.

Comment 182: One commenter stated that the USPTO may not set fees without a benefit-cost analysis under the PRA and E.O. 12866—for example, the USPTO may not reduce its own costs if that would increase costs on the public disproportionately (*see* § I.F).

Response: The USPTO must comply with all rulemaking requirements when setting fees using the authority provided by section 10 of the AIA. As demonstrated in the Rulemaking Considerations section of this Final Rule, and in this rulemaking as a whole, the USPTO has complied with these requirements.

Comment 183: One commenter expressed that several components of this rulemaking implicate the PRA (*e.g.,* the DOCX proposal and the annual active patent practitioner fee). The NPRM asserts that the USPTO has obtained PRA clearance, but the commenter contends this assertion is false, and the USPTO has never even applied for clearance.

Response: The USPTO must comply with the PRA in setting fees using the authority provided by section 10 of the AIA. The USPTO has filed with the OMB a worksheet addressing costs in compliance with the requirement of the statute.

Comment 184: One commenter claimed the USPTO has made no filing seeking any substantive change to 0651–0012 since 2014.

Response: The USPTO has complied with the PRA in considering the paperwork burdens associated with this Final Rule. The USPTO has previously received OMB approval for associated burdens and submitted additional statements to address revisions.

VII. Discussion of Specific Rules

The following section shows the Code of Federal Regulations (CFR) for all fees set or adjusted in this Final Rule. The discussion below includes all fee amendments, all fee discontinuations, and all changes to the CFR text.

Title 37 of the CFR, parts 1, 11, 41, and 42, are amended as follows:

Section 1.16: Section 1.16 is amended by revising paragraphs (a) through (e), (h), (j), (k), and (m) through (s) and adding paragraph (u) to set forth the application filing, excess claims, search, and examination fees for patent applications filed as authorized under section 10 of the Act. The changes to the

fee amounts indicated in § 1.16 are shown in Table 11.

TABLE 11—CFR SECTION 1.16 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.16(a)	1011/2011/3011	Basic filing fee—Utility (paper filing also requires non-electronic filing fee under 1.16(t)).	300	150	75	320	160	80
1.16(a)	4011	Basic filing fee—Utility (electronic filing for small entities).	n/a	75	n/a	n/a	80	n/a
1.16(b)	1012/2012/3012	Basic filing fee—Design	200	100	50	220	110	55
1.16(b)	1017/2017/3017	Basic filing fee—Design (CPA)	200	100	50	220	110	55
1.16(c)	1013/2013/3013	Basic filing fee—Plant	200	100	50	220	110	55
1.16(d)	1005/2005/3005	Provisional application filing fee	280	140	70	300	150	75
1.16(e)	1014/2014/3014	Basic filing fee—Reissue	300	150	75	320	160	80
1.16(e)	1019/2019/3019	Basic filing fee—Reissue (Design CPA)	300	150	75	320	160	80
1.16(h)	1201/2201/3201	Each independent claim in excess of three	460	230	115	480	240	120
1.16(h)	1204/2204/3204	Each reissue independent claim in excess of three	460	230	115	480	240	120
1.16(j)	1203/2203/3203	Multiple dependent claim	820	410	205	860	430	215
1.16(k)	1111/2111/3111	Utility Search Fee	660	330	165	700	350	175
1.16(m)	1113/2113/3113	Plant Search Fee	420	210	105	440	220	110
1.16(n)	1114/2114/3114	Reissue Search Fee or Reissue (Design CPA) Search Fee.	660	330	165	700	350	175
1.16(o)	1311/2311/3311	Utility Examination Fee	760	380	190	800	400	200
1.16(p)	1312/2312/3312	Design Examination Fee or Design CPA Examination Fee.	600	300	150	640	320	160
1.16(q)	1313/2313/3313	Plant Examination Fee	620	310	155	660	330	165
1.16(r)	1314/2314/3314	Reissue Examination Fee or Reissue (Design CPA) Examination Fee.	2,200	1,100	550	2,320	1,160	580
1.16(s)	1081/2081/3081	Utility Application Size Fee—for each additional 50 sheets that exceeds 100 sheets.	400	200	100	420	210	105
1.16(s)	1081/2081/3081	Design Application Size Fee—for each additional 50 sheets that exceeds 100 sheets.	400	200	100	420	210	105
1.16(s)	1081/2081/3081	Plant Application Size Fee—for each additional 50 sheets that exceeds 100 sheets.	400	200	100	420	210	105
1.16(s)	1081/2081/3081	Reissue Application Size Fee—for each additional 50 sheets that exceeds 100 sheets.	400	200	100	420	210	105
1.16(s)	1081/2081/3081	Provisional Application Size Fee—for each additional 50 sheets that exceeds 100 sheets.	400	200	100	420	210	105
1.16(u)	NEW	Non-DOCX Filing Surcharge Fee	n/a	n/a	n/a	400	200	100

Section 1.17: Section 1.17 is amended by revising paragraphs (a), (c) through (g), (i)(2), (k), (m), (p), (q), (r), and (s) to set forth the application processing fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.17 are shown in Table 12. In this Final Rule, an existing fee code has been added to Table 12 for the petition for the extension of the twelve-month (six-month for designs) period for filing a subsequent application. This is not a new fee code created in this rule; rather, it reflects existing practice. In this section, table headers were added to make formatting consistent.

TABLE 12—CFR SECTION 1.17 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.17(a)(1)	1251/2251/3251	Extension for response within first month	200	100	50	220	110	55
1.17(a)(2)	1252/2252/3252	Extension for response within second month	600	300	150	640	320	160
1.17(a)(3)	1253/2253/3253	Extension for response within third month	1,400	700	350	1,480	740	370
1.17(a)(4)	1254/2254/3254	Extension for response within fourth month	2,200	1,100	550	2,320	1,160	580
1.17(a)(5)	1255/2255/3255	Extension for response within fifth month	3,000	1,500	750	3,160	1,580	790
1.17(c)	1817/2817/3817	Request for prioritized examination	4,000	2,000	1,000	4,200	2,100	1,050
1.17(d)	1819/2819/3819	Correction of inventorship after first action on merits	600	300	150	640	320	160
1.17(e)(1)	1801/2801/3801	Request for continued examination (RCE)—1st request (*see* 37 CFR 1.114).	1,300	650	325	1,360	680	340
1.17(e)(2)	1820/2820/3820	Request for continued examination (RCE)—2nd and subsequent requests (*see* 37 CFR 1.114).	1,900	950	475	2,000	1,000	500
1.17(f)	1462/2462/3462	Petitions requiring the petition fee set forth in 37 CFR 1.17(f) (Group I).	400	200	100	420	210	105
1.17(g)	1463/2463/3463	Petitions requiring the petition fee set forth in 37 CFR 1.17(g) (Group II).	200	100	50	220	110	55
1.17(i)(2)	1803/2803/3803	Request for voluntary publication or republication	130	130	130	140	140	140
1.17(i)(2)	1808/2808/3808	Other publication processing fee	130	130	130	140	140	140
1.17(k)	1802/2802/3802	Request for expedited examination of a design application.	900	450	225	1,600	800	400

TABLE 12—CFR SECTION 1.17 FEE CHANGES—Continued

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.17(m)	1453/2453/3453	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding.	2,000	1,000	500	2,100	1,050	525
1.17(m)	1454/2454/3454	Petition for the delayed submission of a priority or benefit claim.	2,000	1,000	500	2,100	1,050	525
1.17(m)	1784/2784/3784	Petition to excuse applicant's failure to act within prescribed time limits in an international design application.	2,000	1,000	500	2,100	1,050	525
1.17(m)	1558/2558/3558	Petition for the delayed payment of the fee for maintaining a patent in force.	2,000	1,000	500	2,100	1,050	525
1.17(m)	1628/2628/3628	Petition for the extension of the twelve-month (six-month for designs) period for filing a subsequent application.	2,000	1,000	500	2,100	1,050	525
1.17(p)	1806/2806/3806	Submission of an Information Disclosure Statement	240	120	60	260	130	65
1.17(r)	1809/2809/3809	Filing a submission after final rejection (*see* 37 CFR 1.129(a)).	840	420	210	880	440	220
1.17(s)	1810/2810/3810	For each additional invention to be examined (*see* 37 CFR 1.129(b)).	840	420	210	880	440	220

Section 1.18: Section 1.18 is amended by revising paragraphs (a) through (f) to set forth the patent issue fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.18 are shown in Table 13.

TABLE 13—CFR SECTION 1.18 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.18(a)(1)	1501/2501/3501	Utility issue Fee	1,000	500	250	1,200	600	300
1.18(a)(1)	1511/2511/3511	Reissue issue Fee	1,000	500	250	1,200	600	300
1.18(b)(1)	1502/2502/3502	Design issue Fee	700	350	175	740	370	185
1.18(c)(1)	1503/2503/3503	Plant Issue Fee	800	400	200	840	420	210
1.18(d)(3)	1505/2505/3505	Publication fee for republication	300	300	300	320	320	320
1.18(e)	1455/2455/3455	Filing an application for patent term adjustment	200	200	200	210	210	210
1.18(f)	1456/2456/3456	Request for reinstatement of term reduced	400	400	400	420	420	420

Section 1.19: Section 1.19 is amended by revising paragraphs (b)(1)(i)(B) and (b)(1)(ii)(B) and by removing and reserving paragraphs (j) through (l) to set forth the patent document supply fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.19 are shown in Table 14.

TABLE 14—CFR SECTION 1.19 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.19(b)(1) (i)(B)	8051	Copy patent file wrapper, paper medium, any number of sheets.	280	280	280	290	290	290
1.19(b)(1) (ii)(B)	8052	Copy patent file wrapper, electronic medium, any size or provided electronically.	55	55	55	60	60	60
1.19(j)	8057	Copy of Patent Technology Monitoring Team (PTMT) patent bibliographic extract and other DVD (optical disc).	50	50	50	discontinued	discontinued	discontinued
1.19(k)	8058	Copy of U.S. patent custom data extracts.	100	100	100	discontinued	discontinued	discontinued
1.19(l)	8059	Copy of selected technology reports, miscellaneous technology areas.	30	30	30	discontinued	discontinued	discontinued

Section 1.20: Section 1.20 is revised to set forth post-issuance fees as authorized under section 10 of the Act. In this section, (c)(5) through (7) are being reinstated due to an inadvertent deletion. The changes to the fee amounts indicated in § 1.20 are shown in Table 15.

TABLE 15—CFR SECTION 1.20 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.20(a)	1811/2811/3811	Certificate of correction	150	150	150	160	160	160
1.20(b)	1816/2816/3816	Processing fee for correcting inventorship in a patent	150	150	150	160	160	160
1.20(c)(1)	1831/2831/3831	*Ex parte* reexamination (§ 1.510(a)) Streamlined	6,000	3,000	1,500	6,300	3,150	1,575
1.20(c)(2)	1812/2812/3812	*Ex parte* reexamination (§ 1.510(a)) Non-streamlined	12,000	6,000	3,000	12,600	6,300	3,150
1.20(c)(7)	1812/2812/3812	Refused request for ex parte reexamination	3,600	1,800	900	3,780	1,890	945
1.20(c)(3)	1821/2821/3821	Each reexamination independent claim in excess of three and also in excess of the number of such claims in the patent under reexamination.	460	230	115	480	240	120
1.20(c)(6)	1824/2824/3824	Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d).	1,940	970	485	2,040	1,020	510
1.20(d)	1814/2814/3814	Statutory disclaimer, including terminal disclaimer	160	160	160	170	170	170
1.20(e)	1551/2551/3551	For maintaining an original or any reissue patent, due at 3.5 years.	1,600	800	400	2,000	1,000	500
1.20(f)	1552/2552/3552	For maintaining an original or any reissue patent, due at 7.5 years.	3,600	1,800	900	3,760	1,880	940
1.20(g)	1553/2553/3553	For maintaining an original or any reissue patent, due at 11.5 years.	7,400	3,700	1,850	7,700	3,850	1,925
1.20(h)	1554/2554/3554	Surcharge—3.5 year—Late payment within 6 months	160	80	40	500	250	125
1.20(h)	1555/2555/3555	Surcharge—7.5 year—Late payment within 6 months	160	80	40	500	250	125
1.20(h)	1556/2556/3556	Surcharge—11.5 year—Late payment within 6 months.	160	80	40	500	250	125
1.20(j)(1)	1457/2457/3457	Extension of term of patent	1,120	1,120	1,120	1,180	1,180	1,180
1.20(j)(2)	1458/2458/3458	Initial application for interim extension (*see* 37 CFR 1.790).	420	420	420	440	440	440
1.20(j)(3)	1459/2459/3459	Subsequent application for interim extension (*see* 37 CFR 1.790).	220	220	220	230	230	230
1.20(k)(1)	1826/2826/3826	Request for supplemental examination	4,400	2,200	1,100	4,620	2,310	1,155
1.20(k)(2)	1827/2827/3827	Reexamination ordered as a result of supplemental examination.	12,100	6,050	3,025	12,700	6,350	3,175
1.20(k)(3)(ii)	1829/2829/3829	Supplemental Examination Document Size Fee—for each additional 50 sheets or a fraction thereof in a nonpatent document.	280	140	70	300	150	75

Section 1.21: Section 1.21 is amended by adding paragraph (a)(8) and revising paragraphs (a)(1), (2), and (5), (9)(ii), (10); (k); (n); (o); and (q) to set forth miscellaneous fees and charges as authorized under section 10 of the Act. Section 1.21(a)(6)(i) is being revised to remove and reserve the fee for the USPTO-assisted recovery of ID or reset of password for the Office of Enrollment and Discipline Information System. The changes to the fee amounts indicated in § 1.21 are shown in Table 16.

The USPTO amends paragraph (o) of § 1.21 to clarify the applicability of its provisions. The USPTO specifies that the mega-sequence listing fee applies to an application filed under 35 U.S.C. 111 or 371 to clarify that the fee applies to both provisional and nonprovisional applications filed under 35 U.S.C. 111, as well as to national stage applications under 35 U.S.C. 371. The fee does not apply to international applications filed with the U.S. Receiving Office (RO/US) that do not enter the U.S. national stage under 35 U.S.C. 371. Furthermore, the rule clarifies that it is the receipt by the Office of a mega-sequence listing in an application that is subject to the fee. A sequence listing in a national stage application may be received by the USPTO from the International Bureau in accordance with PCT Article 20 rather than directly submitted to the USPTO by the applicant. Thus, the clarification makes clear that the mega-sequence listing fee applies to such receipt. The USPTO further clarifies that the fee applies to only the first receipt of a sequence listing in electronic form having a size ranging from 300MB to 800MB and to the first receipt of a sequence listing in electronic form having a size over 800MB. Thus, an applicant will not be charged the mega-sequence listing fee for the submission of a substitute or replacement electronic form of the sequence listing (*see* 37 CFR 1.825) unless the size of the substitute or replacement electronic form sequence listing is subject to the provisions of a different paragraph of § 1.21(o) (*e.g.,* the first sequence listing in an application is between 300MB and 800MB and a replacement sequence listing is greater than 800MB). Finally, the USPTO specifies that for purposes of determining the fee required under § 1.21(o), the size of the electronic form of the sequence listing is measured without file compression.

TABLE 16—CFR SECTION 1.21 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.21(a)(1)(i)	9001	Application fee (non-refundable).	100	100	100	110	110	110
1.21(a)(1)(ii)(A)	9010	For test administration by commercial entity.	200	200	200	210	210	210
1.21(a)(1)(ii)(B)	9011	For test administration by the USPTO.	450	450	450	470	470	470

TABLE 16—CFR SECTION 1.21 FEE CHANGES—Continued

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.21(a)(1)(iii)	9029	For USPTO-administered review of registration examination.	450	450	450	470	470	470
1.21(a)(2)(i)	9003	On registration to practice under § 11.6.	200	200	200	210	210	210
1.21(a)(2)(ii)	9026	On grant of limited recognition under § 11.9(b).	200	200	200	210	210	210
1.21(a)(2)(iii)	9025	On change of registration from agent to attorney.	100	100	100	110	110	110
1.21(a)(5)(i)	9012	Review of decision by the Director of Enrollment and Discipline under § 11.2(c).	400	400	400	420	420	420
1.21(a)(5)(ii)	9013	Review of decision of the Director of Enrollment and Discipline under § 11.2(d).	400	400	400	420	420	420
1.21(a)(6)(i)	9027	For USPTO-assisted recovery of ID or reset of password for the Office of Enrollment and Discipline Information System.	70	70	70	discontinued	discontinued	discontinued
1.21(a)(9)(ii)	9004	Administrative reinstatement fee.	200	200	200	210	210	210
1.21(a)(10)	9014	On petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office.	1,600	1,600	1,600	1,680	1,680	1,680
1.21(k)	9024	Unspecified other services, excluding labor.	AT COST	AT COST	AT COST	AT COST	AT COST	AT COST
1.21(n)	8026	Handling fee for incomplete or improper application.	130	130	130	140	140	140
1.21(o)(1)	1091/2091/3091	Submission of sequence listings of 300MB to 800MB.	1,000	500	250	1,060	530	265
1.21(o)(2)	1092/2092/3092	Submission of sequence listings of more than 800MB.	10,000	5,000	2,500	10,500	5,250	2,625
1.21(q)	8054	Additional fee for expedited service.	160	160	160	170	170	170

Section 1.27: Section 1.27 is amended by revising the introductory text of paragraph (c)(3) to provide that the payment, by any party, of the exact amount of the small entity transmittal fee set forth in § 1.1031(a) will be treated as a written assertion of entitlement to small entity status. The change to § 1.27(c)(3) will make it easier for applicants filing an international design application through the USPTO as an office of indirect filing to establish small entity status.

Section 1.431: Section 1.431 is amended by revising paragraph (c) to remove the reference to the late payment fee calculation under PCT Rule 16*bis*.2. The late payment fee pursuant to PCT Rule 16*bis*.2 is added to § 1.445, as that provision concerns international application filing, processing, and search fees.

Section 1.445: Section 1.445 is amended by revising paragraph (a) to set forth international filing, processing, and search fees and charges as authorized under section 10 of the Act. The changes to the fee amounts indicated in 37 CFR 1.445 are shown in Table 17. Section 1.445(a) is also amended to include the late payment fee pursuant to PCT Rule 16*bis*.2. *See* discussion of § 1.431, *supra.*

TABLE 17—CFR SECTION 1.445 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.445(a)(1) (i)(A)	1601/2601/3601	Transmittal fee	240	120	60	260	130	65
1.445(a)(2) (i)	1602/2602/3602	Search fee—regardless of whether there is a corresponding application (*see* 35 U.S.C. 361(d) and PCT Rule 16).	2,080	1,040	520	2,180	1,090	545
1.445(a)(3) (i)	1604/2604/3604	Supplemental search fee when required, per additional invention.	2,080	1,040	520	2,180	1,090	545
1.445(a)(4)	1621/2621/3621	Transmitting application to Intl. Bureau to act as receiving office.	240	120	60	260	130	65
1.445(a)(5)	1627/2627/3627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13*ter*.	300	150	75	320	160	80

Section 1.482: Section 1.482 is amended by revising paragraphs (a) through (c) to read as set out in the regulatory text at the end of this document. The changes to the fee

amounts indicated in § 1.482 are shown in Table 18.

TABLE 18—CFR SECTION 1.482 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.482(a)(1)(i)	1605/2605/3605	Preliminary examination fee—U.S. was the ISA	600	300	150	640	320	160
1.482(a)(1)(ii)	1606/2606/3606	Preliminary examination fee—U.S. was not the ISA	760	380	190	800	400	200
1.482(a)(2)	1607/2607/3607	Supplemental examination fee per additional invention.	600	300	150	640	320	160
1.482(c)	1627/2627/3627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13*ter*.	300	150	75	320	160	80

Section 1.492: Section 1.492 is amended by revising paragraphs (a), (b)(3) and (4), (c)(2), (d), (f), (h), and (j) to set forth the application filing, excess claims, search, and examination fees for international patent applications entering the national stage as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.492 are shown in Table 19. In this section, table headers were added to make formatting consistent.

TABLE 19—CFR SECTION 1.492 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.492(a)	1631/2631/3631	Basic National Stage Fee	300	150	75	320	160	80
1.492(b)(3)	1642/2642/3642	National Stage Search Fee—search report prepared and provided to USPTO.	520	260	130	540	270	135
1.492(b)(4)	1632/2632/3632	National Stage Search Fee—all other situations	660	330	165	700	350	175
1.492(c)(2)	1633/2633/3633	National Stage Examination Fee—all other situations	760	380	190	800	400	200
1.492(d)	1614/2614/3614	Each independent claim in excess of three	460	230	115	480	240	120
1.492(f)	1616/2616/3616	Multiple dependent claim	820	410	205	860	430	215
1.492(h)	1617/2617/3617	Search fee, examination fee or oath or declaration after the date of commencement of the national stage.	140	70	35	160	80	40
1.492(j)	1681/2681/3681	National Stage Application Size Fee—for each additional 50 sheets that exceeds 100 sheets.	400	200	100	420	210	105

Section 11.11: The USPTO amends paragraph (a)(1) to provide that the OED director may publish a practitioner's CLE certification status. Paragraph (a)(1) has also been amended to require that persons granted limited recognition pursuant to § 11.9 provide the contact information listed in § 11.11(a)(1).

The USPTO amends paragraph (a)(2) to provide that registered practitioners and persons granted limited recognition under § 11.9(b) are required to biennially file a registration statement. It further provides that failure to file the mandatory registration statement may result in administrative suspension as set forth in § 11.11(b).

The USPTO adds paragraph (a)(3) to § 11.11 to provide that registered practitioners and persons granted limited recognition under § 11.9(b) may certify to the OED director that they have completed six credits of CLE in the preceding 24 months, with five of the credits in patent law and practice and one of the credits in ethics.

The USPTO amends paragraph (b)(1) in § 11.11 to apply to those failing to comply with § 11.11(a)(2), which refers to the registration statement.

The USPTO amends paragraph (e) in § 11.11 to provide that resigned practitioners are subject to investigation for their conduct that occurred prior to, during, or after the period of their resignation.

The USPTO amends paragraph (f)(1) in § 11.11 to remove any references to resigned practitioners, remove the requirement that a practitioner who was administratively suspended for two or more years before the date the Office receives a completed application from the person must also pass the registration examination under § 11.7(b)(1)(ii), and add the requirement that any practitioner who remains administratively suspended for more than five years shall be required to file a petition to the OED director requesting reinstatement and providing objective evidence that the practitioner continues to possess the necessary legal qualifications to render valuable service to patent applicants.

The USPTO adds paragraph (f)(3) to § 11.11, which sets forth the process by which a practitioner who has resigned may apply to be reinstated to the register in active status.

Section 41.20: Section 41.20 is amended by revising paragraphs (a), (b)(1), (b)(2)(ii), and (b)(3) and (4) to set forth the appeal fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 41.20 are shown in Table 20.

TABLE 20—CFR SECTION 41.20 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
41.20(a)	1405/2405/3405	Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3.	400	400	400	420	420	420

TABLE 20—CFR SECTION 41.20 FEE CHANGES—Continued

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
41.20(b)(1)	1401/2401/3401	Notice of appeal	800	400	200	840	420	210
41.20(b)(2)(ii)	1404/2404/3404	Filing a brief in support of an appeal in an *inter partes* reexamination proceeding.	2,000	1,000	500	2,100	1,050	525
41.20(b)(3)	1403/2403/3403	Request for oral hearing	1,300	650	325	1,360	680	340
41.20(b)(4)	1413/2413/3413	Forwarding an appeal in an application or *ex parte* reexamination proceeding to the Board.	2,240	1,120	560	2,360	1,180	590

Section 42.15: Section 42.15 is amended by revising paragraphs (a) through (e) to set forth the *inter partes* review and post-grant review or covered business method patent review fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 42.15 are shown in Table 21.

TABLE 21—CFR SECTION 42.15 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Final rule fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
42.15(a)(1)	1406	*Inter partes* review request fee—Up to 20 Claims	15,500	15,500	15,500	19,000	19,000	19,000
42.15(a)(2)	1414	*Inter partes* review post-institution fee—Up to 15 Claims.	15,000	15,000	15,000	n/a	n/a	n/a
42.15(a)(2)	1414	*Inter partes* review post-institution fee—Up to 20 Claims.	n/a	n/a	n/a	22,500	22,500	22,500
42.15(a)(3)	1407	*Inter partes* review request of each claim in excess of 20.	300	300	300	375	375	375
42.15(a)(4)	1415	*Inter partes* post-institution request of each claim in excess of 20.	600	600	600	750	750	750
42.15(b)(1)	1408	Post-grant or covered business method patent review request fee—Up to 20 Claims.	16,000	16,000	16,000	20,000	20,000	20,000
42.15(b)(2)	1416	Post-grant or covered business method patent review post-institution fee—Up to 15 Claims.	22,000	22,000	22,000	n/a	n/a	n/a
42.15(b)(2)	1416	Post-grant or covered business method patent review post-institution fee—Up to 20 Claims.	n/a	n/a	n/a	27,500	27,500	27,500
42.15(b)(3)	1409	Post-grant or covered business method review request of each claim in excess of 20.	375	375	375	475	475	475
42.15(b)(4)	1417	Post-grant or covered business method review post-institution request of each claim in excess of 20.	825	825	825	1,050	1,050	1,050
42.15(c)(1)	1412	Petition for a derivation proceeding	400	400	400	420	420	420
42.15(d)	1411	Request to make a settlement agreement available and other requests filed in a patent trial proceeding.	400	400	400	420	420	420
42.15(e)	NEW	*Pro hac vice* admission fee	n/a	n/a	n/a	250	250	250

VIII. Rulemaking Considerations

A. AIA: America Invents Act

This Final Rule sets and adjusts fees under section 10(a) of the AIA as amended by the SUCCESS Act, Public Law 115–273, 132 Stat. 4158. Section 10(a) of the AIA authorizes the director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under title 35 of the U.S.C. for any services performed, or materials furnished, by the Office. The SUCCESS Act extends the USPTO fee setting authority until September 2026. Section 10 of the AIA prescribes that fees may be set or adjusted only to recover the aggregate estimated cost to the Office for processing, activities, services, and materials relating to patents, including administrative costs of the Office with respect to such patent fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services. Section 10(e) of the AIA sets forth the general requirements for rulemakings that set or adjust fees under this authority. In particular, section 10(e)(1) requires the director to publish in the **Federal Register** any proposed fee change under section 10 and include in such publication the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change. For such rulemakings, the AIA requires that the Office provide a public comment period of no less than 45 days.

The PPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of patent operations. When proposing fees under section 10 of the Act, the director must provide the PPAC with the proposed fees at least 45 days prior to publishing them in the **Federal Register**. The PPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold public hearing(s) on the proposed fees. The PPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the Office issues any final fees. The Office considers and analyzes any comments, advice, or recommendations received from the PPAC before finally setting or adjusting fees.

Consistent with this framework, on August 8, 2018, the director notified the PPAC of the Office's intent to set or adjust patent fees and submitted a preliminary patent fee proposal with supporting materials. The preliminary patent fee proposal and associated materials are available at *https://www.uspto.gov/FeeSettingAndAdjusting.* The PPAC held a public hearing in Alexandria, Virginia, on

September 6, 2018. Transcripts of the hearing are available for review at *https://www.uspto.gov/sites/default/files/documents/PPAC_Hearing_Transcript_20180906.pdf.* Members of the public were invited to the hearing and given the opportunity to submit written and/or oral testimony for the PPAC to consider. The PPAC considered such public comments from the hearing and made all comments available to the public via the Fee Setting website, *https://www.uspto.gov/FeeSettingAndAdjusting.* The PPAC also provided a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the preliminary proposed fees. The report regarding the preliminary proposed fees was released on October 29, 2018, and can be found online at *https://www.uspto.gov/sites/default/files/documents/PPAC_Fee_Setting_Report_Oct2018_1.pdf.* The Office considered and analyzed all comments, advice, and recommendations received from the PPAC before publishing the NPRM on July 31, 2019 (84 FR 37398). The NPRM comment period closed on September 30, 2019. Section 10(e) of the Act requires the director to publish the final fee rule in the **Federal Register** and the Official Gazette of the USPTO at least 45 days before the final fees become effective. Pursuant to this requirement, this rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **Federal Register**], except for the amendment to § 1.16(u), which is effective on January 1, 2022.

B. Regulatory Flexibility Act

The USPTO publishes this Final Regulatory Flexibility Analysis (FRFA) as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*) to examine the impact of the Office's rule to implement the fee setting provisions of the Leahy-Smith America Invents Act (Pub. L. 112–29, 125 Stat. 284) (AIA or the Act) on small entities. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish an NPRM, the agency must prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA), unless the agency certifies under 5 U.S.C. 605(b) that the rule, if implemented, will not have a significant impact on a substantial number of small entities (5 U.S.C. 603, 605). The Office published an IRFA, along with the NPRM, on July 31, 2019 (84 FR 37398). Given that the final patent fee schedule, based on the assumptions found in the FY 2021 Budget, is projected to result in $1.2 billion in additional aggregate revenue over the current fee schedule (baseline) for the period including FY 2020 to FY 2024, the Office acknowledges that the fee adjustments will impact all entities seeking patent protection. The $1,205.1 million in additional aggregate revenue results from an additional $267.9 million in FY 2020, $39.1 million in FY 2021, $293.7 million in FY 2022, $297.8 million in FY 2023, and $306.7 million in FY 2024.

Items 1–6 below discuss the five items specified in 5 U.S.C. 604(a)(1)–(6) to be addressed in an FRFA. Item 6 below discusses alternatives to this proposal that the Office considered.

1. A Statement of the Need for, and Objectives of, the Rule

Section 10 of the AIA, as amended by the SUCCESS Act, authorizes the director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under title 35, U.S.C., for any services performed, or materials furnished, by the Office. The objective of the final patent fee schedule is for patent fees to recover the aggregate cost of patent operations, including administrative costs, while facilitating effective administration of the U.S. patent system. Since its inception, the Act strengthened the patent system by affording the USPTO the ''resources it requires to clear the still sizeable backlog of patent applications and move forward to deliver to all American inventors the first rate service they deserve.'' H.R. Rep. No. 112–98(I), at 163 (2011). In setting and adjusting fees under the Act, the Office will secure a sufficient amount of aggregate revenue to recover the aggregate cost of patent operations, including revenue needed to achieve strategic and operational goals. Additional information on the Office's strategic goals may be found in the Strategic Plan, available at *www.uspto.gov/strategicplan.* Additional information on the Office's operating requirements to achieve the strategic goals may be found in the ''USPTO FY 2021 President's Budget Request,'' available at *https://www.uspto.gov/about-us/performance-and-planning/budget-and-financial-information.*

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 Final Rule as a Result of Such Comments

The Office received two public comments in response to the IRFA. Details of those comments are discussed and analyzed above in Part VI: Discussion of Comments and are summarized here.

Comment: One commenter wrote that the increase in the second and subsequent RCE fee would hurt small entity applicants and small entity law firms. The Initial Regulatory Flexibility Analysis offered no explanation justifying that differential effect on small entities.

Response: The USPTO is not targeting the RCE fees for a specific increase. Instead, the fees for RCEs—both for the first request and for second and subsequent requests—are being adjusted by the across-the-board adjustment to patent fees. The USPTO would like to note that small and micro entity applicants will continue to receive the small and micro entity discounts, which set the fee rates significantly below cost to examine second and subsequent RCE filings. Additionally, the Regulatory Flexibility Analysis analyzed applicants' sensitivity to changes in fee rates by entity size, including RCE fees for small entities. This impact is also included in the RIA completed for this rulemaking, which is available at *https://www.uspto.gov/FeeSettingAndAdjusting.*

Comment: One commenter claimed the Regulatory Flexibility Analysis must analyze the effect of the annual active patent practitioner fee on small entities because a great number of practitioners work for small entities.

Response: As noted in response to Comment 81 above, the USPTO has elected not to implement the annual active patent practitioner fee at this time.

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

The Office did not receive any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

4. A Description of and, Where Feasible, an Estimate of the Number of Small Entities To Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

(a) SBA Size Standard

The Small Business Act (SBA) size standards applicable to most analyses conducted to comply with the RFA are set forth in 13 CFR 121.201. These

regulations generally define small businesses as those with less than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the RFA, and after consulting with the Small Business Administration, the Office formally adopted an alternate size standard for the purpose of conducting an analysis or making a certification under the RFA for patent-related regulations. *See* Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations, 71 FR 67109, 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office 37, 60 (Dec. 12, 2006). The Office's alternate small business size standard consists of the SBA's previously established size standard for entities entitled to pay reduced patent fees. *See* 13 CFR 121.802.

Unlike the SBA's generally applicable small business size standards, the size standard for the USPTO is not industry-specific. The Office's definition of a small business concern for RFA purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105, and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely, an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons, and (b) that has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern that would not qualify as a nonprofit organization or a small business concern under this definition. *See* 71 FR at 67109, 1313 Off. Gaz. Pat. Office 60.

If a patent applicant self-identifies on a patent application as qualifying as a small entity or provides certification of micro entity status for reduced patent fees under the Office's alternative size standard, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Small Entity Defined

The Act provides that fees set or adjusted under section 10(a) ''for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 50 percent'' with respect to the application of such fees to any ''small entity'' (as defined in 37 CFR 1.27) that qualifies for reduced fees under 35 U.S.C. 41(h)(1). In turn, 125 Stat. at 316–17. 35 U.S.C. 41(h)(1) provides that certain patent fees ''shall be reduced by 50 percent'' for a small business concern as defined by section 3 of the SBA, and to any independent inventor or nonprofit organization as defined in regulations described by the director.

Micro Entity Defined

Section 10(g) of the Act created a new category of entity called a ''micro entity.'' 35 U.S.C. 123; *see* also 125 Stat. at 318–19. Section 10(b) of the Act provides that the fees set or adjusted under section 10(a) ''for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 75 percent with respect to the application of such fees to any micro entity as defined by 35 U.S. Code 123.'' 125 Stat. at 315–17. 35 U.S.C. 123(a) defines a ''micro entity'' as an applicant that makes a certification that the applicant: (1) Qualifies as a small entity as defined in 37 CFR 1.27; (2) has not been named as an inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or PCT applications for which the basic national fee under 35 U.S.C. 41(a) was not paid; (3) did not, in the calendar year preceding the calendar year in which the applicable fee is being paid, have a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)), exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census; [2] and (4) has not assigned, granted, or conveyed, and is not under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity exceeding the income limit set forth in (3) above. *See* 125 Stat. at 318. 35 U.S.C. 123(d) also defines a ''micro entity'' as an applicant that certifies that: (1) The applicant's employer, from which the applicant obtains the majority of the applicant's income, is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or (2) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education.

Estimate of Number of Small Entities Affected

The changes in this Final Rule will apply to any entity, including small and micro entities, that pays any patent fee set forth in this Final Rule. The reduced fee rates (50 percent for small entities and 75 percent for micro entities) will continue to apply to any small entity asserting small entity status and to any micro entity certifying micro entity status for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

The Office reviews historical data to estimate the percentages of application filings asserting small entity status. Table 22 presents a summary of such small entity filings by type of application (utility, reissue, plant, design) over the last five years.

TABLE 22—NUMBER OF PATENT APPLICATIONS FILED IN LAST FIVE YEARS *

	FY 2019 **	FY 2018	FY 2017	FY 2016	FY 2015	Average
Utility:						
All	619,186	597,952	604,655	609,063	579,358	602,043
Small	140,097	135,307	134,393	131,617	125,991	133,481
% Small	22.6	22.6	22.2	21.6	21.7	22.2
Micro	19,844	20,314	20,359	20,652	19,119	20,058
% Micro	3.2	3.4	3.4	3.4	3.3	3.3
Reissue:						
All	1,131	1,023	1,086	1,123	1,154	1,103

[2] For more information, *see https://www.uspto.gov/PatentMicroentity.*

TABLE 22—NUMBER OF PATENT APPLICATIONS FILED IN LAST FIVE YEARS *—Continued

	FY 2019 **	FY 2018	FY 2017	FY 2016	FY 2015	Average
Small	241	219	237	237	217	230
% Small	21.3	21.4	21.8	21.1	18.8	20.9
Micro	33	20	23	21	12	22
% Micro	2.9	2.0	2.1	1.9	1.0	2.0
Plant:						
All	1,168	1,043	1,076	1,181	1,095	1,113
Small	594	467	536	563	577	547
% Small	50.9	44.8	49.8	47.7	52.7	49.2
Micro	7	7	18	10	6	10
% Micro	0.6	0.7	1.7	0.8	0.5	0.9
Design:						
All	45,945	46,433	44,048	42,298	38,183	43,381
Small	18,628	18,992	18,014	16,723	14,709	17,413
% Small	40.5	40.9	40.9	39.5	38.5	40.1
Micro	6,464	5,459	4,983	4,289	3,879	5,015
% Micro	14.1	11.8	11.3	10.1	10.2	11.6

* The patent application filing data in this table includes RCEs.
** FY 2019 application filing data are preliminary and will be finalized in the FY 2020 Performance and Accountability Report (PAR).

Because the percentage of small entity filings varies widely between application types, the Office has averaged the small entity filing rates over the past five years for those application types in order to estimate future filing rates by small and micro entities. Those average rates appear in the last column of Table 22.

The USPTO continuously updates both patent fee collections projections and workload projections based on the latest data. The estimated number of patent applications has been updated since the NPRM was published in July 2019. UPR filings growth projections were revised upward during the FY 2021 budget formulation process due to revised RGDP estimates and historical trends. As found in the FY 2021 Budget, the Office estimates that serialized UPR patent application growth rates will be 2.5 percent in FY 2020, 2.0 percent in FY 2021, 1.5 percent in FY 2022, and 1.0 percent in FYs 2023 and 2024. The Office forecasts design patent applications independently of UPR applications because they exhibit different behavior.

Using the estimated filings for the next five years and the average historic rates of small entity filings, Table 23 presents the Office's estimates of the number of patent application filings by all applicants, including small and micro entities, over the next five fiscal years by application type.

TABLE 23—ESTIMATED NUMBERS OF PATENT APPLICATIONS IN FY 2020–FY 2024

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Utility	632,402	632,105	642,729	652,922	662,489
Reissue	899	899	899	899	899
Plant	1,300	1,300	1,300	1,300	1,300
Design	45,751	47,581	49,484	51,464	53,521
Total	680,352	681,885	694,412	706,585	718,209

The Office has undertaken an elasticity analysis to examine if fee adjustments may impact small entities and, in particular, whether increases in fees would result in some such entities not submitting applications. Elasticity measures how sensitive demand for services by patent applicants and patentees is to fee changes. If elasticity is low enough (demand is *inelastic*), then fee increases will not reduce patenting activity enough to negatively impact overall revenues. If elasticity is high enough (demand is *elastic*), then increasing fees will decrease patenting activity enough to decrease revenue. The Office analyzed elasticity at the overall filing level across all patent applicants with regard to entity size and estimated the potential impact to patent application filings across entities. Additional information about elasticity estimates is available at *https://www.uspto.gov/FeeSettingAndAdjusting* in the document entitled ''Setting and Adjusting Patent Fees during Fiscal Year 2020—Description of Elasticity Estimates.''

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 Type of Professional Skills Necessary for Preparation of the Report or Record

When implemented, this rule will not change the burden of existing reporting and recordkeeping requirements for payment of fees. The current requirements for small and micro entities will continue to apply. Therefore, the professional skills necessary to file and prosecute an application through issue and maintenance remain unchanged under this rule. This action only adjusts patent fees and does not set procedures for asserting small entity status or certifying micro entity status, as previously discussed. There are no new compliance requirements in this rule.

The full fee schedule (*see* Part VII: Discussion of Specific Rules) is set forth in this Final Rule. The fee schedule sets or adjusts 296 patent fees in total. This includes four fees that will be discontinued and five new fees.

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

The USPTO considered several alternative approaches to this Final Rule, discussed below, including full cost recovery for individual services, an across-the-board adjustment to fees, and a baseline (current fee rates). The discussion begins with Alternative 1, a description of the fee schedule adopted in this Final Rule. A full discussion of the costs and benefits of all four alternatives and the methodology used for that analysis is contained in the RIA, available at *https://www.uspto.gov/FeeSettingAndAdjusting.*

(a) Alternative 1: Final Patent Fee Schedule—Setting and Adjusting Patent Fees During Fiscal Year 2020

The USPTO chose the patent fee schedule in this Final Rule because it achieves the aggregate revenue needed for the Office to offset aggregate costs, based on the assumptions found in the FY 2021 Budget, and is therefore beneficial to all entities that seek patent protection. Also, the alternative selected here benefits from improvements in the design of the fee schedule. The final patent fee schedule herein secures the Office's required revenue to recover its aggregate costs, while progressing towards high-quality and timely patent examination and review proceedings in order to produce reliable and predictable IP rights. This will benefit all applicants, including small and micro entities, without undue burden to patent applicants and holders, barriers to entry, or reduced incentives to innovate. This alternative maintains small and micro entity discounts. Compared to the current fee schedule, there are no new small or micro entity fee codes being extended to existing large entity fee rates, and none are being eliminated. All entities will benefit from the Office's proposal to discontinue four fees. Three patent service fees are being eliminated in order to focus USPTO workforce efforts on producing products that benefit the general public rather than producing outputs for individual customers that can be obtained through other, more efficient means. Additionally, the Office is eliminating the fee for assisting with the recovery of identification or reset of a password for the Office of Enrollment and Discipline Information System. This fee is being removed because it is unnecessary.

As discussed throughout this document, the fee changes in this alternative are moderate compared to other alternatives. Given that the final patent fee schedule will result in increased aggregate revenue, small and micro entities will pay some higher fees when compared to the current fee schedule (Alternative 4).

In summary, the fees to obtain a patent will increase. All patent fees not covered by the targeted adjustments as discussed in section B of Part V, or to be discontinued, as discussed in section C of Part V, are subject to the approximately 5 percent across the board increase. In addition to the across the board increase, some fees will be subject to a larger increase. For example, the issue fee and first stage maintenance fee rate will increase by 20 and 25 percent, respectively. However, second and third stage maintenance fees will only increase by 4 percent, less than the across-the-board increase. This alternative includes a new surcharge fee for applications not filed in DOCX format, which aims to improve the electronic application process for patent applicants by modernizing the USPTO's filing and viewing systems. This streamlines the application and publication processes, which benefits both the applicants and examiners. In an effort to enable the PTAB to continue high-quality, timely, and efficient proceedings with the expected increase in work following the Supreme Court decision in *SAS Institute Inc.* v. *Iancu,* 138 S. Ct. 1348 (2018), AIA trial fees will increase by at least 23.0 percent. Finally, in response to feedback from members of the public, the fee for a request for the expedited examination of a design application has been reduced to $1,600. Under the NPRM, the fee was proposed to be $2,000.

Adjusting the patent fee schedule as prescribed in this alternative allows the Office to implement the patent-related strategic goals and objectives documented in the Strategic Plan and to carry out requirements as described in the FY 2021 Budget. Specifically, this final patent fee schedule is estimated to generate sufficient revenue to support increases in core examination costs that are necessary to implement strategic initiatives to issue highly reliable patents, such as increasing the time examiners are provided to work on each application. This final patent fee schedule also supports the Strategic Plan's mission support goal to deliver organizational excellence (which includes optimizing the speed, quality, and cost-effectiveness of IT delivery to achieve business value and ensuring financial sustainability to facilitate effective USPTO operations) by allowing the Office to continue to make necessary business improvements. While all of the other alternatives discussed facilitate progress toward some of the Office's goals, the final patent fee schedule is the only one that does so in a way that does not impose undue costs on patent applicants and holders.

A comparison between the final patent fee schedule for this rule and existing fees (labeled Alternative 1—Final Patent Fee Schedule—Setting and Adjusting Patent Fees during Fiscal Year 2020) is available at *https://www.uspto.gov/FeeSettingAndAdjusting* in the document entitled ''Final Regulatory Flexibility Analysis Tables.'' Fee changes for small and micro entities are included in the tables. For the comparison between the fees in the final patent fee schedule and current fees, as noted above, the ''current fees'' column displays the fees that were in effect as of January 2018.

(b) Other Alternatives Considered

In addition to the final patent fee schedule set forth in Alternative 1, above, the Office considered several other alternative approaches. For each alternative considered, the Office calculated fee rates and the resulting revenue derived by each alternative scenario. The fees and their corresponding revenue tables are available at *https://www.uspto.gov/FeeSettingAndAdjusting.* Please note, only the fees outlined in Alternative 1 are being implemented in the Final Rule; other scenarios are discussed only to present the Office's analysis of other options.

Alternative 2: Unit Cost Recovery

It is common practice in the federal government to set individual fees at a level sufficient to recover the cost of that single service. In fact, official guidance on user fees, as cited in OMB Circular A–25: User Charges, states that user charges (fees) should be sufficient to recover the full cost to the federal government of providing the particular service, resource, or good when the government is acting in its capacity as sovereign.

As such, the USPTO considered setting most individual large entity fees at the historical cost of performing the activities related to the particular service in FY 2018. (While more recent FY 2019 cost data is now available, for

consistency with information presented in the NPRM, the Office continues to base the fee rates displayed under Alternative 2 in the IRFA and the RIA on FY 2018 unit cost data). There are several complexities in achieving individual fee unit cost recovery for the patent fee schedule. The most significant is the AIA requirement to provide a 50 percent discount on fees to small entities and a 75 percent discount on fees to micro entities. To account for this requirement, this alternative continues existing small and micro entity discounts where eligible under AIA authority. Thus, in order to continue the small and micro entity discounts and generate sufficient revenue to recover the Office's anticipated budgetary requirements over the five-year period with the assumptions found in the FY 2021 Budget, for this alternative, maintenance fees must be set significantly above unit cost.

With the exception of maintenance fees, fees for which there is no FY 2018 cost data would be set at current rates under this alternative. The Office no longer collects activity-based information for maintenance fees, and previous year unit costs were negligible. For the small number of services that have a variable fee, the aggregate revenue table does not list a fee. Instead, for those services with an estimated workload, the workload is listed in dollars rather than units to develop revenue estimates. Fees without either a fixed fee rate or a workload estimate are assumed to provide zero revenue to the Office. Note, this alternative bases fee rates for FY 2020 through FY 2024 on FY 2018 historical costs. The Office recognizes that this approach does not account for inflationary factors that would likely increase costs and necessitate higher fees in the out-years.

Alternative 2 could present significant barriers to those seeking patent protection because front-end fees would increase significantly for all applicants, even with small and micro entity fee reductions. Further, this alternative is counter to the Office's general philosophy to charge applicants and holders lower fees when they have less information about the relative value of their innovation. This alternative does not align well with the strategic and policy goals of this Final Rule. Both the current and final patent fee schedule are structured to collect more fees further along in the process (*i.e.,* issue fees and maintenance fees), when the patent owner has better information about a patent's value, rather than up front (*i.e.,* filing fees, search fees, and examination fees), when applicants are less certain about the value of their innovation, even though the front-end services are costlier to the Office. This alternative presents significant barriers to those seeking patent protection because if the Office were to immediately shift from the current front-end/back-end balance to a unit cost recovery structure, front-end fees would increase significantly, nearly tripling in some cases (*e.g.,* search fees).

The Office has estimated the potential quantitative elasticity impacts for application filings (*e.g.,* filing, search, and examination fees), maintenance renewals (all stages), and other major fee categories. Results of this analysis indicate that a high cost of entry into the patent system could lead to a significant decrease in the incentives to invest in innovative activities among all entities, especially for small and micro entities. Under the current fee schedule, maintenance fees subsidize all applications, including those applications for which no claims are allowed. By insisting on unit cost payment at each point in the application process, the Office is effectively charging high fees for every attempted patent, meaning those applicants who have less information about the patentability of their claims or the market value of their invention may be less likely to pursue initial prosecution (*e.g.,* filing, search, and examination) or subsequent actions to continue prosecution (*e.g.,* RCE). The ultimate effect of these changes in behavior is likely to stifle innovation. In sum, this alternative is inadequate to accomplish the goals and strategies as stated in Part III of this Final Rule.

The Office theorizes that the high costs of entry into the patent system could lead to a decrease in the incentives to invest in innovative activities among all entities, and especially small and micro entities. There is a strong possibility that funds previously used for issue and maintenance fee payments could offset the higher front-end costs for some users, but the front-end costs could prove insurmountable for other innovators.

The fee schedule for Alternative 2: Unit Cost Recovery is available at *https://www.uspto.gov/FeeSettingAndAdjusting* in the document entitled ''Final Regulatory Flexibility Analysis Tables.'' For the comparison between unit cost recovery fees and current fees, the ''current fees'' column displays the fees that are in effect as of January 2018. This column is used to calculate dollar and percent fee change compared to unit cost recovery fees.

Alternative 3: Across-the Board-Adjustment

In years past, the USPTO used its authority to adjust statutory fees annually according to increases in the consumer price index (CPI), which is a commonly used measure of inflation. Building on this prior approach and incorporating the additional authority under the AIA to set small and micro entity fees, Alternative 3 would set fees by applying a one-time 10 percent, across the board inflationary increase to the baseline (current fees) beginning in July 2020. Ten percent represents the change in revenue needed to achieve the aggregate revenue needed to cover future budgetary requirements based on the assumptions found in the FY 2021 Budget. All entities (large, small, and micro) would pay 10 percent higher fees for every product and service.

As estimated by the CBO in 2019, projected CPI rates by fiscal year are: 2.3 percent in FY 2020, 2.5 percent in FY 2021 through FY 2023, and 2.4 percent in FY 2024. The Office elected not to apply the estimated cumulative inflationary adjustment (12.8 percent), from FY 2020 through FY 2024 because doing so would result in significantly greater fee revenue than needed to meet the Office's core mission and strategic priorities. Under this alternative, nearly every existing fee would be increased, and no fees would be discontinued or reduced. But this alternative maintains the status quo ratio of front-end and back-end fees, given that all fees would be adjusted by the same escalation factor, thereby promoting innovation strategies and allowing applicants to gain access to the patent system through fees set below cost while patent holders pay issue and maintenance fees above cost to subsidize the below cost front-end fees. Alternative 3 nevertheless fails to implement policy factors and deliver benefits beyond what exists in the baseline fee schedule (*e.g.,* no fee adjustments to offer new patent prosecution options or facilitate more effective administration of the patent system). Given that all entities (large, small, and micro) would pay 10.0 percent higher fees for every product and service, especially the fees due at the time of filing, this alternative does not adequately support the Office's policy factor to promote innovation strategies.

The fee schedule for Alternative 3: Across-the-Board Adjustment is available at *https://www.uspto.gov/FeeSettingAndAdjusting* in the document entitled ''Final Regulatory Flexibility Analysis Tables.'' For the comparison between the across-the-

board adjustment fees and current fees, the ''current fees'' column displays the fees that are in effect as of January 2018.

Alternative 4: Baseline (Current Fee Schedule)

The Office considered a no-action alternative. This alternative would retain the status quo, meaning that the Office would continue the small and micro entity discounts that Congress provided in section 10 of the Act and maintain fees as of January 2018.

This approach would not provide sufficient aggregate revenue, based on the assumptions found in the FY 2021 Budget, to accomplish the Office's rulemaking goals as set forth in Part III of this Final Rule or the Strategic Plan. IT improvement, progress on backlog and pendency, and other improvement activities would continue, but at a significantly slower rate, as increases in core patent examination costs that are necessary to implement the strategic objective to issue highly reliable patents—such as increasing the time examiners are provided to work on each application—crowd out funding for other improvements. Likewise, without a fee increase, the USPTO would deplete its operating reserves, leaving the Office vulnerable to fiscal and economic events. This would expose core operations to unacceptable levels of financial risk and would position the Office to have to return to making inefficient, short-term funding decisions.

The fee schedule for Alternative 4: Baseline (Current Fee Schedule) is available at *https://www.uspto.gov/FeeSettingAndAdjusting* in the document entitled ''Final Regulatory Flexibility Analysis Tables.''

Alternatives Specified by the RFA

The RFA provides that an agency should also consider four specified ''alternatives'' or approaches, namely: (1) Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for small entities; (3) using performance rather than design standards; and (4) exempting small entities from coverage of the rule, or any part thereof (5 U.S.C. 604(c)). The USPTO discusses each of these specified alternatives or approaches below and describes how this Final Rule is adopting these approaches.

Differing Requirements

As discussed above, the changes in this Final Rule would continue existing fee discounts for small and micro entities that take into account the reduced resources available to them as well as offer new discounts when applicable under AIA authority. Specifically, micro entities would continue to receive a 75 percent reduction in patent fees under this proposal and non-micro, small entities would continue to pay 50 percent of the fee.

This Final Rule sets fee levels but does not set or alter procedural requirements for asserting small or micro entity status. To pay reduced patent fees, small entities must merely assert small entity status to pay reduced patent fees. The small entity may make this assertion by either checking a box on the transmittal form, ''Applicant claims small entity status,'' or by paying the basic filing or basic national small entity fee exactly. The process to claim micro entity status is similar in that eligible entities need only submit a written certification of their status prior to or at the time a reduced fee is paid. This Final Rule does not change any reporting requirements for any small or micro entity. For both small and micro entities, the burden to establish their status is nominal (making an assertion or submitting a certification), and the benefit of the fee reductions (50 percent for small entities and 75 percent for micro entities) is significant.

This Final Rule makes the best use of differing requirements for small and micro entities. It also makes the best use of the redesigned fee structure, as discussed further below.

Clarification, Consolidation, or Simplification of Requirements

This Final Rule pertains to setting or adjusting patent fees. Any compliance or reporting requirements in this rule are *de minimis* and necessary to implement lower fees. Therefore, any clarifications, consolidations, or simplifications to compliance and reporting requirements for small entities are not applicable or would not achieve the objectives of this rulemaking.

Performance Standards

Performance standards do not apply to the Final Rule.

Exemption for Small and Micro Entities

The final patent fee schedule maintains a 50 percent reduction in fees for small entities and a 75 percent reduction in fees for micro entities. The Office considered exempting small and micro entities from paying increased patent fees but determined that the USPTO would lack statutory authority for this approach. Section 10(b) of the Act provides that ''fees set or adjusted under subsection (a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents *shall* be reduced by 50 percent [for small entities] and *shall* be reduced by 75 percent [for micro entities]'' (emphasis added). Neither the AIA nor any other statute authorizes the USPTO simply to exempt small or micro entities, as a class of applicants, from paying increased patent fees.

C. Executive Order 12866 (Regulatory Planning and Review)

This Final Rule has been determined to be economically significant for purposes of Executive Order 12866 (Sept. 30, 1993). The Office has developed an RIA as required for rulemakings deemed to be economically significant. The complete RIA is available at *https://www.uspto.gov/FeeSettingAndAdjusting.*

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of this Final Rule; (2) tailored this Final Rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This Final Rule is not subject to the requirements of Executive Order 13771 (Jan. 30, 2017) because this Final Rule involves a transfer payment.

F. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

G. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes, (2) impose substantial direct compliance costs on Indian tribal governments, or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

H. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under Executive Order 13211 (May 18, 2001) because this final rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211.

I. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

J. Executive Order 13045 (Protection of Children)

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

K. Executive Order 12630 (Taking of Private Property)

This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

L. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this Final Rule are expected to 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 United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this Final Rule is a ''major rule'' as defined in 5 U.S.C. 804(2).

M. Unfunded Mandates Reform Act of 1995

The changes set forth in this rulemaking do not involve a federal intergovernmental mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

N. National Environmental Policy Act

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

O. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

P. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This Final Rule involves information collection requirements that are subject to review by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collection of information involved in this Final Rule have been reviewed and previously approved by the OMB under control numbers 0651–0012, 0651–0016, 0651–0020, 0651–0021, 0651–0031, 0651–0032, 0651–0033, 0651–0059, 0651–0063, 0651–0064, 0651–0069, and 0651–0075. In addition, updates to the aforementioned information collections as a result of this Final Rule have been submitted to the OMB as non-substantive change requests.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 11

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, 37 CFR parts 1, 11, 41, and 42 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.16 is amended by:
■ a. Revising paragraphs (a) through (e);
■ b. Adding table headings to the tables in paragraphs (f) and (g);
■ c. Revising paragraph (h);
■ d. Adding a heading to the table in paragraph (i);
■ e. Revising paragraphs (j) and (k);
■ f. Adding a heading to the table in paragraph (l);
■ g. Revising paragraphs (m) through (s);
■ h. Adding a heading to the table in paragraph (t); and
■ i. Adding paragraph (u).

The revisions and additions read as follows:

§ 1.16 National application filing, search, and examination fees.

(a) Basic fee for filing each application under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

TABLE 1 TO PARAGRAPH (a)

By a micro entity (§ 1.29)	$80.00
By a small entity (§ 1.27(a))	160.00
By a small entity (§ 1.27(a)) if the application is submitted in compliance with the Office electronic filing system (§ 1.27(b)(2))	80.00
By other than a small or micro entity	320.00

(b) Basic fee for filing each application under 35 U.S.C. 111 for an original design patent:

TABLE 2 TO PARAGRAPH (b)

By a micro entity (§ 1.29)	$55.00
By a small entity (§ 1.27(a))	110.00
By other than a small or micro entity	220.00

(c) Basic fee for filing each application for an original plant patent:

TABLE 3 TO PARAGRAPH (c)

By a micro entity (§ 1.29)	$55.00
By a small entity (§ 1.27(a))	110.00
By other than a small or micro entity	220.00

(d) Basic fee for filing each provisional application:

TABLE 4 TO PARAGRAPH (d)

By a micro entity (§ 1.29)	$75.00
By a small entity (§ 1.27(a))	150.00
By other than a small or micro entity	300.00

(e) Basic fee for filing each application for the reissue of a patent:

TABLE 5 TO PARAGRAPH (e)

By a micro entity (§ 1.29)	$80.00
By a small entity (§ 1.27(a))	160.00
By other than a small or micro entity	320.00

(f) * * *

TABLE 6 TO PARAGRAPH (f)

* * * * *

(g) * * *

TABLE 7 TO PARAGRAPH (g)

* * * * *

(h) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim in independent form in excess of three:

TABLE 8 TO PARAGRAPH (h)

By a micro entity (§ 1.29)	$120.00
By a small entity (§ 1.27(a))	240.00
By other than a small or micro entity	480.00

(i) * * *

TABLE 9 TO PARAGRAPH (i)

* * * * *

(j) In addition to the basic filing fee in an application, other than a provisional application, that contains, or is amended to contain, a multiple dependent claim, per application:

TABLE 10 TO PARAGRAPH (j)

By a micro entity (§ 1.29)	$215.00
By a small entity (§ 1.27(a))	430.00
By other than a small or micro entity	860.00

(k) Search fee for each application filed under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

TABLE 11 TO PARAGRAPH (k)

By a micro entity (§ 1.29)	$175.00
By a small entity (§ 1.27(a))	350.00
By other than a small or micro entity	700.00

(l) * * *

TABLE 12 TO PARAGRAPH (l)

* * * * *

(m) Search fee for each application for an original plant patent:

TABLE 13 TO PARAGRAPH (m)

By a micro entity (§ 1.29)	$110.00
By a small entity (§ 1.27(a))	220.00
By other than a small or micro entity	440.00

(n) Search fee for each application for the reissue of a patent:

TABLE 14 TO PARAGRAPH (n)

By a micro entity (§ 1.29)	$175.00
By a small entity (§ 1.27(a))	350.00
By other than a small or micro entity	700.00

(o) Examination fee for each application filed under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

TABLE 15 TO PARAGRAPH (o)

By a micro entity (§ 1.29)	$200.00
By a small entity (§ 1.27(a))	400.00
By other than a small or micro entity	800.00

(p) Examination fee for each application under 35 U.S.C. 111 for an original design patent:

TABLE 16 TO PARAGRAPH (p)

By a micro entity (§ 1.29)	$160.00
By a small entity (§ 1.27(a))	320.00
By other than a small or micro entity	640.00

(q) Examination fee for each application for an original plant patent:

TABLE 17 TO PARAGRAPH (q)

By a micro entity (§ 1.29)	$165.00
By a small entity (§ 1.27(a))	330.00
By other than a small or micro entit	660.00

(r) Examination fee for each application for the reissue of a patent:

TABLE 18 TO PARAGRAPH (r)

By a micro entity (§ 1.29)	$580.00
By a small entity (§ 1.27(a))	1,160.00
By other than a small or micro entity	2,320.00

(s) Application size fee for any application filed under 35 U.S.C.111 for the specification and drawings which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

TABLE 19 TO PARAGRAPH (s)

By a micro entity (§ 1.29)	$105.00
By a small entity (§ 1.27(a))	210.00
By other than a small or micro entity	420.00

(t) * * *

TABLE 20 TO PARAGRAPH (t)

* * * * *

(u) Additional fee for any application filed on or after January 1, 2022 under 35 U.S.C.111 for an original patent, except design, plant, or provisional applications, where the specification, claims, and/or abstract does not conform to the USPTO requirements for submission in DOCX format:

TABLE 21 TO PARAGRAPH (u)

By a micro entity (§ 1.29)	$100.00
By a small entity (§ 1.27(a))	200.00
By a small entity (§ 1.27(a)) if the application is submitted in compliance with the Office electronic filing system (§ 1.27(b)(2))	200.00
By other than a small or micro entity	400.00

■ 3. Section 1.17 is amended by:

■ a. Revising paragraph (a) and (c) through (g);

■ c. Revising paragraph (h) introductory text and adding heading to the table in paragraph (h);

■ d. Revising paragraph (i)(1) introductory text and adding a heading to the table in paragraph (i)(1);

■ e. Revising paragraphs (i)(2) and (k);

■ f. Revising paragraph (m);

■ g. Adding a heading to the table in paragraph (o);

■ h. Revising paragraphs (p) through (s); and

■ i. Adding a heading to the table in paragraph (t).

The revisions and additions read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) Extension fees pursuant to § 1.136(a):

(1) For reply within first month:

TABLE 1 TO PARAGRAPH (a)(1)

By a micro entity (§ 1.29)	$55.00
By a small entity (§ 1.27(a))	110.00
By other than a small or micro entity	220.00

(2) For reply within second month:

TABLE 2 TO PARAGRAPH (a)(2)

By a micro entity (§ 1.29)	$160.00
By a small entity (§ 1.27(a))	320.0
By other than a small or micro entity	640.00

(3) For reply within third month:

TABLE 3 TO PARAGRAPH (a)(3)

By a micro entity (§ 1.29)	$370.00
By a small entity (§ 1.27(a))	740.00
By other than a small or micro entity	1,480.00

(4) For reply within fourth month:

TABLE 4 TO PARAGRAPH (a)(4)

By a micro entity (§ 1.29)	$580.00
By a small entity (§ 1.27(a))	1,160.00
By other than a small or micro entity	$2,320.00

(5) For reply within fifth month:

TABLE 5 TO PARAGRAPH (a)(5)

By a micro entity (§ 1.29)	$790.00
By a small entity (§ 1.27(a))	1,580.00
By other than a small or micro entity	3,160.00

* * * * *

(c) For filing a request for prioritized examination under § 1.102(e):

TABLE 6 TO PARAGRAPH (c)

By a micro entity (§ 1.29)	$1,050.00
By a small entity (§ 1.27(a))	2,100.00
By other than a small or micro entity	4,200.00

(d) For correction of inventorship in an application after the first action on the merits:

TABLE 7 TO PARAGRAPH (d)

By a micro entity (§ 1.29)	$160.00
By a small entity (§ 1.27(a))	320.00
By other than a small or micro entity	640.00

(e) To request continued examination pursuant to § 1.114:

(1) For filing a first request for continued examination pursuant to § 1.114 in an application:

TABLE 8 TO PARAGRAPH (e)(1)

By a micro entity (§ 1.29)	$340.00
By a small entity (§ 1.27(a))	680.00
By other than a small or micro entity	1,360.00

(2) For filing a second or subsequent request for continued examination pursuant to § 1.114 in an application:

TABLE 9 TO PARAGRAPH (e)(2)

By a micro entity (§ 1.29)	$500.00
By a small entity (§ 1.27(a))	1,000.00
By other than a small or micro entity	2,000.00

(f) For filing a petition under one of the sections in paragraphs (f)(1) through (6) of this section that refers to this paragraph (f):

TABLE 10 TO PARAGRAPH (f)

By a micro entity (§ 1.29)	$105.00
By a small entity (§ 1.27(a))	210.00
By other than a small or micro entity	420.00

§ 1.36(a)—for revocation of a power of attorney by fewer than all of the applicants

§ 1.53(e)—to accord a filing date

§ 1.182—for a decision on a question not specifically provided for in an application for a patent

§ 1.183—to suspend the rules in an application for a patent

§ 1.741(b)—to accord a filing date to an application under § 1.740 for an extension of a patent term

§ 1.1023—to review the filing date of an international design application

(g) For filing a petition under one of the following sections that refers to this paragraph (g):

TABLE 11 TO PARAGRAPH (g)

By a micro entity (§ 1.29)	$55.00
By a small entity (§ 1.27(a))	110.00
By other than a small or micro entity	220.00

§ 1.12—for access to an assignment record

§ 1.14—for access to an application

§ 1.46—for filing an application on behalf of an inventor by a person who otherwise shows sufficient proprietary interest in the matter

§ 1.55(f)—for filing a belated certified copy of a foreign application

§ 1.55(g)—for filing a belated certified copy of a foreign application

§ 1.57(a)—for filing a belated certified copy of a foreign application

§ 1.59—for expungement of information

§ 1.103(a)—to suspend action in an application

§ 1.136(b)—for review of a request for an extension of time when the provisions of § 1.136(a) are not available

§ 1.377—for review of a decision refusing to accept and record payment of a maintenance fee filed prior to the expiration of a patent

§ 1.550(c)—for patent owner requests for an extension of time in *ex parte* reexamination proceedings

§ 1.956—for patent owner requests for an extension of time in *inter partes* reexamination proceedings

§ 5.12 of this chapter—for expedited handling of a foreign filing license

§ 5.15 of this chapter—for changing the scope of a license

§ 5.25 of this chapter—for a retroactive license

(h) For filing a petition under one of the following sections that refers to this paragraph (h):

TABLE 12 TO PARAGRAPH (h)

* * * * *

(i) * * *

(1) For taking action under one of the following sections that refers to this paragraph (i)(1):

TABLE 13 TO PARAGRAPH (i)(1)

* * * * *

(2) For taking action under one of the sections in paragraphs (i)(2)(i) and (ii) of this section that refers to this paragraph (i)(2):

TABLE 14 TO PARAGRAPH (i)(2)

By a micro entity (§ 1.29)	$140.00
By a small entity (§ 1.27(a))	140.00
By other than a small or micro entity	140.00

§ 1.217—for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication

§ 1.221—for requesting voluntary publication or republication of an application

* * * * *

(k) For filing a request for expedited examination under § 1.155(a):

TABLE 15 TO PARAGRAPH (k)

By a micro entity (§ 1.29)	$400.00
By a small entity (§ 1.27(a))	800.00
By other than a small or micro entity	1,600.00

* * * * *

(m) For filing a petition for the revival of an abandoned application for a

patent, for the delayed payment of the fee for issuing each patent, for the delayed response by the patent owner in any reexamination proceeding, for the delayed payment of the fee for maintaining a patent in force, for the delayed submission of a priority or benefit claim, for the extension of the 12-month (six-month for designs) period for filing a subsequent application (§§ 1.55(c) and (e); 1.78(b), (c), and (e); 1.137; 1.378; and 1.452), or for filing a petition to excuse an applicant's failure to act within prescribed time limits in an international design application (§ 1.1051):

TABLE 16 TO PARAGRAPH (m)

By a micro entity (§ 1.29)	$525.00
By a small entity (§ 1.27(a))	1,050.00
By other than a small or micro entity	2,100.00

* * * * *

(o) * * *

TABLE 17 TO PARAGRAPH (o)

* * * * *

(p) For an information disclosure statement under § 1.97(c) or (d):

TABLE 18 TO PARAGRAPH (p)

By a micro entity (§ 1.29)	$65.00
By a small entity (§ 1.27(a))	130.00
By other than a small or micro entity	260.00

(q) Processing fee for taking action under one of the sections in paragraphs (q)(1) through (3) of this section that refers to this paragraph (q): $50.00

§ 1.41—to supply the name or names of the inventor or inventors after the filing date without a cover sheet as prescribed by § 1.51(c)(1) in a provisional application

§ 1.48—for correction of inventorship in a provisional application

§ 1.53(c)(2)—to convert a nonprovisional application filed under § 1.53(b) to a provisional application under § 1.53(c)

(r) For entry of a submission after final rejection under § 1.129(a):

TABLE 19 TO PARAGRAPH (r)

By a micro entity (§ 1.29)	$220.00
By a small entity (§ 1.27(a))	440.00
By other than a small or micro entity	880.00

(s) For each additional invention requested to be examined under § 1.129(b):

TABLE 20 TO PARAGRAPH (s)

By a micro entity (§ 1.29)	$220.00

TABLE 20 TO PARAGRAPH (s)—Continued

By a small entity (§ 1.27(a))	440.00
By other than a small or micro entity	880.00

(t) * * *

TABLE 21 TO PARAGRAPH (t)

* * * * *

■ 4. Section 1.18 is amended by revising paragraphs (a), (b)(1), (c), (d)(3), (e), and (f) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original patent, except a design or plant patent, or for issuing each reissue patent:

TABLE 1 TO PARAGRAPH (a)

By a micro entity (§ 1.29)	$300.00
By a small entity (§ 1.27(a))	600.00
By other than a small or micro entity	1,200.00

(b)(1) Issue fee for issuing an original design patent:

TABLE 2 TO PARAGRAPH (b)(1)

By a micro entity (§ 1.29)	$185.00
By a small entity (§ 1.27(a))	370.00
By other than a small or micro entity	740.00

* * * * *

(c) Issue fee for issuing an original plant patent:

TABLE 3 TO PARAGRAPH (c)

By a micro entity (§ 1.29)	$210.00
By a small entity (§ 1.27(a))	420.00
By other than a small or micro entity	840.00

(d) * * *	
(3) Republication fee (§ 1.221(a))	$320.00
(e) For filing an application for patent term adjustment under § 1.705	210.00
(f) For filing a request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) in an application for a patent term adjustment under § 1.705	420.00

■ 5. Section 1.19 is amended by revising paragraphs (b)(1)(i)(B) and (b)(1)(ii)(B) and removing paragraphs (j) through (l).

The revisions read as follows:

§ 1.19 Document supply fees.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) Copy Patent File Wrapper, Any Number of Sheets: $290.00

* * * * *

(ii) * * *

(B) Copy Patent File Wrapper, Electronic, Any Size: $60.00

* * * * *

■ 6. Section 1.20 is revised to read as follows:

§ 1.20 Post-issuance fees.

(a) For providing a certificate of correction for an applicant's mistake (§ 1.323): $160.00

(b) Processing fee for correcting inventorship in a patent (§ 1.324): $160.00

(c) In reexamination proceedings:

(1)(i) For filing a request for *ex parte* reexamination (§ 1.510(a)) having:

(A) 40 or fewer pages

(B) Lines that are double-spaced or one-and-a-half spaced

(C) Text written in a non-script type font such as Arial, Times New Roman, or Courier

(D) A font size no smaller than 12 point

(E) Margins that conform to the requirements of § 1.52(a)(1)(ii)

(F) Sufficient clarity and contrast to permit direct reproduction and electronic capture by use of digital imaging and optical character recognition

TABLE 1 TO PARAGRAPH (c)(1)(i)

By a micro entity (§ 1.29)	$1,575.00
By a small entity (§ 1.27(a))	3,150.00
By other than a small or micro entity	6,300.00

(ii) The following parts of an *ex parte* reexamination request are excluded from paragraphs (c)(1)(i)(A) through (F) of this section:

(A) The copies of every patent or printed publication relied upon in the request pursuant to § 1.510(b)(3)

(B) The copy of the entire patent for which reexamination is requested pursuant to § 1.510(b)(4)

(C) The certifications required pursuant to § 1.510(b)(5) and (6)

(2) For filing a request for *ex parte* reexamination (§ 1.510(b)) that has sufficient clarity and contrast to permit direct reproduction and electronic capture by use of digital imaging and optical character recognition, and which otherwise does not comply with the provisions of paragraph (c)(1) of this section:

TABLE 2 TO PARAGRAPH (c)(2)

By a micro entity (§ 1.29)	$3,150.00
By a small entity (§ 1.27(a))	6,300.00
By other than a small or micro entity	12,600.00

(3) For filing with a request for reexamination or later presentation at any other time of each claim in independent form in excess of three and

also in excess of the number of claims in independent form in the patent under reexamination:

TABLE 3 TO PARAGRAPH (c)(3)

By a micro entity (§ 1.29)	$120.00
By a small entity (§ 1.27(a))	240.00
By other than a small or micro entity	480.00

(4) For filing with a request for reexamination or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 and also in excess of the number of claims in the patent under reexamination (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

TABLE 4 TO PARAGRAPH (c)(4)

By a micro entity (§ 1.29)	$25.00
By a small entity (§ 1.27(a))	50.00
By other than a small or micro entity	100.00

(5) If the excess claims fees required by paragraphs (c)(3) and (4) of this section are not paid with the request for reexamination or on later presentation of the claims for which the excess claims fees are due, the fees required by paragraphs (c)(3) and (4) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(6) For filing a petition in a reexamination proceeding, except for those specifically enumerated in §§ 1.550(i) and 1.937(d):

TABLE 5 TO PARAGRAPH (c)(6)

By a micro entity (§ 1.29)	$510.00
By a small entity (§ 1.27(a))	1,020.00
By other than a small or micro entity	2,040.00

(7) For a refused request for *ex parte* reexamination under § 1.510 (included in the request for *ex parte* reexamination fee at § 1.20(c)(1) or (2)):

TABLE 6 TO PARAGRAPH (c)(7)

By a micro entity (§ 1.29)	$1,890.00
By a small entity (§ 1.27(a))	945.00
By other than a small or micro entity	3,780.00

(d) For filing each statutory disclaimer (§ 1.321): $170.00

(e) For maintaining an original or any reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years, the fee being due by three years and six months after the original grant:

TABLE 7 TO PARAGRAPH (e)

By a micro entity (§ 1.29)	$500.00
By a small entity (§ 1.27(a))	1,000.00
By other than a small or micro entity	2,000.00

(f) For maintaining an original or any reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years, the fee being due by seven years and six months after the original grant:

TABLE 8 TO PARAGRAPH (f)

By a micro entity (§ 1.29)	$940.00
By a small entity (§ 1.27(a))	1,880.00
By other than a small or micro entity	3,760.00

(g) For maintaining an original or any reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years, the fee being due by eleven years and six months after the original grant:

TABLE 9 TO PARAGRAPH (g)

By a micro entity (§ 1.29)	$1,925.00
By a small entity (§ 1.27(a))	3,850.00
By other than a small or micro entity	7,700.00

(h) Surcharge for paying a maintenance fee during the six-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980:

TABLE 10 TO PARAGRAPH (h)

By a micro entity (§ 1.29)	$125.00
By a small entity (§ 1.27(a))	250.00
By other than a small or micro entity	500.00

(i) [Reserved]

(j) For filing an application for extension of the term of a patent:

TABLE 11 TO PARAGRAPH (j)

(1) Application for extension under § 1.740	$1,180.00
(2) Initial application for interim extension under § 1.790	440.00
(3) Subsequent application for interim extension under § 1.790	230.00

(k) In supplemental examination proceedings:

(1) For processing and treating a request for supplemental examination:

TABLE 12 TO PARAGRAPH (k)(1)

By a micro entity (§ 1.29)	$1,155.00
By a small entity (§ 1.27(a))	2,310.00
By other than a small or micro entity	4,620.00

(2) For *ex parte* reexamination ordered as a result of a supplemental examination proceeding:

TABLE 13 TO PARAGRAPH (k)(2)

By a micro entity (§ 1.29)	$3,175.00
By a small entity (§ 1.27(a))	6,350.00
By other than a small or micro entity	12,700.00

(3) For processing and treating, in a supplemental examination proceeding, a non-patent document over 20 sheets in length, per document:

(i) Between 21 and 50 sheets:

TABLE 14 TO PARAGRAPH (k)(3)(i)

By a micro entity (§ 1.29)	$45.00
By a small entity (§ 1.27(a))	90.00
By other than a small or micro entity	180.00

(ii) For each additional 50 sheets or a fraction thereof:

TABLE 15 TO PARAGRAPH (k)(3)(ii)

By a micro entity (§ 1.29)	$75.00
By a small entity (§ 1.27(a))	150.00
By other than a small or micro entity	300.00

■ 7. Section 1.21 is amended by:
■ a. Revising paragraphs (a)(1), (2), and (5);
■ b. Removing and reserving paragraph (a)(6)(i);
■ c. Adding paragraph (a)(8);
■ d. Revising paragraphs (a)(9)(ii) and (a)(10);
■ e. Adding paragraph (k); and
■ f. Revising paragraphs (n), (o), and (q).

The revisions and addition read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) * * *

(1) For admission to examination for registration to practice:

(i) Application fee (non-refundable): $110.00

(ii) Registration examination fee

(A) For test administration by commercial entity: $210.00

(B) For test administration by the USPTO: $470.00

(iii) For USPTO-administered review of registration examination: $470.00

(2) On registration to practice or grant of limited recognition:

(i) On registration to practice under § 11.6 of this chapter: $210.00

(ii) On grant of limited recognition under § 11.9(b) of this chapter: $210.00

(iii) On change of registration from agent to attorney: $110.00

* * * * *

(5) For review of decision:

(i) By the Director of Enrollment and Discipline under § 11.2(c) of this chapter: $420.00

(ii) Of the Director of Enrollment and Discipline under § 11.2(d) of this chapter: $420.00

* * * * *

(9) * * *

(ii) Administrative reinstatement fee: $210.00

(10) On application by a person for recognition or registration after disbarment or suspension on ethical grounds, or resignation pending disciplinary proceedings in any other jurisdiction; on application by a person for recognition or registration who is asserting rehabilitation from prior conduct that resulted in an adverse decision in the Office regarding the person's moral character; on application by a person for recognition or registration after being convicted of a felony or crime involving moral turpitude or breach of fiduciary duty; and on petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office: $1,680.00

* * * * *

(k) For items and services that the director finds may be supplied, for which fees are not specified by statute or by this part, such charges as may be determined by the director with respect to each such item or service: Actual cost

* * * * *

(n) For handling an application in which proceedings are terminated pursuant to § 1.53(e): $140.00

(o) The receipt of a very lengthy sequence listing (mega-sequence listing) in an application under 35 U.S.C. 111 or 371 is subject to the following fee:

(1) First receipt by the Office of a sequence listing in electronic form ranging in size from 300MB to 800MB (without file compression):

TABLE 1 TO PARAGRAPH (o)(1)

By a micro entity (§ 1.29)	$265.00
By a small entity (§ 1.27(a))	530.00
By other than a small or micro entity	1,060.00

(2) First receipt by the Office of a sequence listing in electronic form exceeding 800MB in size (without file compression):

TABLE 2 TO PARAGRAPH (o)(2)

By a micro entity (§ 1.29)	$2,625.00
By a small entity (§ 1.27(a))	5,250.00
By other than a small or micro entity	10,500.00

* * * * *

(q) Additional fee for expedited service: $170.00.

■ 8. Section 1.27 is amended by revising paragraph (c)(3) introductory text as follows:

§ 1.27 Definition of small entities and establishing status as a small entity to permit payment of small entity fees; when a determination of entitlement to small entity status and notification of loss of entitlement to small entity status are required; fraud on the Office.

* * * * *

(c) * * *

(3) *Assertion by payment of the small entity basic filing, basic transmittal, basic national fee, international search fee, or individual designation fee in an international design application.* The payment, by any party, of the exact amount of one of the small entity basic filing fees set forth in § 1.16(a), (b), (c), (d), or (e), the small entity transmittal fee set forth in § 1.445(a)(1) or § 1.1031(a), the small entity international search fee set forth in § 1.445(a)(2) to a Receiving Office other than the United States Receiving Office in the exact amount established for that Receiving Office pursuant to PCT Rule 16, or the small entity basic national fee set forth in § 1.492(a), will be treated as a written assertion of entitlement to small entity status even if the type of basic filing, basic transmittal, or basic national fee is inadvertently selected in error. The payment, by any party, of the small entity first part of the individual designation fee for the United States to the International Bureau (§ 1.1031) will be treated as a written assertion of entitlement to small entity status.

* * * * *

■ 9. Section 1.431 is amended by revising paragraph (c) to read as follows:

§ 1.431 International application requirements.

* * * * *

(c) Payment of the international filing fee (PCT Rule 15.2) and the transmittal and search fees (§ 1.445) may be made in full at the time the international application papers required by paragraph (b) of this section are deposited or within one month thereafter. The international filing, transmittal, and search fee payable is the international filing, transmittal, and search fee in effect on the receipt date of the international application. If the international filing, transmittal, and search fees are not paid within one month from the date of receipt of the international application and prior to the sending of a notice of deficiency, which imposes a late payment fee (§ 1.445(a)(6)), the applicant will be notified and given a one-month non-extendable time limit within which to pay the deficient fees plus the late payment fee.

* * * * *

■ 10. Section 1.445 is amended by revising paragraph (a) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by law or by the director under the authority of 35 U.S.C. 376:

(1) A transmittal fee (*see* 35 U.S.C. 361(d) and PCT Rule 14) consisting of:

(i) A basic portion:

(A) For an international application having a receipt date that is on or after October 2, 2020:

TABLE 1 TO PARAGRAPH (a)(1)(i)(A)

By a micro entity (§ 1.29)	$65.00
By a small entity (§ 1.27(a))	130.00
By other than a small or micro entity	260.00

(B) For an international application having a receipt date that is on or after January 1, 2014, and before October 2, 2020:

TABLE 2 TO PARAGRAPH (a)(1)(i)(B)

By a micro entity (§ 1.29)	$60.00
By a small entity (§ 1.27(a))	120.00
By other than a small or micro entity	240.00

(C) For an international application having a receipt date that is before January 1, 2014: $240.00.

(ii) A non-electronic filing fee portion for any international application designating the United States of America that is filed on or after November 15, 2011, other than by the Office electronic filing system, except for a plant application:

TABLE 3 TO PARAGRAPH (a)(1)(ii)

By a small entity (§ 1.27(a))	$200.00
By other than a small entity	400.00

(2) A search fee (*see* 35 U.S.C. 361(d) and PCT Rule 16):

(i) For an international application having a receipt date that is on or after October 2, 2020:

TABLE 4 TO PARAGRAPH (a)(2)(i)

By a micro entity (§ 1.29)	$545.00
By a small entity (§ 1.27(a))	1,090.00
By other than a small or micro entity	2,180.00

(ii) For an international application having a receipt date that is on or after January 1, 2014, and before October 2, 2020:

TABLE 5 TO PARAGRAPH (a)(2)(ii)

By a micro entity (§ 1.29)	$520.00
By a small entity (§ 1.27(a))	1,040.00
By other than a small or micro entity	2,080.00

(iii) For an international application having a receipt date that is before January 1, 2014: $2,080.00.

(3) A supplemental search fee when required, per additional invention:

(i) For an international application having a receipt date that is on or after October 2, 2020:

TABLE 6 TO PARAGRAPH (a)(3)(i)

By a micro entity (§ 1.29)	$545.00
By a small entity (§ 1.27(a))	1,090.00
By other than a small or micro entity	2,180.00

(ii) For an international application having a receipt date that is on or after January 1, 2014, and before October 2, 2020:

TABLE 7 TO PARAGRAPH (a)(3)(ii)

By a micro entity (§ 1.29)	$520.00
By a small entity (§ 1.27(a))	1,040.00
By other than a small or micro entity	2,080.00

(iii) For an international application having a receipt date that is before January 1, 2014: $2,080.00.

(4) A fee equivalent to the transmittal fee in paragraph (a)(1) of this section that would apply if the USPTO was the Receiving Office for transmittal of an international application to the International Bureau for processing in its capacity as a Receiving Office (PCT Rule 19.4).

(5) Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter:*

TABLE 8 TO PARAGRAPH (a)(5)

By a micro entity (§ 1.29)	$80.00
By a small entity (§ 1.27(a))	160.00
By other than a small or micro entity	320.00

(6) Late payment fee pursuant to PCT Rule 16b*is*.2

■ 11. Section 1.482 is revised to read as follows:

§ 1.482 International preliminary examination and processing fees.

(a) The following fees and charges for international preliminary examination are established by the director under the authority of 35 U.S.C. 376:

(1) The following preliminary examination fee is due on filing the demand:

(i) If an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

TABLE 1 TO PARAGRAPH (a)(1)(i)

By a micro entity (§ 1.29)	$160.00

TABLE 1 TO PARAGRAPH (a)(1)(i)—Continued

By a small entity (§ 1.27(a))	320.00
By other than a small or micro entity	640.00

(ii) If the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office:

TABLE 2 TO PARAGRAPH (a)(1)(ii)

By a micro entity (§ 1.29)	$200.00
By a small entity (§ 1.27(a))	400.00
By other than a small or micro entity	800.00

(2) An additional preliminary examination fee when required, per additional invention:

TABLE 3 TO PARAGRAPH (a)(2)

By a micro entity (§ 1.29)	$160.00
By a small entity (§ 1.27(a))	320.00
By other than a small or micro entity	640.00

(b) The handling fee is due on filing the demand and shall be as prescribed in PCT Rule 57.

(c) Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter:*

TABLE 4 TO PARAGRAPH (c)

By a micro entity (§ 1.29)	$80.00
By a small entity (§ 1.27(a))	160.00
By other than a small or micro entity	320.00

■ 12. Section 1.492 is amended by:
■ a. Revising paragraph (a);
■ b. Adding headings to the tables in paragraphs (b)(1) and (2);
■ c. Revising paragraphs (b)(3) and (4);
■ d. Adding a heading to the table in paragraph (c)(1);
■ e. Revising paragraphs (c)(2) and (d);
■ f. Adding a heading to the table in paragraph (e);
■ g. Revising paragraphs (f) and (h);
■ h. Adding a heading to the table in paragraph (i); and
■ i. Revising paragraph (j).

The revisions and additions read as follows:

§ 1.492 National stage fees.

* * * * *

(a) The basic national fee for an international application entering the national stage under 35 U.S.C. 371:

TABLE 1 TO PARAGRAPH (a)

By a micro entity (§ 1.29)	$80.00
By a small entity (§ 1.27(a))	160.00
By other than a small or micro entity	320.00

(b) * * *

(1) * * *

TABLE 2 TO PARAGRAPH (b)(1)

* * * * *

(2) * * *

TABLE 3 TO PARAGRAPH (b)(2)

* * * * *

(3) If an international search report on the international application has been prepared by an International Searching Authority other than the United States International Searching Authority and is provided, or has been previously communicated by the International Bureau, to the Office:

TABLE 4 TO PARAGRAPH (b)(3)

By a micro entity (§ 1.29)	$135.00
By a small entity (§ 1.27(a))	270.00
By other than a small or micro entity	540.00

(4) In all situations not provided for in paragraph (b)(1), (2), or (3) of this section:

TABLE 5 TO PARAGRAPH (b)(4)

By a micro entity (§ 1.29)	$175.00
By a small entity (§ 1.27(a))	350.00
By other than a small or micro entity	700.00

(c) * * *

(1) * * *

TABLE 6 TO PARAGRAPH (c)(1)

* * * * *

(2) In all situations not provided for in paragraph (c)(1) of this section:

TABLE 7 TO PARAGRAPH (c)(2)

By a micro entity (§ 1.29)	$200.00
By a small entity (§ 1.27(a))	400.00
By other than a small or micro entity	800.00

(d) In addition to the basic national fee, for filing or on later presentation at any other time of each claim in independent form in excess of three:

TABLE 8 TO PARAGRAPH (d)

By a micro entity (§ 1.29)	$120.00
By a small entity (§ 1.27(a))	240.00
By other than a small or micro entity	480.00

(e) * * *

TABLE 9 TO PARAGRAPH (e)

* * * * *

(f) In addition to the basic national fee, if the application contains, or is

amended to contain, a multiple dependent claim, per application:

TABLE 10 TO PARAGRAPH (f)

By a micro entity (§ 1.29)	$215.00
By a small entity (§ 1.27(a))	430.00
By other than a small or micro entity	860.00

* * * * *

(h) Surcharge for filing the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage (§ 1.491(a)) pursuant to § 1.495(c):

TABLE 11 TO PARAGRAPH (h)

By a micro entity (§ 1.29)	$40.00
By a small entity (§ 1.27(a))	80.00
By other than a small or micro entity	160.00

(i) * * *

TABLE 12 TO PARAGRAPH (i)

* * * * *

(j) Application size fee for any international application, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

TABLE 13 TO PARAGRAPH (j)

By a micro entity (§ 1.29)	$105.00
By a small entity (§ 1.27(a))	210.00
By other than a small or micro entity	420.00

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

■ 13. The authority citation for 37 CFR part 11 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 2(b)(2), 32, 41; sec. 1, Pub. L. 113–227, 128 Stat. 2114.

■ 14. Section 11.11 is amended by revising the section heading and paragraphs (a)(1) and (2), adding paragraph (a)(3), revising paragraphs (b)(1), (e), and (f)(1), and adding paragraph (f)(3) to read as follows:

§ 11.11 Administrative suspension, inactivation, resignation, reinstatement, and revocation.

(a) * * *

(1) A registered practitioner, or person granted limited recognition under § 11.9(b), must notify the OED director of the postal address for their office, at least one and up to three email addresses where they receive email, and a business telephone number, as well as every change to each of said addresses and telephone number within thirty days of the date of the change. A registered practitioner, or person granted limited recognition under § 11.9(b), shall, in addition to any notice of change of address and telephone number filed in individual patent applications, separately file written notice of the change of address or telephone number with the OED director. A registered practitioner, or person granted limited recognition under § 11.9(b), who is an attorney in good standing with the bar of the highest court of one or more states shall provide the OED director with the identification number associated with each bar membership. The OED director shall publish a list containing the name, postal business addresses, business telephone number, registration number or limited recognition number, and registration status as an attorney or agent of each registered practitioner, or person granted limited recognition under 11.9(b), recognized to practice before the Office in patent matters. The OED director may also publish the continuing legal education certification status of each registered practitioner, or person granted limited recognition under § 11.9(b).

(2) Biennially, registered practitioners and persons granted limited recognition may be required to file a registration statement with the OED director for the purpose of ascertaining whether such practitioner desires to remain in an active status. Any registered practitioner, or person granted limited recognition under § 11.9(b), failing to file the registration statement or give any information requested by the OED director within a time limit specified shall be subject to administrative suspension under paragraph (b) of this section.

(3)(i) A registered practitioner, or person granted limited recognition under § 11.9(b), who has completed, in the past 24 months, five hours of continuing legal education credits in patent law and practice and one hour of continuing legal education credit in ethics, may certify such completion to the OED director.

(ii) A registered practitioner, or person granted limited recognition under § 11.9(b), may earn up to two of the five hours of continuing legal education credit in patent law and practice by providing patent *pro bono* legal services through the USPTO Patent Pro Bono Program. One hour of continuing legal education credit in patent law and practice may be earned for every three hours of patent *pro bono* legal service.

(b) * * *

(1) Whenever it appears that a registered practitioner, or person granted limited recognition under § 11.9(b), has failed to comply with paragraph (a)(2) of this section, the OED director shall publish and send a notice to the registered practitioner, or person granted limited recognition, advising of the noncompliance, the consequence of being administratively suspended set forth in paragraph (b)(6) of this section if noncompliance is not timely remedied, and the requirements for reinstatement under paragraph (f) of this section. The notice shall be published and sent to the registered practitioner, or person granted limited recognition, by mail to the last postal address furnished under paragraph (a) of this section or by email addressed to the last email address furnished under paragraph (a) of this section. The notice shall demand compliance and payment of a delinquency fee set forth in § 1.21(a)(9)(i) of this chapter within 60 days after the date of such notice.

* * * * *

(e) *Resignation.* A registered practitioner who is not under investigation under § 11.22 for a possible violation of the USPTO Rules of Professional Conduct, is not subject to discipline under § 11.24 or § 11.25, or against whom probable cause has not been found by a panel of the Committee on Discipline under § 11.23(b), may resign by notifying the OED director in writing that they desire to resign. Upon acceptance in writing by the OED director of such notice, that registered practitioner shall no longer be eligible to practice before the Office in patent matters but shall continue to file a change of address for five years thereafter in order that they may be located in the event information regarding the practitioner's conduct comes to the attention of the OED director or any grievance is made about their conduct while they engaged in practice before the Office. The name of any registered practitioner whose resignation is accepted shall be removed from active status, endorsed as resigned, and notice thereof published in the Official Gazette. Upon acceptance of the resignation by the OED director, the resigned practitioner must comply with the provisions of § 11.116. A resigned practitioner is subject to investigation and discipline for their conduct that occurred prior to, during, or after the period of their resignation.

(f) * * *

(1)(i) Any administratively suspended registered practitioner, or person granted limited recognition under

§ 11.9(b), may be reinstated provided the practitioner:

(A) Is not the subject of a disciplinary investigation or a party to a disciplinary proceeding;

(B) Has applied for reinstatement on an application form supplied by the OED director;

(C) Has demonstrated good moral character and reputation and competence in advising and assisting patent applicants in the presentation and prosecution of their applications before the Office;

(D) Has submitted a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the patent laws and the rules of practice before the Office;

(E) Has paid the fees set forth in § 1.21(a)(9)(ii) of this chapter; and

(F) Has paid all applicable delinquency fees as set forth in § 1.21(a)(9)(i) of this chapter.

(ii) Any administratively suspended registered practitioner, or person granted limited recognition, who applies for reinstatement more than five years after the effective date of the administrative suspension, additionally shall be required to file a petition to the OED director requesting reinstatement and providing objective evidence that they continue to possess the necessary legal qualifications to render valuable service to patent applicants.

* * * * *

(3)(i) Any registered practitioner who has been endorsed as resigned pursuant to paragraph (e) of this section may be reinstated on the register provided the practitioner:

(A) Is not the subject of a disciplinary investigation or a party to a disciplinary proceeding;

(B) Has applied for reinstatement on an application form supplied by the OED director;

(C) Has demonstrated good moral character and reputation and competence in advising and assisting patent applicants in the presentation and prosecution of their applications before the Office;

(D) Has submitted a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the patent laws and the rules of practice before the Office;

(E) Has paid the fees set forth in § 1.21(a)(9)(ii) of this chapter; and

(F) Has paid all applicable delinquency fees as set forth in § 1.21(a)(9)(i) of this chapter.

(ii) Any resigned registered practitioner who applies for reinstatement more than five years after the effective date of the resignation additionally shall be required to file a petition to the OED director requesting reinstatement and providing objective evidence that they continue to possess the necessary legal qualifications to render valuable service to patent applicants.

PART 41—PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 15. The authority citation for part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, and Pub. L. 112–29.

■ 16. Section 41.20 is amended by revising paragraphs (a), (b)(1), (b)(2)(ii), and (b)(3) and (4) to read as follows:

§ 41.20 Fees.

(a) *Petition fee.* The fee for filing a petition under this part is: $420.00.

(b) * * *

(1) For filing a notice of appeal from the examiner to the Patent Trial and Appeal Board:

TABLE 1 TO PARAGRAPH (b)(1)

By a micro entity (§ 1.29)	$210.00
By a small entity (§ 1.27(a))	420.00
By other than a small or micro entity	840.00

(2) * * *

(ii) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal in an *inter partes* reexamination proceeding:

TABLE 2 TO PARAGRAPH (b)(2)(ii)

By a micro entity (§ 1.29)	$525.00
By a small entity (§ 1.27(a))	1,050.00
By other than a small or micro entity	2,100.00

(3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:

TABLE 3 TO PARAGRAPH (b)(3)

By a micro entity (§ 1.29)	$340.00
By a small entity (§ 1.27(a))	680.00
By other than a small or micro entity	1,360.00

(4) In addition to the fee for filing a notice of appeal, for forwarding an appeal in an application or *ex parte* reexamination proceeding to the Board:

TABLE 4 TO PARAGRAPH (b)(4)

By a micro entity (§ 1.29)	$590.00
By a small entity (§ 1.27(a))	1,180.00
By other than a small or micro entity	2,360.00

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 17. The authority citation for 37 CFR part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326; Pub. L. 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

■ 18. Section 42.15 is revised to read as follows:

§ 42.15 Fees.

(a) On filing a petition for *inter partes* review of a patent, payment of the following fees are due:

(1) *Inter Partes* Review request fee: $19,000.00

(2) *Inter Partes* Review Post-Institution fee: $22,500.00

(3) In addition to the *Inter Partes* Review request fee, for requesting a review of each claim in excess of 20: $375.00

(4) In addition to the *Inter Partes* Post-Institution request fee, for requesting a review of each claim in excess of 20: $750.00

(b) On filing a petition for post-grant review or covered business method patent review of a patent, payment of the following fees are due:

(1) Post-Grant or Covered Business Method Patent Review request fee: $20,000.00

(2) Post-Grant or Covered Business Method Patent Review Post-Institution fee: $27,500.00

(3) In addition to the Post-Grant or Covered Business Method Patent Review request fee, for requesting a review of each claim in excess of 20: $475.00

(4) In addition to the Post-Grant or Covered Business Method Patent Review Post-Institution fee, for requesting a review of each claim in excess of 20: $1,050.00

(c) On the filing of a petition for a derivation proceeding, payment of the following fee is due:

(1) Derivation petition fee: $420.00.

(2) [Reserved]

(d) Any request requiring payment of a fee under this part, including a written request to make a settlement agreement available: $420.00.

(e) Fee for non-registered practitioners to appear *pro hac vice* before the Patent Trial and Appeal Board: $250.00.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2020–16559 Filed 7–31–20; 8:45 am]

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Part IV

The President

Presidential Permit of July 29, 2020—Authorizing NuStar Logistics, L.P., To Construct, Connect, Operate, and Maintain Pipeline Facilities at the International Boundary Between the United States and Mexico

Presidential Permit of July 29, 2020—Authorizing NuStar Logistics, L.P., To Operate and Maintain Existing Pipeline Facilities at the International Boundary Between the United States and Mexico

Presidential Permit of July 29, 2020—Authorizing the Kansas City Southern Railway Company To Construct, Connect, Operate, and Maintain Railway Bridge Facilities at the International Boundary Between the United States and Mexico

Presidential Permit of July 29, 2020—Authorizing TransCanada Keystone Pipeline, L.P., To Operate and Maintain Existing Pipeline Facilities at the International Boundary Between the United States and Canada

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Vol. 85, No. 149
Monday, August 3, 2020

Presidential Documents

Title 3—

The President

Presidential Permit of July 29, 2020

Authorizing NuStar Logistics, L.P., To Construct, Connect, Operate, and Maintain Pipeline Facilities at the International Boundary Between the United States and Mexico

By virtue of the authority vested in me as President of the United States of America (the ''President''), I hereby grant this Presidential permit, subject to the conditions herein set forth, to NuStar Logistics, L.P. (the ''permittee''). The permittee is a limited partnership formed under the laws of the State of Delaware and is a subsidiary of NuStar Energy L.P., a publicly traded master limited partnership based in San Antonio, Texas. Permission is hereby granted to the permittee to construct, connect, operate, and maintain pipeline Border facilities, as described herein, at the international border of the United States and Mexico at Hidalgo County, Texas, for the transport between the United States and Mexico of all hydrocarbons and petroleum products of every description, refined or unrefined (inclusive of, but not limited to, crude oil, naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, kerosene, and diesel), but not including natural gas subject to section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b).

This permit supersedes and revokes the Presidential permit issued previously to the permittee, dated June 28, 2017. *See* 82 Fed. Reg. 32041 (July 11, 2017).

This permit does not affect the applicability of any otherwise-relevant laws and regulations. As confirmed in Article 2 of this permit, the Border facilities shall remain subject to all such laws and regulations.

The term ''Facilities,'' as used in this permit, means the portion in the United States of the ''New Burgos'' pipeline project associated with the permittee's May 28, 2019, application for an amendment to its existing permit, and any land, structures, installations, or equipment appurtenant thereto. The ''New Burgos'' pipeline project will be approximately 46.5 miles of pipeline connecting a terminal approximately 6 miles north of downtown Edinburg, Texas, with the Petróleos Mexicanos (PEMEX) Burgos Gas Plant near Reynosa, Tamaulipas, Mexico.

The term ''Border facilities,'' as used in this permit, means those parts of the Facilities consisting of a new 10-inch diameter pipeline extending from the international border between the United States and Mexico underneath the Rio Grande at a point southeast of Peñitas, Texas, to and including the first mainline shut-off valve in the United States, located in Hidalgo County, Texas, approximately 1.6 miles from the international border, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. This permit may be terminated, revoked, or amended at any time at the sole discretion of the President, with or without advice provided by any executive department or agency (agency). The permittee shall make no substantial change in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit unless the President has approved the

change in an amendment to this permit or in a new permit. Such substantial changes do not include, and the permittee may make, changes to the average daily throughput capacity of the Border facilities to any volume of products that is achievable through the Border facilities, and to the directional flow of any such products.

Article 2. The standards for, and the manner of, construction, connection, operation, and maintenance of the Border facilities shall be subject to inspection by the representatives of appropriate Federal, State, and local agencies. Officers and employees of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to the Border facilities by the permittee. The Border facilities, including the construction, connection, operation, and maintenance of the Border facilities, shall be subject to all applicable laws and regulations, including pipeline safety laws and regulations issued or administered by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense, shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct an appropriate official or agency to take possession of the Border facilities—or to remove the Border facilities or take other action—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States exercises the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring the Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, or any changes to the name of the permittee, shall be immediately communicated in writing to the President or his designee, and shall include information identifying any transferee. Notwithstanding any such transfers or changes, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto, unless subsequently terminated, revoked, or amended by the President.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of construction, connection, operation, or maintenance of the Border facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

Article 7. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect

to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

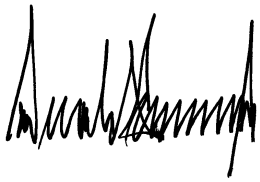
Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such requests could include, for example, information concerning current conditions or anticipated changes in ownership or control, construction, connection, operation, or maintenance of the Border facilities.

Article 9. The permittee shall provide written notice to the President or his designee at the time that the construction authorized by this permit begins, at such time as such construction is completed, interrupted, or discontinued, and at other times as may be requested by the President.

Article 10. This permit shall expire 10 years from the date of its issuance if the permittee has not commenced construction of the Border facilities by that date.

Article 11. This permit is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I, DONALD J. TRUMP, President of the United States of America, have hereunto set my hand this twenty-ninth day of July, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2020–17016
Filed 7–31–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Presidential Permit of July 29, 2020

Authorizing NuStar Logistics, L.P., To Operate and Maintain Existing Pipeline Facilities at the International Boundary Between the United States and Mexico

By virtue of the authority vested in me as President of the United States of America (the ''President''), I hereby grant this Presidential permit, subject to the conditions herein set forth, to NuStar Logistics, L.P. (the ''permittee''). The permittee is a limited partnership formed under the laws of the State of Delaware and is a subsidiary of NuStar Energy L.P., a publicly traded master limited partnership based in San Antonio, Texas. Permission is hereby granted to the permittee to operate and maintain existing pipeline Border facilities, as described herein, at the international border of the United States and Mexico at Hidalgo County, Texas, for the transport between the United States and Mexico of all hydrocarbons and petroleum products of every description, refined or unrefined (inclusive of, but not limited to, crude oil, naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, kerosene, and diesel), but not including natural gas subject to section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b).

This permit supersedes and revokes the Presidential permit issued previously to the permittee, dated May 30, 2017, *see* 82 Fed. Reg. 26563 (June 7, 2017), and the Presidential permit issued previously to Valero Logistics Operations L.P., dated February 7, 2006, *see* 71 Fed. Reg. 8630 (Feb. 17, 2006).

This permit does not affect the applicability of any otherwise-relevant laws and regulations. As confirmed in Article 2 of this permit, the Border facilities shall remain subject to all such laws and regulations.

The term ''Facilities,'' as used in this permit, means the portion in the United States of the ''Burgos'' pipeline project associated with the permittee's May 28, 2019, application for an amendment to its existing permit, and any land, structures, installations, or equipment appurtenant thereto. The ''Burgos'' pipeline project is approximately 46.5 miles of pipeline connecting a terminal approximately 6 miles north of downtown Edinburg, Texas, with the Petróleos Mexicanos (PEMEX) Burgos Gas Plant near Reynosa, Tamaulipas, Mexico.

The term ''Border facilities,'' as used in this permit, means those parts of the Facilities consisting of an 8-inch diameter pipeline in existence at the time of this permit's issuance extending from the international border between the United States and Mexico underneath the Rio Grande at a point southeast of Peñitas, Texas, to and including the first mainline shut-off valve in the United States, located in Hidalgo County, Texas, approximately 1.6 miles from the international border, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. This permit may be terminated, revoked, or amended at any time at the sole discretion of the President, with or without advice provided by any executive department or agency (agency). The permittee shall make no substantial change

in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit unless the President has approved the change in an amendment to this permit or in a new permit. Such substantial changes do not include, and the permittee may make, changes to the average daily throughput capacity of the Border facilities to any volume of products that is achievable through the Border facilities, and to the directional flow of any such products.

Article 2. The standards for, and the manner of, operation and maintenance of the Border facilities shall be subject to inspection by the representatives of appropriate Federal, State, and local agencies. Officers and employees of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to the Border facilities by the permittee. The Border facilities, including the operation and maintenance of the Border facilities, shall be subject to all applicable laws and regulations, including pipeline safety laws and regulations issued or administered by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense, shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct an appropriate official or agency to take possession of the Border facilities—or to remove the Border facilities or take other action—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States exercises the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring the Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, or any changes to the name of the permittee, shall be immediately communicated in writing to the President or his designee, and shall include information identifying any transferee. Notwithstanding any such transfers or changes, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto, unless subsequently terminated, revoked, or amended by the President.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of construction, connection, operation, or maintenance of the Border facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

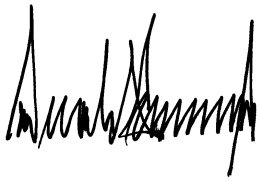
(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

Article 7. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such requests could include, for example, information concerning current conditions or anticipated changes in ownership or control, construction, connection, operation, or maintenance of the Border facilities.

Article 9. This permit is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I, DONALD J. TRUMP, President of the United States of America, have hereunto set my hand this twenty-ninth day of July, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



THE WHITE HOUSE,
August 3, 2020.

[FR Doc. 2020–17034
Filed 7–31–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Presidential Permit of July 29, 2020

Authorizing TransCanada Keystone Pipeline, L.P., To Operate and Maintain Existing Pipeline Facilities at the International Boundary Between the United States and Canada

By virtue of the authority vested in me as President of the United States of America (the ''President''), I hereby grant this Presidential permit, subject to the conditions herein set forth to TransCanada Keystone Pipeline, L.P. (the ''permittee''). The permittee is a limited partnership, organized under the laws of the State of Delaware and owned by affiliates of TC Energy Corporation, a Canadian public company organized under the laws of Canada. Permission is hereby granted to the permittee to operate and maintain existing pipeline Border facilities, as described herein, at the international border of the United States and Canada at Cavalier County, North Dakota, for the transport between the United States and Canada of all hydrocarbons and petroleum products of every description, refined or unrefined (inclusive of, but not limited to, crude oil, naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, kerosene, and diesel), but not including natural gas subject to section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b).

This permit supersedes and revokes the Presidential permit issued previously to the permittee, dated March 11, 2008. *See* 73 Fed. Reg. 11456 (Mar. 3, 2008) (notice of proposed permit determination).

This permit does not affect the applicability of any otherwise-relevant laws and regulations. As confirmed in Article 2 of this permit, the Border facilities shall remain subject to all such laws and regulations.

The term ''Facilities,'' as used in this permit, means the portion in the United States of the international pipeline project associated with the permittee's July 12, 2019, application for an amendment to its existing permit, and any land, structures, installations, or equipment appurtenant thereto.

The term ''Border facilities,'' as used in this permit, means those parts of the Facilities consisting of a 30-inch diameter pipeline in existence at the time of this permit's issuance extending from the international border between the United States and Canada at Cavalier County, North Dakota, to and including the first mainline shut-off valve or pumping station in the United States, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. This permit may be terminated, revoked, or amended at any time at the sole discretion of the President, with or without advice provided by any executive department or agency (agency). The permittee shall make no substantial change in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit unless the President has approved the change in an amendment to this permit or in a new permit. Such substantial changes do not include, and the permittee may make, changes to the average daily throughput capacity of the Border facilities to any volume of products

that is achievable through the Border facilities, and to the directional flow of any such products.

Article 2. The standards for, and the manner of, operation and maintenance of the Border facilities shall be subject to inspection by the representatives of appropriate Federal, State, and local agencies. Officers and employees of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to the Border facilities by the permittee. The Border facilities, including the operation and maintenance of the Border facilities, shall be subject to all applicable laws and regulations, including pipeline safety laws and regulations issued or administered by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense, shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct an appropriate official or agency to take possession of the Border facilities—or to remove the Border facilities or take other action—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States exercises the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring the Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, or any changes to the name of the permittee, shall be immediately communicated in writing to the President or his designee, and shall include information identifying any transferee. Notwithstanding any such transfers or changes, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto, unless subsequently terminated, revoked, or amended by the President.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of construction, connection, operation, or maintenance of the Border facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

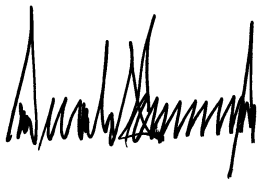
Article 7. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting

obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such requests could include, for example, information concerning current conditions or anticipated changes in ownership or control, construction, connection, operation, or maintenance of the Border facilities.

Article 9. This permit is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I, DONALD J. TRUMP, President of the United States of America, have hereunto set my hand this twenty-ninth day of July, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2020–17045
Filed 7–31–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Presidential Permit of July 29, 2020

Authorizing the Kansas City Southern Railway Company To Construct, Connect, Operate, and Maintain Railway Bridge Facilities at the International Boundary Between the United States and Mexico

By virtue of the authority vested in me as President of the United States of America (the ''President''), I hereby grant this Presidential permit, subject to the conditions herein set forth, to The Kansas City Southern Railway Company (the ''permittee''). The permittee is a Missouri corporation and a wholly owned subsidiary of Kansas City Southern, a Delaware corporation. Permission is hereby granted to the permittee to construct, connect, operate, and maintain certain railway Border facilities, as described herein, at the international border of the United States and Mexico at Laredo, Texas, and Nuevo Laredo, Mexico.

This permit does not affect the applicability of any otherwise-relevant laws and regulations. As confirmed in Article 2 of this permit, the Border facilities shall remain subject to all such laws and regulations.

The term ''Facilities,'' as used in this permit, means the portion in the United States of the international railway bridge project—to be constructed adjacent to the existing International Rail Bridge at Laredo, Texas—associated with the permittee's March 3, 2020, application for a Presidential permit, and any land, structures, installations, or equipment appurtenant thereto.

The term ''Border facilities,'' as used in this permit, means those parts of the Facilities consisting of the railway bridge, its approaches, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. This permit may be terminated, revoked, or amended at any time at the sole discretion of the President, with or without advice provided by any executive department or agency (agency). The permittee shall make no substantial change in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit unless the President has approved the change in an amendment to this permit or in a new permit.

Article 2. The standards for, and the manner of, construction, connection, operation, and maintenance of the Border facilities shall be subject to inspection by the representatives of appropriate Federal, State, and local agencies. Officers and employees of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to said Border facilities by the permittee. The Border facilities, including the construction, connection, operation, and maintenance of the Border facilities, shall be subject to all applicable laws and regulations, including laws and regulations governing bridges or railway safety, or issued or administered by the Committee on Foreign Investment in the United States or by the United States Section of the International Boundary and Water Commission.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense,

shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct an appropriate official or agency to take possession of the Border facilities—or to remove the Border facilities or take other action—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States exercises the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring the Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, or any changes to the name of the permittee, shall be immediately communicated in writing to the President or his designee, and shall include information identifying any transferee. Notwithstanding any such transfers or changes, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto, unless subsequently terminated, revoked, or amended by the President.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of construction, connection, operation, or maintenance of the Border facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

Article 7. To the extent authorized by law, the permittee shall provide to U.S. Customs and Border Protection of the Department of Homeland Security and any other relevant United States Government agencies, at no cost to the United States, suitable inspection facilities, at a mutually agreed upon site, for officers and employees of such agencies to perform their duties. The provision of such facilities shall include, to the extent deemed necessary by such agencies, the transfer of title to any such facilities (including the site) to the United States. The inspection facilities shall meet the latest agency design standards and any operational requirements, including facilities for the Rail-Vehicle and Cargo Inspection Systems, inspection and office space, personnel parking and restrooms, utilities, and an access road. To the extent authorized by law, the permittee shall be responsible for any ongoing maintenance or necessary improvements to the inspection facilities, including to comply with updated agency design standards, and for the full cost of providing services at such facilities.

Article 8. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting

obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

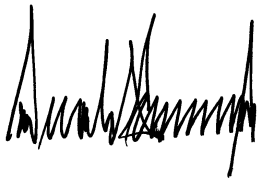
Article 9. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such requests could include, for example, information concerning current conditions or anticipated changes in ownership or control, construction, connection, operation, or maintenance of the Border facilities.

Article 10. The permittee shall provide written notice to the President or his designee at the time that the construction authorized by this permit begins, at such time as such construction is completed, interrupted, or discontinued, and at other times as may be requested by the President.

Article 11. This permit shall expire 15 years from the date of its issuance if the permittee has not commenced construction of the Border facilities by that date.

Article 12. This permit is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I, DONALD J. TRUMP, President of the United States of America, have hereunto set my hand this twenty-ninth day of July, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2020–17040
Filed 7–31–20; 11:15 am]
Billing code 3295–F0–P

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Federal Register

Vol. 85, No. 149

Monday, August 3, 2020

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Federal Register/Code of Federal Regulations	
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FEDERAL REGISTER PAGES AND DATE, AUGUST

46531–47012 3

CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Permits:
Permit of July 29, 2020 46997
Permit of July 29, 2020 47001
Permit of July 29, 2020 47005
Permit of July 29, 2020 47009

8 CFR

103.....46788
106.....46788
204.....46788
211.....46788
212.....46788
214.....46788
216.....46788
217.....46788
223.....46788
235.....46788
236.....46788
240.....46788
244.....46788
245.....46788
245a.....46788
248.....46788
264.....46788
274a.....46788
286.....46788
301.....46788
319.....46788
320.....46788
322.....46788
324.....46788
334.....46788
341.....46788
343a.....46788
343b.....46788
392.....46788

14 CFR

39.....46531, 46533

Proposed Rules:
39.....46560, 46563

21 CFR

Proposed Rules:
1.....46566

33 CFR

165.....46536

34 CFR

Ch. III.....46538

37 CFR

1.....46932
11.....46932
41.....46932
42.....46932

39 CFR

Proposed Rules:
113.....46575

40 CFR

9.....46550
721.....46550

Proposed Rules:
52 (2 documents) 46576, 46581

48 CFR

1539.....46556
1552.....46556

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List July 28, 2020

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 2020

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
August 3	Aug 18	Aug 24	Sep 2	Sep 8	Sep 17	Oct 2	Nov 2
August 4	Aug 19	Aug 25	Sep 3	Sep 8	Sep 18	Oct 5	Nov 2
August 5	Aug 20	Aug 26	Sep 4	Sep 9	Sep 21	Oct 5	Nov 3
August 6	Aug 21	Aug 27	Sep 8	Sep 10	Sep 21	Oct 5	Nov 4
August 7	Aug 24	Aug 28	Sep 8	Sep 11	Sep 21	Oct 6	Nov 5
August 10	Aug 25	Aug 31	Sep 9	Sep 14	Sep 24	Oct 9	Nov 9
August 11	Aug 26	Sep 1	Sep 10	Sep 15	Sep 25	Oct 13	Nov 9
August 12	Aug 27	Sep 2	Sep 11	Sep 16	Sep 28	Oct 13	Nov 10
August 13	Aug 28	Sep 3	Sep 14	Sep 17	Sep 28	Oct 13	Nov 12
August 14	Aug 31	Sep 4	Sep 14	Sep 18	Sep 28	Oct 13	Nov 12
August 17	Sep 1	Sep 8	Sep 16	Sep 21	Oct 1	Oct 16	Nov 16
August 18	Sep 2	Sep 8	Sep 17	Sep 22	Oct 2	Oct 19	Nov 16
August 19	Sep 3	Sep 9	Sep 18	Sep 23	Oct 5	Oct 19	Nov 17
August 20	Sep 4	Sep 10	Sep 21	Sep 24	Oct 5	Oct 19	Nov 18
August 21	Sep 8	Sep 11	Sep 21	Sep 25	Oct 5	Oct 20	Nov 19
August 24	Sep 8	Sep 14	Sep 23	Sep 28	Oct 8	Oct 23	Nov 23
August 25	Sep 9	Sep 15	Sep 24	Sep 29	Oct 9	Oct 26	Nov 23
August 26	Sep 10	Sep 16	Sep 25	Sep 30	Oct 13	Oct 26	Nov 24
August 27	Sep 11	Sep 17	Sep 28	Oct 1	Oct 13	Oct 26	Nov 25
August 28	Sep 14	Sep 18	Sep 28	Oct 2	Oct 13	Oct 27	Nov 27
August 31	Sep 15	Sep 21	Sep 30	Oct 5	Oct 15	Oct 30	Nov 30