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

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

DEPARTMENT OF HOMELAND SECURITY

6 CFR Chapter I

49 CFR Chapter XII

[DHS Docket No. DHS–2021–0008]

Ratification of Security Directive

AGENCY: Office of Strategy, Policy, and Plans, Department of Homeland Security (DHS).

ACTION: Notification of ratification of directive.

SUMMARY: DHS is publishing official notification that the Transportation Security Oversight Board (TSOB) has ratified a Transportation Security Administration (TSA) surface transportation security directive (SD) requiring mask wearing on public transportation and at transportation hubs to protect the safety and security of the traveling public and the transportation system. As a consequence of the TSOB's actions, described below, the SD will remain in effect until at least May 11, 2021, and may further be extended by the TSA Administrator to the extent described below.

DATES: The ratification was executed on February 28, 2021 and took effect on that date. The SD is in effect until at least May 11, 2021.

FOR FURTHER INFORMATION CONTACT: John D. Cohen, DHS Coordinator for Counterterrorism and Assistant Secretary for Counterterrorism and Threat Prevention, DHS Office of Strategy, Policy, and Plans, (202) 202–282–9708, *john.cohen@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Executive Order, DHS Determination, and Centers for Disease Control and Prevention (CDC) Order

On January 21, 2021, in recognition of the continuing threat to health, safety, and economic and national security posed by COVID–19, including the new virus variants, the President issued Executive Order 13,998, *Promoting COVID–19 Safety in Domestic and International Travel.*[1] The Executive Order directs the Secretary of Homeland Security, in coordination with other federal officials and ''through the Administrator of the Transportation Security Administration,'' to ''immediately take action, to the extent appropriate and consistent with applicable law, to require masks to be worn in compliance with CDC guidelines'' in or on airports, commercial aircraft, trains, public maritime vessels, intercity bus services, and all forms of public transportation.[2] The Executive Order focuses on a nationwide, ''whole of government'' approach to addressing security and safety concerns presented by the continued transmission of COVID–19 through the transportation system.

On January 27, 2021, the Acting Secretary of Homeland Security issued a *Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using and Employed by the Transportation System.*[3] The Acting Secretary's determination directs TSA to take actions consistent with its statutory authorities ''to implement the Executive Order to promote safety in and secure the transportation system.'' In particular, the determination directs TSA to support ''the CDC in the enforcement of any orders or other requirements necessary to protect the transportation system, including passengers and employees, from COVID–19 and to mitigate the spread of COVID–19 through the transportation system.''

On January 29, 2021, the Director of the CDC's Division of Global Migration and Quarantine issued a Notice and Order titled *Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs.*[4] The CDC Order, effective February 1, 2021, provides that it ''shall be enforced by the Transportation Security Administration under appropriate statutory and regulatory authorities'' and ''further enforced by other federal authorities'' as well as ''cooperating state and local authorities.''[5]

B. TSA Security Directive 1582/84–21–01

On January 31, 2021, the Senior Official Performing the Duties of the TSA Administrator issued Security Directive 1582/84–21–01 to surface transportation owners and operators requiring mask wearing on public transportation, passenger rail, and bus conveyances, and at transportation hubs to protect the safety and security of the traveling public and the transportation system.[6] The SD, which is available in the docket for this notice at *https://www.regulations.gov/,* became effective on February 1, 2021, and is scheduled to expire on May 11, 2021. Neither the Acting Secretary's national emergency determination nor the CDC Order includes an expiration date and they remain in effect based on specific public health conditions and in consideration of the public health emergency.

The SD implements the Executive Order, the Acting Secretary of Homeland Security's national emergency determination, and the CDC Order by requiring mask wearing on surface transportation conveyances and at transportation hubs. The directive mandates measures to secure and promote safety in the transportation system, including passengers and employees, by mitigating against the further spread of COVID–19. Under the SD, covered owners and operators must: (1) Provide prominent and adequate notice of the mask requirement to facilitate awareness and compliance; (2) require individuals to wear a mask; and (3) report incidents of non-compliance to TSA. Consistent with the CDC Order, the directive permits limited exemptions from the requirement to wear a mask in the transportation system and does not preempt state or local requirements that are the same or

[1] 86 FR 7205 (published Jan. 26, 2021).

[2] *Id.*

[3] Acting Secretary David P. Pekoske, Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using and Employed by the Transportation System (Jan. 27, 2021), *available at https://www.dhs.gov/publication/determination-national-emergency-requiring-actions-protect-safety-americans-using-and* (accessed Feb. 22, 2021).

[4] 86 FR 8025 (Feb. 3, 2021).

[5] *Id.* at 8030.

[6] See 49 U.S.C. 114(*l*)(2)(A) (authorizing TSA to issue emergency regulations or security directives without providing notice or public comment where ''the Administrator determines that the regulation must be issued immediately in order to protect transportation security. . . .''.).

more protective of public health than TSA's mandatory measures.

II. TSOB Ratification

The Aviation and Transportation Security Act (the Act) establishes the TSOB and provides that the TSOB shall ''review and ratify or disapprove'' security directives issued by TSA under 49 U.S.C. 114(l)(2).[7] The Act further states that such directives ''shall remain effective for a period not to exceed 90 days unless ratified or disapproved by the Board or rescinded by the Administrator.''[8]

Pursuant to these authorities, the Senior Official Performing the Duties of the Deputy Secretary of Homeland Security, in his capacity as chairman of the TSOB, requested TSOB review of the SD.[9] On February 28, 2021, the TSOB ratified TSA Security Directive 1582/84–21–01. As part of this ratification, the TSOB also ratified any extension of the SD for a period no longer than the period of time that the Secretary's national emergency determination and the CDC Order remain in effect should the TSA Administrator determine that such an extension is warranted to support implementation of the Executive Order, the national emergency determination, and the CDC order.

The SD is available in the docket for this notice at *https://www.regulations.gov/.*

David P. Pekoske,

Senior Official Performing the Duties of Deputy Secretary of Homeland Security & Chairman of the Transportation Security Oversight Board, U.S. Department of Homeland Security.

[FR Doc. 2021–05241 Filed 3–10–21; 4:15 pm]

BILLING CODE 9110–9M–P

[7] 49 U.S.C. 115(a) and (c)(1).

[8] *Id.* 114(*l*)(2)(B).

[9] DHS Delegation No. 7071.1, *Delegation to the Deputy Secretary to Chair the Transportation Security Oversight Board* (Apr. 2, 2007).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1123; Project Identifier MCAI–2020–01294–R; Amendment 39–21448; AD 2021–05–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2016–23–05, which applied to certain Airbus Helicopters Model SA–365N1, AS–365N2, AS 365 N3, SA–366G1, EC 155B, and EC155B1 helicopters. AD 2016–23–05 required repetitive checks of the oil level of the tail rotor gearbox and, if necessary, filling the oil to the maximum level; and replacement of a certain control rod double bearing (bearing) with a new bearing. This AD retains the requirements of AD 2016–23–05 and also requires modifying the helicopter by replacing the tail gearbox (TGB) control shaft guide bushes; repetitive inspections of the TGB magnetic plug and corrective actions if necessary; repetitive replacements of the bearing; and modifying the helicopter by replacing the TGB; as specified in a European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, which is incorporated by reference. This AD also adds helicopters to the applicability. This AD was prompted by reports of occurrences of loss of yaw control due to failure of the TGB bearing. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 16, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 16, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, 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 material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1123.

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–2020–1123; 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: Kathleen Arrigotti, Aviation Safety Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0125, dated July 21, 2017 (EASA AD 2017–0125) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Model SA 365 N1, AS 365 N2, AS 365 N3, SA 366 G1, EC 155 B, and EC 155 B1 helicopters. EASA AD 2017–0125 supersedes EASA AD 2017–0007, dated January 13, 2017, which superseded EASA AD 2016–0097R1, dated May 25, 2016 (which corresponds to FAA AD 2016–23–05). EASA AD 2017–0125 adds helicopters to the applicability, adds repetitive inspections of the magnetic plug after bearing replacement, requires the use of the revised Airbus Helicopters Alert Service Bulletin (ASB) instructions, and requires replacement of the TGB with a modified unit, which terminates the repetitive inspections.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2016–23–05, Amendment 39–18712 (81 FR 85126, November 25, 2016) (AD 2016–23–05). AD 2016–23–05 applied to certain Airbus Helicopters Model SA–365N1, AS–365N2, AS 365 N3, SA–366G1, EC 155B, and EC155B1 helicopters. The NPRM published in the **Federal Register** on December 14, 2020 (85 FR 80689). The NPRM was prompted by a determination that additional inspections, replacements, and modifications are necessary to address the unsafe condition. The NPRM proposed to retain the requirements of AD 2016–23–05 and also require modifying the helicopter by replacing the TGB control shaft guide bushes; repetitive inspections of the TGB magnetic plug and corrective actions if necessary; repetitive replacements of the bearing; and modifying the helicopter by replacing the TGB; as specified in an EASA AD. The NPRM also proposed to add helicopters to the applicability.

The FAA is issuing this AD to address damage to the bearing, which could result in end play, loss of tail rotor pitch control, and subsequent loss of control of the helicopter. 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.

Update to the Costs of Compliance

The FAA has updated the costs for the new required actions and on-condition actions based on data received since the NPRM was issued.

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 Service Information Under 1 CFR Part 51

EASA AD 2017–0125 describes procedures for modifying the helicopter by replacing TGB control shaft guide bushes, repetitive inspections (checks) of the oil level of the tail rotor gearbox and, if necessary, filling the oil to the maximum level, repetitive inspections of the TGB magnetic plug for the presence of particles and corrective actions if necessary (corrective actions include removing the TGB, complying with certain work cards to address particles and other conditions such as abrasions, scales, flakes, and splinters, and replacing the bearing), repetitive replacements of the bearing; and modifying the helicopter by replacing the TGB.

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.

Explanation of Retained Requirements

Although this AD does not explicitly restate the requirements of AD 2016–23–05, this AD retains certain requirements of AD 2016–23–05. Those requirements are referenced in paragraphs (2) and (5) of EASA AD 2017–0125, which, in turn, is referenced in paragraph (g) of this AD.

Costs of Compliance

The FAA estimates that this AD affects 52 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2016–23–05.	17 work-hours × $85 per hour = $1,445	$1,125	$2,570	$133,640.
New actions	71 work-hours × $85 per hour = $6,035	Up to $155,300	Up to $161,335	Up to $8,389,420.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
Up to 8 work-hours × $85 per hour = $680	$0	$680

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 4 work-hours × $85 per hour = $340	Up to $1,395	Up to $1,735

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 this 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 removing Airworthiness Directive (AD) 2016–23–05, Amendment 39–18712 (81 FR 85126, November 25, 2016), and adding the following new AD:

2021–05–05 Airbus Helicopters: Amendment 39–21448 Docket No. FAA–2020–1123; Project Identifier MCAI–2020–01294–R.

(a) Effective Date

This airworthiness directive (AD) is effective April 16, 2021.

(b) Affected ADs

This AD replaces AD 2016–23–05, Amendment 39–18712 (81 FR 85126, November 25, 2016) (AD 2016–23–05).

(c) Applicability

This AD applies to Airbus Helicopters Model SA–365N1, AS–365N2, AS 365 N3, SA–366G1, EC 155B, and EC155B1 helicopters, certificated in any category, all serial numbers.

(d) Subject

Joint Aircraft System Component (JASC) Code 65, Tail Rotor.

(e) Reason

This AD was prompted by reports of occurrences of loss of yaw control due to failure of the tail gearbox (TGB) control rod double bearing (bearing). This AD was also prompted by the determination that additional inspections, replacements, and modifications are necessary to address the unsafe condition. The FAA is issuing this AD to address damage to the bearing, which could result in end play, loss of tail rotor pitch control, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2017–0125, dated July 21, 2017 (EASA AD 2017–0125).

(h) Exceptions to EASA AD 2017–0125

(1) Where EASA AD 2017–0125 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2017–0125 refers to June 4, 2011 (the effective date of EASA AD 2011–0105), this AD requires using the effective date of this AD.

(3) Where EASA AD 2017–0125 refers to May 25, 2016 (the effective date of EASA AD 2016–0197R1), this AD requires using the effective date of this AD.

(4) The ''Remarks'' section of EASA AD 2017–0125 does not apply to this AD.

(5) Where paragraph (2) of EASA AD 2017–0125 requires inspections (checks) to be done ''in accordance with the instructions of Paragraph 3.B.1 of the applicable inspection ASB,'' for this AD, those instructions are for reference only and are not required for the actions in paragraph (2) of EASA AD 2017–0125. The inspections (checks) required by paragraph (2) of EASA AD 2017–0125 may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(6) Where paragraph (5) of EASA AD 2017–0125 specifies to ''accomplish the applicable corrective action(s) in accordance with the instructions of Paragraph 3.B.1 of the applicable inspection ASB,'' for this AD, a qualified mechanic must add oil to the TGB to the ''max'' level if the oil level is not at maximum. The instructions are for reference only and are not required for the actions in paragraph (5) of EASA AD 2017–0125.

(7) Where EASA AD 2017–0125 refers to flight hours (FH), this AD requires using hours time-in-service.

(8) Where EASA AD 2017–0125 requires action after the last flight of the day or ''ALF,'' this AD requires those actions before the first flight of the day.

(9) Where the service information referred to in EASA AD 2017–0125 specifies to perform a metallurgical analysis and contact the manufacturer if collected particles are not clearly characterized, this AD does not require contacting the manufacturer to determine the characterization of the particles collected.

(10) Although service information referenced in EASA AD 2017–0125 specifies to scrap parts, this AD does not include that requirement.

(11) Although service information referenced in EASA AD 2017–0125 specifies reporting information to Airbus Helicopters and filling in a ''particle detection'' follow-up sheet, this AD does not include those requirements.

(12) Although service information referenced in EASA AD 2017–0125 specifies returning certain parts to an approved workshop, this AD does not include that requirement.

(13) Where paragraph (6) of EASA AD 2017–0125 refers to ''any discrepancy,'' for this AD, discrepancies include the presence of particles and other conditions such as abrasions, scales, flakes, and splinters.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Strategic Policy Rotorcraft Section, 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 Strategic Policy Rotorcraft Section, send it to: Manager, Strategic Policy Rotorcraft Section, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110. Information may be emailed to: *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Kathleen Arrigotti, Aviation Safety Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@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 Aviation Safety Agency (EASA) AD 2017–0125, dated July 21, 2017.

(ii) [Reserved].

(3) For EASA AD 2017–0125, 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.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. 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–2020–1123.

(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 February 17, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–05142 Filed 3–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4497; Project Identifier 2016–SW–011–AD; Amendment 39–21450; AD 2021–05–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (Type Certificate Previously Held by Eurocopter Deutschland GmbH) Helicopters

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model BO–105A, BO–105C, BO–105S, MBB–BK 117 A–1, MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, MBB–BK 117 B–2, and MBB–BK 117 C–1 helicopters. This AD was prompted by a report of a loss of electrical ground between the starter-generator and the generator voltage regulator (regulator). This AD requires inspecting the starter-generator electrical ground connection, retrofitting the starter-generator wire harness, and depending on model, revising the existing Rotorcraft Flight Manual (RFM) for your helicopter. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 16, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 16, 2021.

ADDRESSES: For Eurocopter service information identified in this final rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4497; 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 street 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: Ronnea L. Derby, Aerospace Engineer, Denver ACO Branch, FAA, 26805 East 68th Ave., Room 214, Denver, CO 80249; telephone 303–342–1093; email *ronnea.l.derby.@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2015–0098, dated June 2, 2015 (EASA AD 2015–0098), and EASA AD 2015–0220, dated November 9, 2015 (EASA AD 2015–0220) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Model MBB–BK117 A–1, MBB–BK117 A–3, MBB–BK117 A–4, MBB–BK117 B–1, MBB–BK117 B–2, and MBB–BK117 C–1 helicopters; and Airbus Helicopters Model BO105 A, BO105 C, BO105 D and BO105 S helicopters with certain part-numbered voltage regulators.

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 Helicopters Model BO–105A, BO–105C, and BO–105S helicopters; and all Airbus Helicopters Model MBB–BK 117 A–1, MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, MBB–BK 117 B–2, and MBB–BK 117 C–1 helicopters. The NPRM published in the **Federal Register** on July 16, 2020 (85 FR 43153). The NPRM was prompted by a report of a loss of electrical ground between the starter-generator and the regulator. The NPRM proposed to require inspecting the starter-generator electrical ground connection, retrofitting the starter-generator wire harness, and depending on model, revising the existing RFM for your helicopter.

The FAA is issuing this AD to address the loss of electrical ground between the starter-generator and the regulator. This condition could result in an overvoltage of electrical power, damage to electronic equipment, and subsequent loss of control of the helicopter.

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 Service Information Under 1 CFR Part 51

Eurocopter (now Airbus Helicopters) issued Alert Service Bulletin ASB–MBB–BK117–90–118, Revision 2, dated May 4, 2009, for certain Model MBB–BK117 helicopters and Alert Service Bulletin ASB BO105–90–103, Revision 4, dated June 21, 2010, for certain Model BO105 helicopters. This service information specifies a visual inspection for damage, corrosion, and cracks and measuring the resistance of the left-hand and right-hand electrical ground connections between each starter-generator and the regulator. If there is damage or suspected damage, or if the resistance is out of tolerance, this service information specifies replacing the wire terminal. This service information also specifies performing the visual inspection and resistance measurement each time the starter generator is removed or the wiring is disconnected until a retrofit ground connection is installed. These documents are distinct since they apply to different models.

Eurocopter also issued Eurocopter Flight Manual BK117 A–3 Temporary Revision 9, Eurocopter Flight Manual BK117 A–4 Temporary Revision 5, Eurocopter Flight Manual BK117 B–1 Temporary Revision 6, Eurocopter Flight Manual BK 117 B–2 Temporary Revision 1, and Eurocopter Flight Manual BK 117 C–1 Temporary Revision 2, all dated September 22, 2006, to provide updated procedures in the event of a generator failure. These

documents are distinct since they apply to different models.

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

Other Related Service Information

Eurocopter (now Airbus Helicopters) issued Service Bulletin SB BO105–90–104, Revision 1, dated June 21, 2010, for certain Model BO105 helicopters. This service information specifies procedures for installing a retrofit ground connection of the starter-generator.

Eurocopter issued Alert Service Bulletin ASB–BO 105–80–118, Revision 1, dated November 29, 1995, and Service Bulletin SB–BO105–80–119, dated November 7, 1994, both for certain Model BO105 helicopters. This service information specifies retrofitting certain helicopters with voltage regulators that incorporate overvoltage protection by modifying the main relay box, modifying the overhead panel, and performing a functional test.

Eurocopter issued Information Notice 2370–I–24, Revision 0, dated November 15, 2011, for certain Model BO105 helicopters to provide notice that a modified starter-generator may only be installed on helicopters that have also been modified. This service information states that combining modified with non-modified can cause overvoltage in the electrical system during the first ground run following engine replacement and subsequent damage to electronic equipment. This service information also recommends retrofitting all helicopters approved to only fly under visual flight rules.

Differences Between This AD and the EASA ADs

The EASA ADs require visually inspecting the wire terminals for damage, corrosion, and cracks. This AD requires visually inspecting for a crack, a kink, fraying, looseness, missing material, and corrosion.

The EASA ADs require repeating the visual inspection and resistance measurement each time a starter-generator is removed or the wiring is disconnected from a starter-generator. This AD does not because such a compliance time would be difficult to enforce.

EASA AD 2015–0220 requires additional actions for Model BO–105 helicopters with a serial number up to 0160 than for helicopters with a serial number 0161 and larger. This AD requires the same actions for all Model BO–105 helicopters regardless of serial number.

EASA AD 2015–0220 allows credit for complying with Eurocopter Alert Service Bulletin ASB BO105–90–103, Revision 2 or Revision 3, whereas this AD does not.

Costs of Compliance

The FAA estimates that this AD affects 40 Model BO–105 helicopters and 44 Model MBB–BK 117 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this AD using an estimated labor cost of $85 per work-hour.

Performing a visual inspection and resistance measurement of the electrical ground connection takes about 2 work-hours for an estimated cost of $170 per helicopter and $14,280 for the U.S. fleet per inspection and measurement.

Performing the retrofit of the wiring harness takes about 10 work-hours. Required parts for a Model BO–105 helicopter cost $2,509 for an estimated replacement cost of $3,359 per helicopter and $134,360 for the U.S. fleet. Required parts for a Model MBB–BK 117 helicopter cost $1,730 for an estimated replacement cost of $2,580 per helicopter and $113,520 for the U.S. fleet. Revising the existing RFM for Model MBB–BK 117 helicopters takes about 0.5 work-hour, for an estimated cost of $43 per helicopter and $1,892 for the U.S. fleet.

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:

2021–05–07 Airbus Helicopters Deutschland GmbH (Type Certificate Previously Held by Eurocopter Deutschland GmbH): Amendment 39–21450; Docket No. FAA–2015–4497; Project Identifier 2016–SW–011–AD.

(a) Effective Date

This airworthiness directive (AD) is effective April 16, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Airbus Helicopters Deutschland GmbH (Type Certificate previously held by Eurocopter Deutschland GmbH) helicopters, certificated in any category:

(1) Model BO–105A, BO–105C, and BO–105S helicopters with a voltage regulator part number (P/N) 51565–000, 51565–000R, or 51509–002R installed; and

(2) Model MBB–BK 117 A–1, MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, MBB–BK 117 B–2, and MBB–BK 117 C–1 helicopters.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2497, Electrical Power System Wiring.

(e) Unsafe Condition

This AD was prompted by a report of a loss of electrical ground between the starter-

generator and the generator voltage regulator (regulator). The FAA is issuing this AD to address loss of electrical ground between the starter-generator and the regulator. This condition could result in an overvoltage of electrical power, damage to electronic equipment, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 50 hours time-in-service (TIS):

(i) Visually inspect the wire terminal of wire P55F16N/P56F16N for Model BO–105A, BO–105C, and BO–105S helicopters and wire 1PA53B20/2PA53B20 for Model MBB–BK 117 A–1, MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, MBB–BK 117 B–2, and MBB–BK 117 C–1 helicopters on Terminal E of each starter-generator for a crack, a kink, fraying, looseness, missing material, and corrosion. If there is a crack, a kink, fraying, looseness, missing material, or any corrosion, before further flight, replace the wire terminal.

(ii) Measure the resistance between each starter-generator and its regulator in accordance with the Accomplishment Instructions, paragraph 2.A.2.3. of Eurocopter Alert Service Bulletin ASB BO105–90–103, Revision 4, dated June 21, 2010, or paragraphs 2.A.2.3. and 2.A.2.5. of Eurocopter Alert Service Bulletin ASB–MBB–BK117–90–118, Revision 2, dated May 4, 2009, as applicable to your model helicopter. If the resistance is more than 500 milliohms, before further flight, replace the wire terminal.

(2) Within 150 hours TIS:

(i) Install a wire harness from each generator voltage regulator as follows.

(A) For Model BO–105A, BO–105C, and BO–105S helicopters: Wire harness P/N 105–90081.

(B) For Model MBB–BK 117 A–1, MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, and MBB–BK 117 B–2 helicopters: Wire harness P/N 117–901941.

(C) For Model MBB–BK 117 C–1 helicopters: Wire harness P/N 117–901961.

(ii) For Model MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, MBB–BK 117 B–2, and MBB–BK 117 C–1 helicopters, revise the existing Rotorcraft Flight Manual (RFM) for your helicopter to include the information in Section 3 Emergency and Malfunction Procedures of the following temporary revisions, as applicable to your helicopter: Eurocopter Flight Manual BK117 A–3 Temporary Revision 9, Eurocopter Flight Manual BK117 A–4 Temporary Revision 5, Eurocopter Flight Manual BK117 B–1 Temporary Revision 6, Eurocopter Flight Manual BK 117 B–2 Temporary Revision 1, or Eurocopter Flight Manual BK 117 C–1 Temporary Revision 2, all dated September 22, 2006. Using a later RFM revision with information identical to that contained in the temporary revision specified for your helicopter is acceptable for compliance with the requirement of this paragraph.

(iii) For Model MBB–BK 117 A–1 helicopters, revise Section 3 Emergency and Malfunction Procedures of the existing RFM for your helicopter to include the information in Figures 1 through 3 to paragraph (g)(2)(iii) of this AD.

BILLING CODE 4910–13–P

CAUTION LIGHT INDICATIONS

GEN I or **GEN II**

Conditions/Indications

Affected generator has failed or is disconnected from the power distribution system.

Procedure

1. BUS-TIE switch position – Check

If BUS–TIE in position OFF:

2. Electrical short circuit procedure – Perform (refer to para 3.6.1)

If voltage is out of normal range (> 30 V):

2. Generator overvoltage procedure – Perform (refer to para 3.6.1.a)

If BUS–TIE in position NORM:

2. Affected GENERATOR switch – RESET, then ON
GEN caution light remains on

3. Relevant GENERATOR sw – OFF

4. GEN TRIP switch (to trip generator) – Relevant position (I or II), then release

5. AMM SEL switch – Select normal generator

6. Ammeter and voltmeter – Monitor

NOTE One generator alone will provide sufficient power for normal services.

Figure 1 to Paragraph (g)(2)(iii)

CAUTION LIGHT INDICATIONS

GEN I and **GEN II**

Conditions/Indications

Both generators have failed or are disconnected from the power distribution system.

Procedure

1. GENERATOR 1 switch – RESET, then ON
2. Ammeter and voltmeter – Check
3. GENERATOR 1 switch – OFF
4. GENERATOR 2 switch – RESET, then ON
5. Ammeter and voltmeter – Check
6. GENERATOR 2 switch – OFF

If voltage is out of normal range (> 30 V):

7. Generator overvoltage procedure – Perform (refer to para 3.6.1.a)

If voltage is in normal range:

8. Both GENERATOR switches – RESET, then ON

If one GEN caution light remains on:

9. Respective GENERATOR switch – OFF
10. GEN TRIP switch – Respective position (I or II), then release

If both GEN caution light remain on:

11. GEN TRIP switch – Position I and II, then release
12. PWR SELECT switch – OFF

Battery supplies **both flight essential busses.**

NOTE If, in addition, both main busses are necessary, both BUS-TIE switches can be set to NORM and PWR SELECT switch to BAT. Then the battery supplies **both flight essential busses and also both main busses.** In this case battery will be discharged at a high rate.

13. AMM SEL switch – BAT

Figure 2 to Paragraph (g)(2)(iii)

14. Ammeter and voltmeter – Monitor

15. LAND AS SOON AS PRACTICABLE

Residual Battery Endurance					
Continuous load [A]	15	20	25	30	40
Time [min]	60	45	35	30	22
NOTE Calculations are based on an assumed minimum battery capacity of 15 Ah. Times include 10 minutes landing light operation and 10 minutes radio transmission.					
WARNING TOTAL ELECTRICAL FAILURE WILL LIMIT FUEL AVAILABLE TO QUANTITY CONTAINED IN SUPPLY TANKS AT TIME OF FAILURE AND THUS RESIDUAL FLIGHT TIME.					

Figure 2 to Paragraph (g)(2)(iii) (continued)

3.6. **SYSTEM EMERGENCY/MALFUNCTION CONDITIONS**

3.6.1. **Electrical Short Circuit - Generator System I Cutoff**

Conditions/Indications

– Short circuit on main bus No. I or on feeder line between generator No. I and main bus No. I or between main bus No. I and battery relay

– Power supply is interrupted to main bus No. I and battery

– Power supply is guaranteed to main bus No. II, flight essential bus No. II and to non–essential bus by generator No. II and to flight – essential bus No. I by battery.

– **GEN I** caution light on

– **BAT DISCH** warning light

– **BUS-TIE** switch OFF

– Failure of equipment powered by affected busses

Procedure

1. GENERATOR I switch – OFF
2. GEN TRIP switch – Position I, then release
3. AMM SEL switch – BAT
4. Electrical consumption on No. I FLT ESS BUS – Reduce
5. Ammeter and voltmeter – Monitor
6. LAND AS SOON AS PRACTICABLE

NOTE One generator alone will provide sufficient power for normal services.

3.6.1.a **Generator overvoltage**

Conditions/Indications

– Voltmeter indication > 30 V

– **GEN I** or **GEN II** caution light on

Procedure

1. Generator with high voltage – OFF (not to be used again)
2. Other generator – RESET, then ON
3. Ammeter and voltmeter – Monitor
4. GEN TRIP switch – Position (I or II), then release
5. AMM SEL switch – Select normal generator
6. LAND AS SOON AS PRACTICABLE

NOTE One generator alone will provide sufficient power for normal services

Figure 3 to Paragraph (g)(2)(iii)

BILLING CODE 4910–13–C

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Strategic Policy Rotorcraft Section, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-Denver-Aircraft-Cert@faa.gov* or *ronnea.l.derby.@faa.gov*.

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

(i) Related Information

(1) For more information about this AD, contact Ronnea L. Derby, Aerospace Engineer, Denver ACO Branch, FAA, 26805 East 68th Ave., Room 214, Denver, CO 80249; telephone 303–342–1093; email *ronnea.l.derby.@faa.gov*.

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2015–0098, dated June 2, 2015, and EASA AD 2015–0220, dated November 9, 2015. You may view the EASA ADs on the internet at *https://www.regulations.gov* in Docket No. FAA–2015–4497.

(3) The following documents, which are not incorporated by reference, contain additional information about the subject of this AD: Eurocopter Alert Service Bulletin ASB–BO 105–80–118, Revision 1, dated November 29, 1995; Eurocopter Information Notice 2370–I–24, Revision 0, dated November 15, 2011; Eurocopter Service Bulletin SB–BO105–80–119, dated November 7, 1994; and Eurocopter Service Bulletin SB BO105–90–104, Revision 1, dated June 21, 2010.

(4) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (j)(3) and (4) of this AD.

(j) 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) Eurocopter Alert Service Bulletin ASB–MBB–BK117–90–118, Revision 2, dated May 4, 2009.

(ii) Eurocopter Alert Service Bulletin ASB BO105–90–103, Revision 4, dated June 21, 2010.

(iii) Eurocopter Flight Manual BK117 A–3 Temporary Revision 9, dated September 22, 2006.

(iv) Eurocopter Flight Manual BK117 A–4 Temporary Revision 5, dated September 22, 2006.

(v) Eurocopter Flight Manual BK117 B–1 Temporary Revision 6, dated September 22, 2006.

(vi) Eurocopter Flight Manual BK 117 B–2 Temporary Revision 1, dated September 22, 2006.

(vii) Eurocopter Flight Manual BK 117 C–1 Temporary Revision 2, dated September 22, 2006.

(3) For Eurocopter service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.*

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

(5) You may view this 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 February 19, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–05146 Filed 3–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1131; Project Identifier MCAI–2020–00613–R; Amendment 39–21445; AD 2021–05–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, and AS350D helicopters; Model AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters; and Model EC130B4 and EC130T2 helicopters. This AD was prompted by a report of failed main rotor hub-to-mast attachment screws. This AD requires determining whether the helicopter has been operated in a severe environment since the last inspection of the main rotor hub-to-mast attachment screws, an inspection of the main rotor hub-to-mast attachment screws if the helicopter has been operated in a severe environment, and replacement of the main rotor hub-to-mast attachment screws if necessary, as specified in a European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 16, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 16, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1131.

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–2020–1131; 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: Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 470 L'Enfant Plaza SW, Washington, DC 20024; phone: 202–267–9167; email: *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0032, dated February 17, 2017; corrected February 20, 2017 (EASA AD 2017–0032) (also referred to as the

Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Model AS 350 B, AS 350 BA, AS 350 BB, AS 350 B1, AS 350 B2, AS 350 B3, and AS 350 D helicopters; AS 355 E, AS 355 F, AS 355 F1, AS 355 F2, AS 355 N, and AS 355 NP helicopters; and EC 130 B4 and EC 130 T2 helicopters. Model AS 350 BB helicopters are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those helicopters in the applicability. This AD also applies to Airbus Helicopter Model AS 350C helicopters because these helicopters have a similar design and are included on the U.S. type certificate data sheet.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, and AS350D helicopters; Model AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters; and Model EC130B4 and EC130T2 helicopters. The NPRM published in the **Federal Register** on December 15, 2020 (85 FR 81157). The NPRM was prompted by a report of failed main rotor hub-to-mast attachment screws. The NPRM proposed to require determining whether the helicopter has been operated in a severe environment since the last inspection of the main rotor hub-to-mast attachment screws, an inspection of the main rotor hub-to-mast attachment screws if the helicopter has been operated in a severe environment, and replacement of the main rotor hub-to-mast attachment screws if necessary, as specified in an EASA AD.

The FAA is issuing this AD to address failed main rotor hub-to-mast attachment screws, which could lead to disconnection of the main rotor hub-to-mast attachment, possibly resulting in loss of control of the helicopter. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comments received. An individual indicated agreement with the NPRM.

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

EASA AD 2017–0032 describes procedures for determining whether the helicopter has been operated in a severe environment since the last inspection of the main rotor hub-to-mast attachment screws, an inspection of the main rotor hub-to-mast attachment screws for corrosion and damage (damage includes cracks, dents, and bolt distortion) if the helicopter was operated in a severe environment, and replacement of the main rotor hub-to-mast attachment screws if necessary. 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.

Differences Between This AD and the MCAI

EASA AD 2017–0032 does not apply to Airbus Helicopter Model AS350C helicopters, which are included on the U.S. type certificate data sheet. However, this AD applies to Airbus Helicopter Model AS350C helicopters because those helicopters have a similar design to the helicopters identified in EASA AD 2017–0032.

Where the service information specified in paragraph (3) of EASA AD 2017–0032 specifies to contact Airbus Helicopters if damage or corrosion exceeds existing criteria, this AD requires replacing the affected screws using a method approved by the Manager, International Validation Branch, FAA.

Costs of Compliance

The FAA estimates that this AD affects 1,220 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED DETERMINATION OF HELICOPTER OPERATION IN A SEVERE ENVIRONMENT

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hours × $85 per hour = $85	$0	$85	$103,700

The FAA estimates that it would take about 1 hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $103,700, or $85 per product.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. If a helicopter is determined to have been operated in a severe environment, an inspection of the main rotor hub-to-mast attachment screws will be required. If there is corrosion or damage to any of the screws, replacement of the affected screws will be required. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
4 work-hours × $85 per hour = $340	$106	$446

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Pkwy., Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

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 2021–05–02 Airbus Helicopters: Amendment 39–21445; Docket No. FAA–2020–1131; Project Identifier MCAI–2020–00613–R.

(a) Effective Date

This airworthiness directive (AD) is effective April 16, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters, certificated in any category, as identified in paragraphs (c)(1) through (3) of this AD.

(1) Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, and AS350D helicopters.

(2) Model AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters.

(3) Model EC130B4 and EC130T2 helicopters.

(d) Subject

Joint Aircraft System Component (JASC) Code 6200, Main Rotor System.

(e) Reason

This AD was prompted by a report of failed main rotor hub-to-mast attachment screws. The FAA is issuing this AD to address failed main rotor hub-to-mast attachment screws, which could lead to disconnection of the main rotor hub-to-mast attachment, possibly resulting in loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2017–0032, dated February 17, 2017; corrected February 20, 2017 (EASA AD 2017–0032).

(h) Exceptions to EASA AD 2017–0032

(1) Where EASA AD 2017–0032 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2017–0032 does not apply to this AD.

(3) Paragraph (4) of EASA AD 2017–0032 specifies to report inspection results to Airbus Helicopters within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(4) Where EASA AD 2017–0032 refers to flight hours (FH), this AD requires using hours time-in-service.

(5) Where the service information specified in paragraph (3) of EASA AD 2017–0032 specifies to contact Airbus Helicopters if damage or corrosion exceeds existing criteria, for this AD, replace the affected screws using a method approved by the Manager, International Validation Branch, FAA. For a repair method to be approved by the Manager, International Validation Branch, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(6) Although the service information referenced in EASA AD 2017–0032 specifies to discard certain parts, this AD does not include that requirement.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 470 L'Enfant Plaza SW, Washington, DC 20024; phone: 202–267–9167; email: *hal.jensen@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 Aviation Safety Agency (EASA) AD 2017–0032, dated February 17, 2017; corrected February 20, 2017.

(ii) [Reserved]

(3) For EASA AD 2017–0032, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +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.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. 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–2020–1131.

(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 February 17, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–05151 Filed 3–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1107; Project Identifier 2019–SW–049–AD; Amendment 39–21444; AD 2021–05–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model SA330J helicopters. This AD was prompted by report of failure of a second stage planet gear of the main gear box (MGB). This AD requires replacement of the MGB particle detector assembly with an improved, elongated MGB particle detector assembly, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 16, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 16, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1107.

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–2020–1107; 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: Mahmood G. Shah, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5538; email: *mahmood.g.shah@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0108, dated May 17, 2019 (EASA AD 2019–0108) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Model SA330J helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model SA330J helicopters. The NPRM published in the **Federal Register** on December 4, 2020 (85 FR 78277). The NPRM was prompted by a report of failure of a second stage planet gear of the MGB on a Model EC225 helicopter. Following a review of design similarities, it was determined that such an event might also occur on Model SA330J helicopters. The NPRM proposed to require replacement of the MGB particle detector assembly with an improved, elongated MGB particle detector assembly, as specified in an EASA AD.

The FAA is issuing this AD to address failure of a second stage planet gear of the MGB, which could lead to loss of control of the helicopter. 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 Service Information Under 1 CFR Part 51

EASA AD 2019–0108 describes procedures for replacement of the MGB particle detector assembly with an improved, elongated MGB particle detector assembly. 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 15 helicopters 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
4 work-hours × $85 per hour = $340	$6,795	$7,135	$107,025

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:

2021–05–01 Airbus Helicopters: Amendment 39–21444; Docket No. FAA–2020–1107; Project Identifier 2019–SW–049–AD.

(a) Effective Date

This airworthiness directive (AD) is effective April 16, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model SA330J helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 6320, Main rotor gearbox.

(e) Reason

This AD was prompted by a report of failure of a second stage planet gear of the main gear box (MGB). The FAA is issuing this AD to address failure of a second stage planet gear of the MGB, which could lead to loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0108, dated May 17, 2019 (EASA AD 2019–0108).

(h) Exceptions to EASA AD 2019–0108

(1) Where EASA AD 2019–0108 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0108 does not apply to this AD.

(3) Where EASA AD 2019–0108 refers to flight hours (FH), this AD requires using hours time-in-service.

(4) Although the service information referenced in EASA 2019–0108 specifies to discard certain parts, this AD does not include that requirement.

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the helicopter can be modified (if the operator elects to do so), provided that no passengers are onboard.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Strategic Policy Rotorcraft Section, 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 Strategic Policy Rotorcraft Section, send it to: Manager, Strategic Policy Rotorcraft Section, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110. Information may be emailed to: *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(k) Related Information

For more information about this AD, contact Mahmood G. Shah, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5538; email: *mahmood.g.shah@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) European Union Aviation Safety Agency (EASA) AD 2019–0108, dated May 17, 2019.

(ii) [Reserved]

(3) For EASA AD 2019–0108, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +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.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. 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–2020–1107.

(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 February 17, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–05143 Filed 3–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1139; Product Identifier 2018–SW–056–AD; Amendment 39–21447; AD 2021–05–04]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain serial-numbered Leonardo S.p.a. (Leonardo) Model A109S and AW109SP helicopters. This AD requires installing a placard in the baggage compartment, revising the existing Rotorcraft Flight Manual (RFM) for your helicopter, and inspecting the installation of the terminal lugs. Depending on the outcome of the inspection, this AD requires restoring the installation of the terminal lugs. This AD would also require modifying the helicopter to shim the baggage fairing assy (fwd up) away from the circuit breaker panel and incorporating protective coverings. This AD was prompted by reports of several occurrences of fire ignition and smoke in the baggage compartment. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD is effective April 16, 2021.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of April 16, 2021.

ADDRESSES: For service information identified in this final rule, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1139.

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–2020–1139; 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 AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any service information that is incorporated by reference, any comments received, and other information. The street 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: Kristin Bradley, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *Kristin.Bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Leonardo Model A109S helicopters, serial number (S/N) 22702, 22703, 22705, and 22706 and AW109SP helicopters with S/N up to 22386 inclusive, except S/N 22375 and S/N 22376. The NPRM published in the **Federal Register** on December 21, 2020 (85 FR 82972). The NPRM proposed to require, before further flight, for certain serial-numbered helicopters, installing a placard and revising the existing RFM for your helicopter. The NPRM also proposed to require within 5 hours time-in-service (TIS), for certain model helicopters, inspecting the installation of the terminal lugs, shimming the installation of the baggage fairing assembly (fwd up), and installing a silicon rubber protection over the blind rivets of the hinge in accordance with certain applicable service information. The NPRM also proposed to require within 10 hours TIS and thereafter at intervals not to exceed 25 hours TIS until protective coverings are installed, removing the baggage fairing assembly (fwd up), removing the rubber protections, and inspecting the cable assembly routing of both circuit breaker panels for damage. Depending on the outcome of these inspections, the NPRM proposed to require repairing or replacing certain parts. The NPRM also proposed to require, within 200 hours TIS, modifying the helicopter to incorporate a certain protective coverings, which would provide a terminating action for the repetitive inspections. The proposed requirements were intended to prevent fire in the baggage department.

The NPRM was prompted by EASA Emergency AD No. 2018–0120–E, dated May 29, 2018 (EASA AD 2018–0120–E), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Leonardo S.p.a. (formerly Finmeccanica S.p.A., AgustaWestland S.p.A., Agusta S.p.A.) Model A109S and AW109SP helicopters. EASA advises that an occurrence was reported on an AW109SP helicopter experiencing fire ignition and smoke in the baggage compartment. The investigation determined the event was due to chafing of electrical wiring and further analysis indicated that due to similarity of design, this event could also occur on A109S helicopters. Accordingly, the EASA AD requires modification of the affected baggage fairing assembly (fwd up) part number (P/N) 109–0344–31–101 and temporarily amending the existing RFM and installing a placard prohibiting carrying any loads in the baggage compartment.

After EASA AD 2018–0120–E was issued, a second occurrence was reported of fire ignition and smoke in the baggage compartment, and as a precautionary measure, Leonardo Helicopters issued a series of emergency alert service bulletins providing instructions to prevent damage of electrical assemblies in the baggage compartment. Accordingly, EASA issued EASA Emergency No. 2018–0149–E, dated July 13, 2018 (EASA AD 2018–0149–E), which retains the requirements of EASA AD 2018–0120–E, and also requires repetitive inspections of the baggage compartment electrical assemblies and depending on the inspection outcomes, repairing or replacing certain parts. Also, EASA AD 2018–0149–E expands the applicability to include three additional serial-numbered helicopters, and requires a modification, which acts as a terminating action for the repetitive inspections.

Comments

The FAA gave the public the opportunity to participate in developing this final rule, but the agency did not receive any 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.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is issuing this AD after evaluating all of the information provided by EASA and determining the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

The EASA AD uses compliance times in terms of calendar dates, whereas this AD uses compliance times terms of in hours TIS.

Related Service Information Under 1 CFR Part 51

The FAA has reviewed Leonardo Helicopters Emergency Alert Service Bulletin (EASB) No. 109S–079, and Leonardo Helicopters EASB No. 109SP–120, each Revision A, and each dated June 4, 2018. This service information specifies instructions for manufacturing a placard for the baggage compartment door and also specifies instructions for modifying and inserting a specific cutout into the existing RFM. This service information also specifies instructions for removing the baggage fairing assembly (fwd up) and the rubber protections, inspecting the cable assemblies routing of both circuit breaker panels, and inspecting the installation of the terminal lugs.

The FAA also reviewed Leonardo Helicopters EASB No. 109SP–122, and Leonardo Helicopters EASB No. 109S–081, each dated July 5, 2018, which specify procedures for modifying the helicopter by incorporating protective coverings.

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 15 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

Installing a placard and revising the existing RFM for your helicopter takes about 1 work-hour for an estimated cost of $85 per helicopter and $1,275 for the U.S. fleet.

Inspecting the installation of the terminal lugs, shimming the baggage fairing assembly (fwd up), and installing a silicon rubber protection over the blind rivets takes about 3 work-hours for an estimated cost of $255 per helicopter.

Removing the baggage fairing assembly (fwd up), removing the rubber protections, and performing a repetitive inspection of the cable assemblies of both circuit breaker panels for damage takes about 2 work-hours for an estimated cost of $170 per helicopter per inspection cycle and $2,550 for the U.S. fleet per inspection cycle.

Repairing a cable assembly takes about 4 work-hours and parts would cost about $340 for an estimated cost of $680 per repair.

Modifying the helicopter by installing protective coverings takes about 4 work-hours and parts would cost about $20 for an estimated cost of $360 per helicopter and $5,400 for the U.S. fleet.

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 helicopters 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:

2021–05–04 Leonardo S.p.a.: Amendment 39–21447; Docket No. FAA–2020–1139; Product Identifier 2018–SW–056–AD.

(a) Applicability

This airworthiness directive (AD) applies to Leonardo S.p.a. Model A109S helicopters, serial number (S/N) 22702, 22703, 22705, and 22706 and AW109SP helicopters with S/N up to 22386 inclusive, except S/N 22375 and S/N 22376, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as chafing of electrical wiring. This condition could result in fire ignition and smoke in the baggage compartment and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective April 16, 2021.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) For all helicopters, except Model A109S having S/N 22705 or S/N 22706 and Model AW109SP having S/N 22384, before further flight:

(i) Install a placard with the information in Figure 5 of Leonardo Helicopters Emergency Alert Service Bulletin (EASB) No. 109S–079 (EASB 109S–079), or Leonardo Helicopters EASB No. 109SP–120 (EASB 109SP–120), each Revision A, and each dated June 4, 2018, as applicable to your helicopter model, in the baggage compartment on the internal side of the baggage door D8.

(ii) Revise the existing Rotorcraft Flight Manual (RFM) for your helicopter by cutting along the dashed line of Figure 6 of EASB 109S–079 or EASB 109SP–120, as applicable to your model helicopter, and inserting the cutout to replace page 1–28 or 1–3, as applicable to your model helicopter, of the existing RFM for your helicopter.

(2) For all helicopters, except Model A109S having S/N 22705 or S/N 22706 and Model AW109SP having S/N 22384, within 5 hours time-in-service (TIS):

(i) Visually inspect the installation of the terminal lugs to determine whether the installation is consistent with Figure 2 of EASB 109SP–120 or EASB 109S–079, as applicable to your model helicopter. If the installation is not consistent with Figure 2 of EASB 109SP–120 or EASB 109S–079, as applicable to your model helicopter, restore the installation to be consistent with Figure 2 of EASB 109SP–120 or EASB 109S–079, as applicable to your model helicopter.

(ii) Shim the installation of the baggage fairing assembly (fwd up) part number (P/N) 109–0344–31–101 to move it away from the circuit breaker panel, and install a silicon rubber protection over the blind rivets of the hinge in accordance with the Accomplishment Instructions, Part II, steps 3 through 8 of EASB 109S–079 or EASB 109SP–120, as applicable to your model helicopter.

(3) Performing the steps as described in paragraph (e)(2) of this AD allows the RFM revision described in paragraph (e)(1) of this AD to be removed from the existing RFM for your helicopter and the placard described in paragraph (e)(1) of this AD to be removed from the helicopter.

(4) For all helicopters, within 10 hours TIS and thereafter at intervals not to exceed 25 hours TIS, remove the baggage fairing assembly (fwd up) P/N 109–0344–31–101, remove the rubber protections P/N 109–0746–52–105 and P/N 109–0746–52–107, and inspect the cable assemblies routing of both circuit breaker panels for damage. For the purposes of this inspection, damage may be indicated by chafing. If there is any damage, repair or replace the cables in accordance with FAA accepted procedures and protect the cables by installing Nomex sleeve P/N EN6049–006.

(5) For all helicopters, within 200 hours TIS, modify the helicopter's baggage compartment by adding the protective coverings in accordance with the Accomplishment Instructions, Part II, steps 3 through 14 of Leonardo Helicopters EASB No. 109SP–122, dated July 5, 2018, or Leonardo Helicopters EASB No. 109S–081, dated July 5, 2018, as applicable to your model helicopter. Completion of this modification is a terminating action for the 25 hour TIS repetitive inspections of paragraph (e)(4) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of: Kristin Bradley, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-AVS-AIR-730-AMOC@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD No. 2018–0149–E, dated July 13, 2018. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2020–1139.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5397, Fuselage Wiring, Baggage Fairings Modification.

(i) Material Incorporated by Reference

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

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

(i) Leonardo Helicopters Emergency Alert Service Bulletin (EASB) No. 109S–079, Revision A, dated June 4, 2018.

(ii) Leonardo Helicopters EASB 109SP–120, Revision A, dated June 4, 2018.

(iii) Leonardo Helicopters EASB No. 109SP–122, dated July 5, 2018.

(iv) Leonardo Helicopters EASB No. 109S–081, dated July 5, 2018.

(3) For service information identified in this AD, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.*

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

(5) You may view this 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 February 17, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–05147 Filed 3–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1132; Project Identifier MCAI–2020–01386–R; Amendment 39–21452; AD 2021–05–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2018–15–02, which applied to certain Airbus Helicopters Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. AD 2018–15–02 required repetitively inspecting the tail rotor (TR) pitch rod for a damaged elastomeric ball joint, and corrective action if necessary. This AD continues to require the repetitive inspections and allows the repetitive inspection interval to be extended under certain conditions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by a report of several cases of damaged TR pitch rod ball joints. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 16, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 16, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, 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 material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1132.

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–2020–1132; 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: Katherine Venegas, Aviation Safety Engineer, Cabin Safety, Mechanical and Environmental Systems Section, Los Angeles ACO Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5353; fax: 562–627–5210; email: *Katherine.Venegas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0020R1, dated May 22, 2019 (EASA AD 2017–0020R1) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus Helicopters Model AS350B, AS350BA, AS350BB, AS350B1, AS350B2, AS350B3, AS355E, AS355F, AS355F1, AS355F2, AS355N and AS355NP helicopters. Model AS350BB helicopters are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those helicopters in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2018–15–02, Amendment 39–19334 (83 FR 34029, July 19, 2018) (AD 2018–15–02). AD 2018–15–02 applied to certain Airbus Helicopters Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. The NPRM published in the **Federal Register** on December 16, 2020 (85 FR 81427). The NPRM was prompted by a report of several cases of damaged TR pitch rod ball joints. The NPRM proposed to continue to require the repetitive inspections of the TR pitch rod for a damaged elastomeric ball joint, as specified in an EASA AD. The NPRM also proposed to allow the repetitive inspection intervals specified in AD 2018–15–02 to be extended to correspond with the intervals for the inspection of the TR pitch rod specified in the airworthiness limitation section of the applicable helicopter maintenance manual, as specified in an EASA AD. The FAA is issuing this AD to address damage to the elastomeric ball joint on the TR pitch change rod. This condition could result in failure of the TR pitch change rod and subsequent loss of control of the helicopter.

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 Service Information Under 1 CFR Part 51

EASA AD 2017–0020R1 describes procedures for repetitively inspecting the TR pitch rod for a damaged (debonding, extrusion, or cracking) elastomeric ball joint and corrective action. The corrective action includes replacing an affected TR pitch rod with a serviceable TR pitch rod. 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 955 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2018–15–02	0.5 work-hour × $85 per hour = $42.50	$0	$42.50	$40,587.50

This new AD adds no new costs to affected operators.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$3,358	$3,443

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:

■ a. removing Airworthiness Directive (AD) 2018–15–02, Amendment 39–19334 (83 FR 34029, July 19, 2018); and

■ b. adding the following new AD:

2021–05–09 Airbus Helicopters: Amendment 39–21452; Docket No. FAA–2020–1132; Project Identifier MCAI–2020–01386–R.

(a) Effective Date

This airworthiness directive (AD) is effective April 16, 2021.

(b) Affected ADs

This AD replaces AD 2018–15–02, Amendment 39–19334 (83 FR 34029, July 19, 2018) (AD 2018–15–02).

(c) Applicability

This AD applies to Airbus Helicopters Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2017–0020R1, dated May 22, 2019 (EASA AD 2017–0020R1).

(d) Subject

Joint Aircraft System Component (JASC) Code 6720, Tail Rotor Control System.

(e) Reason

This AD was prompted by a report of several cases of damaged tail rotor (TR) pitch rod ball joints. The FAA is issuing this AD to address damage to the elastomeric ball joint on the TR pitch change rod. This condition could result in failure of the TR pitch change rod and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) New 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 2017–0020R1.

(h) Exceptions to EASA AD 2017–0020R1

(1) Where EASA AD 2017–0020R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2017–0020R1 refers to February 9, 2017 (the effective date of EASA AD 2017–0020–E, dated February 9, 2017), this AD requires using August 3, 2018 (the effective date of AD 2018–15–02).

(3) The ''Remarks'' section of EASA AD 2017–0020R1 does not apply to this AD.

(4) Although the service information referenced in EASA AD 2017–0020R1 specifies to discard certain parts, this AD does not include that requirement.

(5) Where EASA AD 2017–0020R1 refers to flight hours (FH), this AD requires using hours time-in-service (TIS).

(6) Where paragraph (1) of EASA AD 2017–0020R1 specifies an initial compliance time of ''Before exceeding 50 FH [flight hours] since the last inspection per ALS [airworthiness limitations] chapter 04–20–00, or within 10 FH or 7 days, whichever occurs first,'' for this AD, the initial compliance time is within 10 hours TIS.

(7) For the inspections specified in paragraph (1) of EASA AD 2017–0020R1: Accomplishing the actions specified in paragraphs (h)(7)(i) and (ii) of this AD before the effective date of this AD are acceptable for compliance with the inspections specified in in paragraph (1) of EASA AD 2017–0020R1. On or after the effective date of this AD, comply with the inspections as specified in paragraph (1) of EASA AD 2017–0020R1.

(i) Manually induce a flapping movement in the TR blade until the pitch change rod rotates a minimum of 10 degrees.

(ii) Inspect both faces of the blade side of the ball joint elastomer for debonding, extrusion, and cracks.

(8) Although the service information referenced in EASA AD 2017–0020R1 permits certain actions to be performed by a mechanical engineering technician or pilot, this AD requires that the actions be performed by a qualified mechanic.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Katherine Venegas, Aviation Safety Engineer, Cabin Safety, Mechanical and Environmental Systems Section, Los Angeles ACO Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5353; fax: 562–627–5210; email: *Katherine.Venegas@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 2017–0020R1, dated May 22, 2019.

(ii) [Reserved]

(3) For EASA AD 2017–0020R1, 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.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. 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–2020–1132.

(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 February 19, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–05145 Filed 3–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0664; Airspace Docket No. 20–ACE–15]

RIN 2120–AA66

Revocation and Amendment of Class E Airspace; Orange City and Le Mars, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class E airspace extending upward from 700 feet above the surface at Orange City Municipal Airport, Orange City, IA and amends the Class E airspace extending upward from 700 feet above the surface at the Le Mars Municipal Airport, Le Mars, IA. This action is the result of an airspace review caused by the decommissioning of Orange City (ORC) non-directional beacon (NDB), and the Automated Weather Observing System (AWOS) navigation aids, and the closure of the Orange City Municipal Airport. Additionally, the geographical coordinates for the Le Mars Municipal Airport, Le Mars, IA, have been updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, June 17, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it revokes the Class E airspace extending upward from 700 feet above the surface at Orange City Municipal, Orange City, IA and amends the Class E airspace at Le Mars Municipal Airport, Le Mars, IA, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 62269; October 2, 2020) for Docket No. FAA–2020–0664 to remove the Class E airspace extending upward from 700 feet above the surface at Orange City Municipal Airport, Orange City, IA, and amend the Class E airspace extending upward from 700 feet above the surface at Le Mars Municipal Airport, Le Mars, IA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment received supporting the proposed action. No response is provided.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 revokes the Class E airspace extending upward from 700 feet above the surface at Orange City Municipal Airport, Orange City, IA, as the instrument procedures at this airport have been cancelled and the airport closed, so the airspace is no longer required.

Amends the Class E airspace extending upward from 700 feet above the surface to within 6.4-mile (decreased from 7.5-mile) radius of Le Mars Municipal Airport, Le Mars, IA and removes the Orange City Municipal Airport; exclusionary language from the Le Mars Municipal Airport, Le Mars, IA, airspace legal description; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is due to an airspace review caused by the decommissioning of the Orange City NDB, and the Automated Weather Observing System (AWOS) navigation aids which provided navigational information to the instrument procedures at this airport.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

ACE IA E5 Orange City, IA [Removed]

* * * * *

ACE IA E5 Le Mars, IA [Amended]

Le Mars Municipal Airport, IA
(Lat. 42°46′43″ N, long. 96°11′37″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Le Mars Municipal Airport.

Issued in Fort Worth, Texas, on March 5, 2021.

Martin A. Skinner,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–05119 Filed 3–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 21–05]

RIN 1515–AE61

Extension of Import Restrictions Imposed on Certain Archaeological and Ethnological Materials From Colombia

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect an extension of import restrictions on certain archaeological and ecclesiastical ethnological material from Colombia. The restrictions, which were originally imposed by CBP Dec. 06–09 and last extended by CBP Dec. 16–05, are due to expire on March 15, 2021. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has made the requisite determinations for extending the import restrictions that previously existed, and the Government of the United States and the Government of Colombia entered into a new agreement to reflect the extension of these import restrictions. The new agreement, which enters into force on March 10, 2021, supersedes the existing Memorandum of Understanding (MOU) that became effective on March 15, 2006, and enabled the promulgation of the existing import restrictions. Accordingly, the import restrictions will remain in effect for an additional five years, and the CBP regulations are being amended to reflect this further extension until March 10, 2026. CBP Dec. 06–09 contains the amended Designated List of archaeological and ecclesiastical ethnological material from Colombia to which the restrictions apply.

DATES: Effective on March 10, 2021.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Branch Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0215, *otrculturalproperty@cbp.dhs.gov.* For operational aspects, Pinky Khan, Branch Chief, Commercial Targeting and Analysis Center, Trade Policy and Programs, Office of Trade, (202) 427–2018, *CTAC@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.,* which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)), the United States entered into a Memorandum of Understanding, titled ''Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Certain Ecclesiastical Ethnological Material from the Colonial Period of Colombia'' (MOU), with the Republic of Colombia (Colombia) on March 15, 2006. The MOU enabled the promulgation of import restrictions on certain archaeological material representing Colombia's pre-Colombian cultures and ranging in date from approximately 1500 B.C. to A.D. 1530, and Colombian ecclesiastical ethnological material of the Colonial period ranging in date from approximately A.D. 1530 to 1830. On March 17, 2006, CBP published CBP Dec. 06–09 in the **Federal Register** (71 FR 13757), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions and included a list designating the types of articles covered by the restrictions.

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists.

Since the initial notice was published on March 17, 2006, the import restrictions were subsequently extended two (2) times. First, on March 15, 2011, following the exchange of diplomatic notes, CBP published a final rule (CBP

Dec. 11–06) in the **Federal Register** (76 FR 13879) to extend the import restrictions for a period of five years to March 15, 2016. Second, on March 15, 2016, following the exchange of diplomatic notes, CBP published a final rule (CBP Dec. 16–05) in the **Federal Register** (81 FR 13721) to extend the import restriction for an additional five-year period to March 15, 2021.

On June 8, 2020, the United States Department of State proposed in the **Federal Register** (85 FR 35156) to extend the MOU between the United States and Colombia concerning the imposition of import restrictions on certain categories of archeological and ecclesiastical ethnological material from Colombia. On January 6, 2021, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendations by the Cultural Property Advisory Committee, determined that the cultural heritage of Colombia continues to be in jeopardy from pillage of certain archaeological and ecclesiastical ethnological material, and that the import restrictions should be extended for an additional five years. Subsequently, on March 4, 2021, the Government of the United States and Government of Colombia entered into a new agreement, titled ''Agreement between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Materials of the Republic of Colombia,'' which is effective on March 10, 2021. The new agreement supersedes the existing MOU that first entered into force on March 15, 2006. Pursuant to the new agreement, the import restrictions will remain in effect for an additional five years.

Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions. The restrictions on the importation of archaeological and ecclesiastical ethnological material are to continue in effect until March 10, 2026. Importation of such material from Colombia continues to be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

The Designated List and additional information may also be found at the following website address: *https://eca.state.gov/cultural-heritage-center/cultural-property-advisory-committee/current-import-restrictions* by selecting the material for ''Colombia.''

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure under 5 U.S.C. 553(a)(1). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, in the table in paragraph (a) amend the entry for Colombia by removing the words ''CBP Dec. 06—09 extended by CBP Dec. 16—05'' in the column headed ''Decision No.'', and adding in their place the words ''CBP Dec. 06—09 extended by CBP Dec. 21—05''.

■ 2. In § 12.104g, amend the table in paragraph (a) by revising the entry for Colombia to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
*	*	*
Colombia ..	Pre-Columbian archaeological material ranging approximately from 1500 B.C. to 1530 A.D. and ecclesiastical ethnological material of the Colonial period ranging approximately from A.D. 1530 to 1830.	CBP Dec. 06—09 extended by CBP Dec. 21—05.
*	*	*

* * * * *

Troy A. Miller, the Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, is delegating the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

Approved: March 9, 2021.

Timothy E. Skud

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2021–05173 Filed 3–10–21; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 655 and 656

[Docket No. ETA–2020–0006]

RIN 1205–AC00

Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Immigrants and Non-Immigrants in the United States; Delay of Effective Date

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Final rule; delay of effective date.

SUMMARY: On February 1, 2021, the Department of Labor (DOL or Department) proposed to delay the effective date of the final rule entitled ''Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States,'' published in the **Federal Register** on January 14, 2021, for a period of 60 days. The Department proposed to delay the effective date of the final rule until May 14, 2021, in accordance with the Presidential directive as expressed in the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review.'' As stated in the proposal, the 60-day delay would allow agency officials the opportunity to review any questions of fact, law, or policy. The Department invited written comments from the public for 15 days on the proposed delay of effective date. All comments had to be received by February 16, 2021. The Department received 57 comments from the stakeholder community. The Department has reviewed the comments received in response to the proposal and will delay the effective date of the final rule for a period of 60 days.

DATES: As of March 12, 2021, the effective date of the final rule published on January 14, 2021, at 86 FR 3608, is delayed until May 14, 2021.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Room N–5311, Washington, DC 20210, telephone: (202) 693–8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889–5627.

SUPPLEMENTARY INFORMATION:

I. Background and Basis for Proposed Delay

On January 14, 2021, the Department published a final rule in the **Federal Register**, which adopted with changes an Interim Final Rule (IFR) that amended Employment and Training Administration (ETA) regulations governing the prevailing wages for employment opportunities that United States (U.S.) employers seek to fill with foreign workers on a permanent or temporary basis through certain employment-based immigrant visas or through H–1B, H–1B1, or E–3 non-immigrant visas. Specifically, the IFR amended the Department's regulations governing permanent (PERM) labor certifications and Labor Condition Applications (LCAs) to incorporate changes to the computation of wage levels under the Department's four-tiered wage structure based on the Occupational Employment Statistics (OES) wage survey administered by the Bureau of Labor Statistics (BLS). 86 FR 3608. Although the final rule contained an effective date of March 15, 2021, the Department also included a delayed implementation period under which adjustments to the new wage levels will not begin until July 1, 2021. 86 FR 3608, 3642. A general overview of the labor certification and prevailing wage process as well as further background on the rulemaking is available in the Department's final rule, as published in the **Federal Register** on January 14, 2021, and will not be restated herein.

On February 1, 2021, the Department published a notice in the **Federal Register** proposing to delay the effective date of the final rule for 60 days from March 15, 2021, until May 14, 2021. The Department based this action on the Presidential directive as expressed in the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review.'' The memorandum directs agencies to consider delaying the effective date for regulations for the purpose of reviewing questions of fact, law, and policy raised therein. Accordingly, ETA proposed to delay the effective date for the final rule entitled ''*Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States*'' to May 14, 2021, given the complexity of the regulation.

II. Public Comments Received

The Department invited written comment in its February 1, 2021 notice on its proposal to delay the effective date of the final rule, including the proposed delay's impact on any legal, factual, or policy issues raised by the underlying final rule and whether further review of those issues warrants such a delay. The Department further stated that all other comments on the underlying final rule would be considered to be outside the scope of this rulemaking. The February 1, 2021 notice provided a 15-day comment period on the proposed delay, with comments to be submitted electronically at *http://www.regulations.gov/* using docket number ETA–2020–0006.

ETA received 57 unique comments on its proposal to delay the effective date by 60 days to May 14, 2021. Of the 57 comments, 36 were reviewed and determined out of scope either because they were comments exclusively on the final rule and did not address the proposed delay, concerned another agency's rule, or were general statements. The remaining 21 comments were reviewed and determined within the scope of the request for comments. Of these, 17 commenters supported the delay. Four commenters opposed the delay based on their overall support of the final rule.

A. Comments Supporting a Delayed Effective Date

Seventeen commenters supported the proposed delay of the effective date of the final rule, citing disapproval of the final rule overall, concerns that the process in adopting the final rule was rushed, fears that the wage data supporting the final rule was inaccurate, and the need to more thoroughly review the final rule. One commenter stated it is in favor of the proposed delay of effective date and provided a policy

report to assist the agency in evaluating the ''proposed delay's impact on any legal, factual, or policy issues raised by the underlying rule.'' Several commenters expressed strong support of the Department's proposal, and a few commenters encouraged the agency to conduct a full legal review and ''consider and meaningfully respond'' to the issues raised in the IFR comments before implementing any changes to wage requirements.

The Department received two comments stating the delay of effective date is needed because the final rule is not reflective of the policy objectives of the Biden Administration. The two commenters, a trade organization and a trade association, supported the proposed effective date delay, reasoning that, consistent with the Biden Administration's ''Regulatory Freeze Pending Review'' memorandum, it would provide time to evaluate questions of fact, law, and policy raised in the final rule. One of the commenters argued that events and developments that have occurred since the Department published the final rule on January 14, 2021, should be reviewed as relevant questions of fact, law, and policy. Two universities supported the effective date delay stating the delay will give the Department more time to evaluate policy and substantive issues of the final rule, including determining the needs of the U.S. economy in light of the current context of the pandemic and the Biden Administration's priorities. Two trade associations supported postponing implementation of the final rule, with one association stating this delay would allow for proper stakeholder input while maintaining the status quo for employers.

In addition, the Department received five comments stating the proposed delay is needed for the Department to address legal concerns raised by stakeholders and litigants in litigation related to the IFR and final rule. For example, a professional association asserted the final rule violated the Administrative Procedure Act's (APA) notice-and-comment requirements and argued that the final rule must be delayed in order to provide a proper notice-and-comment period. Another professional association and a trade association argued, for instance, that the final rule did not address concerns they raised in prior comments on the IFR and supported delaying the final rule's effective date and compliance dates to allow time for review and reconsideration of the final rule's ''legal and policy shortcomings'' and issues raised by the stakeholder community. The Department also received three comments supporting a delay of the effective date to allow the agency an opportunity to review decisions issued by multiple courts in litigation related to the rulemaking. For example, a trade association explained the proposed 60-day delay will enable the agency to review the final rule and determine it is ''unjustified, ignores labor market realities, and would harm the country's economic recovery.'' The commenter stated in the event the Department does not make such a determination, the delay is needed for courts to render final decisions in related litigation.

Several comments supported the proposed delay on the basis that the additional time will allow the Department to review more thoroughly the final rule and its financial implications for affected industries, including businesses and institutions of higher education, and its impact on the economy. One commenter in this category urged the agency to begin rulemaking to withdraw the final rule.

Lastly, a few comments requested the Department consider further delay of the effective date and/or the compliance dates of the final rule. For example, a trade association stated that given the profound changes in the Department's final rule, a May 14, 2021 effective date is unlikely to avoid significant operational disruptions for many businesses that rely upon various immigrant and non-immigrant workers. Other comments requested the Department delay the July 1, 2021 transition period to afford the regulated community adequate time to adopt necessary changes and to allow the agency enough time to properly implement forms and electronic filing system changes, as needed.

The Department appreciates the comments received. After carefully reviewing the comments, the Department acknowledges the substantive concerns raised by these commenters, including concerns regarding the Department's methodology in the final rule and notice and comment procedures related to the rulemaking, and the commenters' suggestion that the Department should delay the effective date of this rule to review the rulemaking. Given these concerns, the complexity of the regulation, and the issues raised in the litigation challenging the rulemaking, the Department has determined that a 60-day delay of the effective date is needed to provide the Department time to continue its review of the final rule, including evaluating the concerns raised by the commenters and taking additional action as necessary.

B. Comments Opposing a Delayed Effective Date

The Department received four comments that directly addressed and subsequently opposed the proposed delay of the effective date of the final rule. Four commenters stated they generally support the substance of the final rule, and reiterated reasons why the final rule should be implemented. One of the commenters stated it believes the reforms to the Department's wage levels are long overdue and a delay would prevent protections for workers being implemented and reduce job opportunities and wages. It noted that the current wage methodology is in conflict with the INA and further explained that, while it generally supported the final rule as a step in the right direction, the final rule still conflicts with the INA. A commenter opposed the delay because it supports the methodology used in the final rule and believes a delay could cause uncertainty in hiring processes as well as reduce the amount of time employers have to prepare for compliance. This commenter further stated that the current methodology is on ''shaky legal ground.''

The Department appreciates the comments provided. In response to comments concerning the impact of the Department's proposed delay of effective date of the final rule on U.S. workers, the delay of the effective date should not reduce any potential benefits to, or otherwise harm, qualified American or H–1B workers. Under the final rule, the new methodology and attendant changes to the wage level computations will not begin to be implemented until July 1, 2021; before July 1, the current wage methodology remains the same. Rather, as noted in the proposal and above, delaying the effective date for 60 days would provide the Department an opportunity to review questions of fact, law, and policy raised by the final rule. As noted above, one commenter stated the final rule was a step in the right direction but nonetheless ''continues to conflict'' with the INA, providing an example as to why review at this stage is crucial. The 60-day delay announced in this final rule provides the Department time to begin a meaningful review without affecting workers. Finally, the Department may need to propose a further delay of the effective date and accompanying implementation periods due to the complexity of the final rule, as discussed in the Conclusion below, and aims to provide clarity and sufficient time for employers to comply with the regulations.

C. Out of Scope Comments

Thirty-six comments were beyond the scope of this action. Most of the comments related to the content of the final rule and the final rule's methodology rather than the narrow issue of the proposed delay of the effective date. Of particular note, three commenters simply stated they disagreed but it is unclear with what they disagreed. To the extent that they refer only to the proposed extension of the effective date these comments do not alter DOL's conclusion given their lack of rationale and the reasons noted above for extending the effective date. Two comments appeared to be directed at a proposed rule from U.S. Citizenship and Immigration Services, and are therefore out of scope. Finally one commenter submitted a resume, and nothing else.

D. Immediate Effective Date

Section 553(d) of the APA provides that substantive rules should take effect not less than 30 days after the date they are published in the **Federal Register** unless ''otherwise provided by the agency for good cause found.'' 5 U.S.C. 553(d)(3). The Department determines it has good cause to make this rule effective immediately upon publication because allowing for a 30-day period between publication and the effective date of this rulemaking would be both impracticable and unnecessary. A 30-day period would result in the final rule entitled ''Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States'' taking effect on March 15, 2021, before the delay in this rulemaking would begin. Accordingly, a 30-day period would undermine the purpose for which this rule is being promulgated and result in additional confusion for regulated entities. As such, the Department finds that it has good cause to make this rule effective immediately upon publication.

E. Conclusion

Many of the comments specifically addressed substantive concerns related to the Department's publication of the final rule and the methodology or computations contained therein. The Department acknowledges these public comments as well as concerns that have been raised by the commenters and in pending litigation challenging the Department's IFR, *see* 86 FR 3608, 3612 (discussing lawsuits and court orders setting aside the IFR), and, subsequently, the final rule published on January 14, 2021. The Department has already begun its comprehensive review of this rulemaking and may need to take additional action as necessary to complete such a review. In particular, the comments raised thus far suggest that it may be helpful for the Department to issue a request for information soliciting public input on other sources of information and/or methodologies that could be used to inform any new proposal(s) to further amend ETA's regulations governing the prevailing wages for PERM, H–1B, H–1B1, and E–3 job opportunities as the comments raised thus far suggest that additional information and data may be useful in the Department's review. In addition, in light of the complexity of this issue, the Department is considering whether to propose a further delay of the final rule's effective date and accompanying implementation periods that are currently scheduled to take effect on May 14, 2021, and July 1, 2021, respectively. Before further delaying the effective date and implementation periods, the Department will provide the public an opportunity to comment.

III. Statutory and Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review)

Under Executive Order (E.O.) 12866, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. 58 FR 51735. Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. *Id.* Pursuant to E.O. 12866, OIRA has determined that this is not a significant regulatory action. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has determined that this rule is not a ''major rule,'' as defined by 5 U.S.C. 804(2).

B. 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.[1]

This rulemaking is not a ''Federal mandate'' as defined for UMRA purposes.[2] The cost of obtaining prevailing wages, preparing labor condition and certification applications (including all required evidence) and the payment of wages by employers 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.[3] This final rule does not contain a mandate. The requirements of Title II of UMRA, therefore, do not apply, and DOL has not prepared a statement under UMRA. Therefore, no actions were deemed necessary under the provisions of the UMRA.

C. Congressional Review Act

OIRA has determined that this final rule is not a major rule as defined by 5 U.S.C. 804, also known as the ''Congressional Review Act,'' as enacted in section 251 of the Small Business

[1] *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.

[2] *See* 2 U.S.C. 658(6).

[3] *See* 2 U.S.C. 658(7)(A)(ii).

Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 868, *et seq.*

D. Executive Order 13132 (Federalism)

This final rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of E.O. 13132, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988 (Civil Justice Reform)

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

F. Regulatory Flexibility 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.

G. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501, *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections and their practical utility, the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. This final rule does not require a collection of information subject to approval by OMB under the PRA, or affect any existing collections of information.

Suzan G. LeVine,

Principal Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2021–05269 Filed 3–11–21; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2021–0118]

RIN 1625–AA08

Special Local Regulation; Bay Guardian Exercise, Treasure Island, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation (SLR) in the navigable waters of the San Francisco Bay, near Treasure Island, San Francisco, CA in support of the Bay Guardian 2021 exercise. This special local regulation will temporarily restrict vessel traffic in the vicinity of Treasure Island and prohibit vessels and persons not participating in the exercise from entering the regulated area. The purpose of the exercise it to use radioactive detection equipment in a mock scenario. The exercise will be interrupted, as necessary, to permit the passage of commercial vessel traffic. Exercise participants and non-participants operating within the SLR area shall comply with all instructions given by the on-scene Patrol Commander monitoring the event. This regulation is necessary to provide safety of life on the navigable waters during the exercise, which will be held on March 17, 2021.

DATES: This rule is effective from 8 a.m. to 6 p.m. on March 17, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0118 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 rule, call or email Lieutenant Anthony Solares, Waterways Management, U.S. Coast Guard; telephone (415) 399–7443, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port San Francisco
DHS Department of Homeland Security
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

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 it is impracticable. The Coast Guard did not receive final details for this event until February 22, 2021. The Coast Guard must establish this safety zone by March 17, 2021 and lacks sufficient time to provide a reasonable comment period and consider those comments before issuing the rule.

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 this regulation is needed on March 17, 2021, less than 30 days after the Coast Guard received the final details of the event, in order to keep vessels away from the immediate vicinity of the exercise to ensure the safety of exercise participants, mariners, and transiting vessels.

III. Legal Authority and Need for Rule

The legal basis for the proposed rule is 46 U.S.C. 70041 (previously 33 U.S.C. 1233). Under 33 CFR 100.35, the Coast Guard District Commander has authority to promulgate certain special local regulations deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved regatta or marine parade. The Commander of Coast Guard District 11 has delegated to the Captain of the Port (COTP) San Francisco the responsibility of issuing such regulations.

The regulation establishes a regulated area on the waters on which the Bay Guardian exercise will be held. The regulated area is necessary to ensure the safety of exercise participants and mariners transiting near the exercise area.

IV. Discussion of the Rule

The Bay Guardian 2021 exercise will occur in the navigable waters of San Francisco Bay, near Treasure Island, CA,

within an area bounded by a line beginning at position 37°50′48.9″ N, 122°23 45.4″ W; thence to position 37°50′51.1″ N, 122°22′14.1″ W; thence to position 37°49′14.0″ N, 122°21′18.1″ W; thence to position 37°49′8.4″ N, 122°21′28.7″ W; thence to position 37°49′13.3″ N, 122°21′48.4″ W; thence along Treasure island shoreline to position 37°49′22.3″ N, 122°21′44.4″ W, thence along Treasure island shoreline to position 37°50′1.1″ N, 122°22′12.1″ W; thence to position 37°50′1.1″ N, 122°23′46″ W; and thence to the point of beginning.

This rule will be enforced before, during, and immediately after the event, from 8 a.m. to 6 p.m. on March 17, 2021, or as broadcasted via BNM.

Except for persons or vessels authorized by the Captain of the Port or a designated representative, no vessel may enter or remain in the restricted area. A ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in enforcement of the restricted area.

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. 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).

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the restricted area. Although this rule restricts access to the water of the encompassed area, the effect of this rule will not be significant because the local waterway users will be notified to minimize impact. The vessels desiring to transit through or around the temporary restricted area may do so upon express permission from the COTP or the COTP's designated representative.

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 temporary regulated area 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.

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, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have 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 special local regulation of limited size and duration which will be in active use by exercise participant during the 10-hour enforcement period. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T11–049 to read as follows:

§ 100.T11–049 Special Local Regulation; Bay Guardian Exercise, Treasure Island, San Francisco, CA.

(a) *Regulated area.* The regulations in this section apply to the following area: The navigable waters of San Francisco Bay, near Treasure Island, CA, bounded by a line beginning at position 37°50′48.9″ N, 122°23 45.4″ W; thence to position 37°50′51.1″ N, 122°22′14.1″ W; thence to position 37°49′14.0″ N, 122°21′18.1″ W; thence to position 37°49′8.4″ N, 122°21′28.7″ W; thence to position 37°49′13.3″ N, 122°21′48.4″ W; thence along Treasure island shoreline to position 37°49′22.3″ N, 122°21′44.4″ W, thence along Treasure island shoreline to position 37°50′1.1″ N, 122°22′12.1″ W; thence to position 37°50′1.1″ N, 122°23′46″ W; and thence to the point of beginning.

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

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) San Francisco in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participant in the exercise.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port (COTP) San Francisco or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling the Sector Command Center at 415–399–3547. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 8 a.m. to 6 p.m. on March 17, 2021.

Dated: March 9, 2021.

H.H. Wright,

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

[FR Doc. 2021–05258 Filed 3–11–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0711; FRL–10021–10–Region 7]

Air Plan Approval; Kansas; Removal of Kansas City, Kansas Reid Vapor Pressure Fuel Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Kansas. This final action will amend the SIP to remove the Kansas City, Kansas low Reid Vapor Pressure (RVP) fuel requirement which required gasoline sold in the Kansas City, Kansas area to have a seven pounds per square inch (psi) Reid Vapor Pressure from June 1 to September 15. The majority of the state is subject to the Clean Air Act (CAA) nine pounds per square inch Reid Vapor Pressure fuel requirement from June 1 to September 15. In addition, the EPA has issued a separate proposal for the Missouri side of the Kansas City metropolitan area.

DATES: This final rule is effective on April 12, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2020–0711. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Jed D. Wolkins, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7588; email address: *wolkins.jed@epa.gov.*

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

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I. What is being addressed in this document?

The EPA is approving a revision to the Kansas SIP, submitted by the Kansas Department of Health and Environment (KDHE) on December 9, 2020. The revision removes the seven psi RVP fuel requirement for the Kansas City, Kansas, area: Consisting of Johnson and Wyandotte Counties. The former SIP-approved rule, K.A.R. 28–19–719, required gasoline sold in the two counties to have a RVP of seven psi or less from June 1 through September 15. After the effective date of this final action, the Kansas City, Kansas area will only be subject to the CAA RVP fuel requirement of nine psi or less from June 1 through September 15.

II. Background

The EPA established a 1-hour ozone national ambient air quality standard (NAAQS) in 1971.[1] See 36 FR 8186 (April 30, 1971). On March 3, 1978, the EPA designated Johnson and Wyandotte Counties (hereinafter referred to in this document as the ''Kansas City area'') in nonattainment of the 1971 1-hour ozone NAAQS, as required by the CAA Amendments of 1977. See 43 FR 8962 (March 3, 1978). On February 8, 1979, the EPA revised the 1-hour ozone NAAQS, referred to as the 1979 ozone

[1] The 1-hour ozone NAAQS was originally promulgated as a photochemical oxidant standard. See 36 FR 8186 (April 30, 1971). In 1979, the EPA substituted the word ''ozone'' for ''photochemical oxidant.'' See 44 FR 8202 (February 8, 1979). In doing so, the EPA stated that ''(t)he intent of the standard (total-oxidant reduction), the control strategies, and the index of Progress toward attainment (measured ozone levels) remain unchanged.'' Id. at 8203.

NAAQS. See 44 FR 8202 (February 8, 1979).

The EPA redesignated the Kansas City area to attainment of the 1979 1-hour ozone standard and approved Kansas's ozone maintenance plan for the Kansas City area on July 23, 1992. See 57 FR 27936 (June 23, 1992). Pursuant to section 175A of the CAA, the first 10-year maintenance period for the 1-hour ozone standard began on July 23, 1992, the effective date of the redesignation approval.

In 1995, the Kansas City area violated the 1979 1-hour ozone standard. Kansas revised the control strategy and contingency measures in the maintenance plan, which was approved on December 30, 2002. See 67 FR 66058 (October 30, 2002). The revised control strategy included K.A.R. 28–19–719, *Fuel Volatility.*

On May 2, 1997, Kansas adopted the seven and two tenths (7.2) psi RVP limit from June 1 to September 15.[2] The EPA approved this rule into the SIP on July 7, 1997.[3] Following a violation of the ozone standard for the three-year period of 1995–1997, on April 3, 2001, Kansas revised the rule to seven (7.0) psi RVP limit from June 1 to September 15.[4] The EPA approved this rule into the SIP on February 13, 2002.[5]

On July 18, 1997, the EPA established a new 8-hour ozone NAAQS (hereafter the 1997 8-hour ozone NAAQS). See 62 FR 38856 (July 18, 1997). This newly established 8-hour ozone NAAQS replaced the prior 1-hour ozone NAAQS.

On April 30, 2004, the EPA published a final rule in the **Federal Register** stating the 1979 1-hour ozone NAAQS would no longer apply (*i.e.,* would be revoked) for an area one year after the effective date of the area's designation for the 1997 8-hour ozone NAAQS. See 69 FR 23951 (April 30, 2004). The Kansas City Area was designated as an unclassifiable area for the 1997 8-hour ozone NAAQS, effective June 15, 2004. *See id.* However, on May 3, 2005, the EPA published a final rule designating the Kansas City area as an attainment area for the 1997 8-hour ozone NAAQS based on new monitoring data. *See* 70 FR 22801 (May 3, 2005). The effective date of the revocation of the 1979 1-hour ozone standard for the Kansas City area was June 15, 2005. *See* 70 FR 44470 (August 3, 2005). Kansas achieved the required maintenance of the 1979 1-hour ozone standard in 2014.

[2] The Kansas rule allowed an additional one psi for gasoline containing 9 to 10% ethanol.

[3] See 62 FR 36212.

[4] The Kansas rule allows an additional one psi for gasoline containing 9 to 10% ethanol.

[5] See 67 FR 6655.

On December 9, 2020, Kansas requested that the EPA remove K.A.R. 28–19–719 from the SIP. Section 110(l) of the CAA prohibits the EPA from approving a SIP revision that interferes with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. As detailed in the proposal, Kansas adequately demonstrated that removal of this rule will not affect the area's ability to attain or maintain any air quality standards.

III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule opened January 19, 2021 the date of its publication in the **Federal Register** and closed on February 18, 2021. During this period, EPA received three supportive comments and one adverse comment. The adverse comment is discussed below.

Comment: Jeopardizing the health of Kansas City residents is not worth the proposed change because cities are hotspots for air pollution, air pollution leads to respiratory issues and low income populations suffer more from air pollution.

Response: As discussed in our proposal, the increases in emissions from this change will be offset by emissions decreases from fleet turnover and the Tier 3 motor vehicle and fuel standards. In addition, the NAAQS are set at a level protective of public health allowing an adequate margin of safety,[6] and the Kansas City Area is currently monitoring air quality that is attaining all NAAQS.

To determine if the removal of the RVP requirement would interfere with attainment of the NAAQS, KDHE conducted emission calculations for a baseline year of 2017 (with the state RVP requirement) and an implementation year of 2020 (without the state RVP requirement). KDHE found that emissions from motor vehicles decreased from the baseline year to the implementation year. We find this analysis an acceptable showing that the removal of the RVP requirement will not interfere with the attainment of the NAAQS. See our proposal of this action and the KDHE submittal in the docket for more information.

In addition to comparing emissions between 2017 and 2020, KDHE also compared emissions in the same year with and without the state RVP requirement. While there is an increase in emissions from removing the state RVP requirement, the state has demonstrated that the removal of the RVP requirement will not interfere with attainment and maintenance of the NAAQS because emissions will be reduced by continued fleet turnover and Tier 3 motor vehicle and fuel standards. As such, the EPA finds that removal of the RVP requirement will not impair air quality in the Kansas City area and therefore will not result in the public health concerns expressed by the commenter.

[6] See *https://www.epa.gov/naaqs* for more information on the NAAQS.

IV. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from August 27, 2020 to November 4, 2020 and held a public hearing on November 4, 2020. Kansas received eight comments. Kansas adequately responded to the comments but did not change the removal request based on the comments. In addition, as explained in the proposal, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.[7]

V. What action is the EPA taking?

The EPA is taking final action to approve Kansas's removal of the state RVP requirement from the SIP for the Kansas City, Kansas area. As discussed in the proposal the removal of the RVP requirement will not affect the area's ability to attain or maintain any air quality standard.

The EPA published the proposed approval of Kansas's removal of the state RVP requirement from the SIP for the Kansas City, Kansas area on January 19, 2021. The thirty-day public comment period closed on February 18, 2021. The EPA received four public comments on the proposal, discussed above. Also, the proposal contained an error concerning 40 CFR 52.873, paragraph (a), as it included a rescinded date, February 18, 2021. The date should have contained a placeholder that indicated that the effective date of the rescission was 30 days following publication of the final rule in the **Federal Register**. We are noting the error here and are correcting 40 CFR 52.873 paragraph (a) to reflect the correct effective date of the rescission.

VI. Impacts on the Boutique Fuels List

Section 1541(b) of the Energy Policy Act of 2005 required the EPA, in

[7] See 85 FR 83877 (December 23, 2020).

consultation with the U.S. Department of Energy, to determine the number of fuels programs approved into all SIPs as of September 1, 2004 and to publish a list of such fuels. On December 28, 2006, the EPA published the original list of boutique fuels. See 71 FR 78192 (December 28, 2006). On December 4, 2020 the EPA updated the list of boutique fuels to remove boutique fuels that were no longer in approved SIPs. See 85 FR 78412 (December 4, 2020). The EPA maintains the current list of boutique fuels on its website at: *https://www.epa.gov/gasoline-standards/state-fuels.* The boutique fuels list is based on a fuel type approach. CAA section 211(c)(4)(C)(v)(III) requires that the EPA remove a fuel from the published list if it is either identical to a Federal fuel or is removed from the SIP in which it is approved. Under the adopted fuel type approach, the EPA interpreted this requirement to mean that a fuel would have to be removed from all states' SIPs in which it was approved in order to remove the fuel type from the list. See 71 FR 78195 (December 28, 2006). The 7.0 psi RVP fuel program as approved into Kansas's SIP, is a fuel type that is included in the EPA's boutique fuel list. See 85 FR 78412 (December 4, 2020). Subsequent to the effective date of today's action, the EPA will update the State Fuels web page to remove Kansas's 7.0 psi RVP program from the list of boutique fuels.

VII. Incorporation by Reference

In this document, the EPA is amending regulatory text that includes incorporation by reference. As described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Kansas Regulations from the Kansas State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VIII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 11, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: March 2, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart R—Kansas

■ 2. In § 52.870, the table in paragraph (c) is amended by removing the entry ''K.A.R. 28–19–719'' under the heading ''Volatile Organic Compound Emissions''.

■ 3. In § 52.873, paragraph (a) is revised to read as follows:

§ 52.873 Approval status.

(a) Kansas rule K.A.R. 28–19–719 was rescinded on April 12, 2021.

* * * * *

[FR Doc. 2021–04763 Filed 3–11–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–OW–2017–0300; FRL–10020–99–OW]

RIN 2040–AF15

National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; delay of effective date.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is issuing a short delay of the March 16, 2021, effective date of the National Primary Drinking Water Regulations: Lead and Copper Rule Revisions (LCRR), published in the **Federal Register** on January 15, 2021. The LCRR will now become effective on June 17, 2021. This final rule does not change the compliance date of January 16, 2024. This delay in the effective date is consistent with Presidential directives issued on January 20, 2021, to heads of Federal agencies to review certain regulations, including the LCRR. The sole purpose of this delay is to enable EPA to take public comment on a longer extension of the effective date for EPA to undertake its review of the rule in a deliberate and thorough manner consistent with the public health purposes of the Safe Drinking Water Act and the terms and objectives of recent Presidential directives and in consultation with affected stakeholders.

DATES: As of March 12, 2021, the effective date of the final rule published January 15, 2021, at 86 FR 4198, is delayed until June 17, 2021.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OW–2017–0300, is available at *http://www.regulations.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information about EPA Docket Center Services and the current status, please visit us online at *https://www.epa.gov/dockets.* If you are having trouble locating EPA docket materials, contact the EPA Reading Room Staff for assistance by calling (202) 566–1744, or send a message to Dockets Customer Service (*Docket-customerservice@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Jeffrey Kempic, Office of Ground Water and Drinking Water, Standards and Risk Management Division, at (202) 564–3632 or email *kempic.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 20, 2021, President Biden issued an ''Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' (86 FR 7037, January 25, 2021) (''Executive Order 13990''). Section 2 of Executive Order 13990 directs the heads of all agencies to immediately review regulations that may be inconsistent with, or present obstacles to, the policy set forth in Section 1 of Executive Order 13990. In the January 20, 2021, White House ''Fact Sheet: List of Agency Actions for Review,'' the ''National Primary Drinking Water Regulations: Lead and Copper Rule Revisions'' (LCRR) is specifically identified as an agency action that will be reviewed in conformance with Executive Order 13990 (*https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/*). Also on January 20, 2021, Ronald A. Klain, the Assistant to the President and Chief of Staff, issued a Memorandum for the Heads of Executive Departments and Agencies entitled, ''Regulatory Freeze Pending Review'' (White House memo) (86 FR 7424, January 28, 2021); the memorandum directs agencies to consider postponing the effective date of regulations, like the LCRR, that have been published in the **Federal Register**, but have not taken effect, for the purpose of reviewing any questions of fact, law, and policy the rules may raise. In addition to these presidential directives, the LCRR has been challenged in court by Natural Resources Defense Council, Newburgh Clean Water Project, NAACP, Sierra Club, United Parents Against Lead and the Attorneys General of New York, California, Illinois, Maryland, Minnesota, New Jersey, Oregon, Pennsylvania, Wisconsin, and the District of Columbia. Those cases have been consolidated in *Newburgh Clean Water Project, et al.,* v. *EPA,* No. 21–1019 (D.C. Cir.). EPA also received a letter on March 4, 2021, from 36 organizations and five individuals requesting that EPA suspend the March 16, 2021, effective date of the LCRR to review the rule and initiate a new rulemaking. The litigants and other stakeholders raise concerns about key aspects of the rule, including whether to have a maximum contaminant level, the action level, the pace of lead service line replacements, and the requirements for small water systems, as well as compliance with SDWA rulemaking requirements such as those governing risk assessment, management and communication, and the opportunity for a public hearing. EPA also received a letter on February 4, 2021, from the American Water Works Association requesting that EPA not delay the rule.

I. Reason for This Action

Consistent with the above directives, EPA is reviewing the LCRR. In order to ensure that there is an opportunity for engagement with the public in this review, including public input on the critically important public health issues associated with lead in drinking water, and to enable EPA to complete its review of the rule in a deliberate and thorough manner consistent with the public health purposes of the Safe Drinking Water Act, EPA expects that this review will take 9 months and thus will not conclude until December 2021. The sole purpose of this action is to provide a short delay of the effective date of the LCRR so that EPA can request comment on a longer extension—until December 2021—of the LCRR effective date and corresponding compliance dates. The proposed longer extension, published elsewhere in this **Federal Register**, would allow EPA to complete its review of this important rule and consult with stakeholders who have raised significant concerns about the rule, including those who have been historically underserved by, or subject to, discrimination in Federal policies and programs prior to the rule going into effect. The longer extension will also avoid expenditures or other irreversible commitments that would be wasted if, at the end of EPA's review, it decides to propose revisions to the LCRR.

Because of the short duration of this action, the procedural nature of this action, and the fact that the compliance dates for the LCRR are well in the future and this action provides a reprieve for immediate planning for compliance, this action should have minimal adverse impact on regulated entities or the public. No regulatory changes to the LCRR are made by this action. Rather, EPA is taking this action for the sole purpose of providing time for a public comment period which will allow all interested parties to provide input to the agency about whether to extend the LCRR effective date, and corresponding compliance dates, prior to that rule going into effect. To enable this comment process, this rule provides a

short delay of the LCRR effective date, to June 17, 2021, and EPA is simultaneously publishing a proposed rule that, if finalized, would extend the effective date for an additional 6 months (see the ''Proposed Rules'' section of this issue of the **Federal Register**).

II. Importance of EPA's Review of the LCCR for Protection of Public Health

The impact of lead exposure, including through drinking water, is a public health issue of paramount importance and its adverse effects on children and the general population are serious and well known. For example, exposure to lead is known to present serious health risks to the brain and nervous system of children. Lead exposure causes damage to the brain and kidneys and can interfere with the production of red blood cells that carry oxygen to all parts of the body. Lead has acute and chronic impacts on the body. The most robustly studied and most susceptible subpopulations are the developing fetus, infants, and young children. Even low level lead exposure is of particular concern to children because their growing bodies absorb more lead than adults do, and their brains and nervous systems are more sensitive to the damaging effects of lead. EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead. Infants who consume mostly formula mixed with tap water can, depending on the level of lead in the system and other sources of lead in the home, receive 40 percent to 60 percent of their exposure to lead from drinking water used in the formula. Scientists have linked lead's effects on the brain with lowered intelligence quotient (IQ) and attention disorders in children. Young children and infants are particularly vulnerable to lead because the physical and behavioral effects of lead occur at lower exposure levels in children than in adults. During pregnancy, lead exposure may affect prenatal brain development. Lead is stored in the bones and it can be released later in life. Even at low levels of lead in blood, there is an increased risk of health effects in children (*e.g.,* less than 5 micrograms per deciliter) and adults (*e.g.,* less than 10 micrograms per deciliter).

The 2013 Integrated Science Assessment for Lead and the HHS National Toxicology Program Monograph on Health Effects of Low-Level Lead have both documented the association between lead and adverse cardiovascular effects, renal effects, reproductive effects, immunological effects, neurological effects, and cancer. EPA's Integrated Risk Information System (IRIS) Chemical Assessment Summary provides additional health effects information on lead.

Because of disparities in the quality of housing, community economic status, and access to medical care, lead in drinking water (and other media) disproportionately affects lower-income people. Minority and low-income children are more likely to live in proximity to lead-emitting industries and to live in urban areas, which are more likely to have contaminated soils, contributing to their overall exposure. Additionally, non-Hispanic black individuals are more than twice as likely as non-Hispanic whites to live in moderately or severely substandard housing which is more likely to present risks from deteriorating lead based paint. The disparate impacts for low-income and minority populations may be exacerbated because of their more limited resources for remediating the sources of lead such as lead service lines. For example, stakeholders have raised concerns that to the extent water systems rely on homeowners to pay for replacement of privately owned portions of lines, lower-income homeowners will be unable to replace lines, resulting in disparate levels of protection. Moreover, the crisis in Flint, Michigan, has brought increased attention to the challenge of lead in drinking water systems across the country.

Given the paramount significance to the public's health for ensuring that lead in drinking water is adequately addressed under the Safe Drinking Water Act, and the concerns raised by litigants and other stakeholders about the LCRR, it is critically important that EPA's review of the LCRR be deliberate and have the benefit of meaningful engagement with the affected public, including underserved communities disproportionately affected by exposure to lead.

In conducting its review, EPA will carefully consider the concerns raised by stakeholders, including disadvantaged communities that have been disproportionately impacted, states that administer national primary drinking water regulations, consumer and environmental organizations, water systems and other organizations.

Stakeholders have a range of concerns about the LCRR. For example, a primary source of lead exposure in drinking water is lead service lines. Stakeholders have raised concerns that despite the significance of this source of lead, the LCRR fails to require, or create adequate incentives, for public water systems to replace all of their service lines. In addition, stakeholders have raised concerns that portions of many lead service lines are privately owned and disadvantaged homeowners may not be able to afford the cost of replacing their portion of the lead service line and may not have this significant source of lead exposure removed if their water system does not provide financial assistance. Other stakeholders have raised concerns regarding the significant costs public water systems and communities would face to replace all lead service lines. Based upon information from the Economic Analysis for the Final Lead and Copper Rule, EPA estimates that there are between 6.3 and 9.3 million lead service lines nationally and the cost of replacing all of these lines is between $25 and $56 billion.

Another key element of the LCRR relates to requiring public water systems to conduct an inventory of lead service lines so that systems know the scope of the problem, can identify potential sampling locations and can communicate with households that are or may be served by lead service lines to inform them of the actions they may take to reduce their risks. Some stakeholders have raised concerns that the rule's inventory requirements are not sufficiently rigorous to ensure that consumers have access to useful information about the locations of lead service lines in their community. Other stakeholders have raised concerns that water systems do not have accurate records about the composition of privately owned portions of service lines and that have concerns about public water systems publicly releasing information regarding privately owned property.

A core component of the LCRR is maintaining an ''action level'' of 15 parts per billion (ppb), which serves as a trigger for certain actions by public water systems such as lead service line replacement and public education. The LCRR did not modify the existing lead action level but established a 10 ppb ''trigger level'' to require public water systems to initiate actions to decrease their lead levels and take proactive steps to remove lead from the distribution system. Some stakeholders support this new trigger level while others argue that EPA has unnecessarily complicated the regulation. Some stakeholders suggest that the Agency should eliminate the new trigger level and instead lower the 15 ppb action level.

Some stakeholders have indicated that the Agency has provided too much flexibility for small water systems and that it is feasible for many of the systems serving 10,000 or fewer customers to take more actions to reduce drinking water lead levels than

required under the LCRR. Other stakeholders have highlighted the limited technical, managerial, and financial capacity of small water systems and support the flexibilities provided by the LCRR to all of these small systems.

Stakeholders have divergent views of the school and childcare sampling provisions of the LCRR; some believe that the sampling should be more extensive, while others do not believe that community water systems should be responsible for it and that such a program would be more effectively carried out by the school and childcare facilities.

Finally, some stakeholders have expressed concerns that the Agency did not provide adequate opportunities for a public hearing and did not provide a complete or reliable evaluation of the costs and benefits of the proposed LCRR.

The short delay in effective date accomplished by this rule will enable the Agency to separately take comment on the need for a further extension of the effective date and an extension of the compliance dates so that the Agency can conduct a thorough review of the rule and engage meaningfully with the public on this all-important public health regulation. In a separate notice of proposed rulemaking, published in the ''Proposed Rules'' section of this issue of the **Federal Register**, EPA is requesting public comment on the additional 6-month extension of the June 17, 2021, effective date of the LCRR to December 16, 2021, and a 9-month extension of the current compliance date of January 16, 2024, to September 16, 2024, respectively. EPA will engage with stakeholders during this 9 month review period to evaluate the rule and determine whether to initiate a process to revise components of the rule. If EPA decides it is appropriate to propose revisions to the rule, it will consider whether to further extend compliance dates for those specific obligations.

The LCRR's effective date (which is when the rule is codified into the *Code of Federal Regulations*) is different from the compliance date. Section 1412(b)(10) of the Safe Drinking Water Act specifies that drinking water regulations generally require compliance three years after the date the regulation is promulgated. This 3-year period is used by states to adopt laws and regulations in order to obtain primary enforcement responsibility for the rule and by water systems to take any necessary actions to meet the requirements in the rule. Without a delay in the effective date of the rule, regulated entities may feel it necessary to undertake activities and spend scarce resources on compliance obligations that could change at the end of EPA's review period.

III. Compliance With the Administrative Procedure Act

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. As further explained below, EPA has determined that there is good cause to delay the effective date of the LCRR for 90 days without prior proposal and opportunity for comment because pre-promulgation public comment on this short notice is impracticable and contrary to the public interest. Namely, in this instance, where the LCRR will go into effect on March 16, 2021, less than two months after the start of this new Administration, it is impracticable for EPA to provide notice and gather comment prior to the rule going into effect. For the reasons explained above and below, allowing the rule to go into effect without further public engagement will also be contrary to the public interest.

Consistent with Executive Order 13990 and the January 20, 2021, White House memorandum, EPA has determined that the LCRR needs additional assessment of policy and legal issues, as well as stakeholder consultations on issues critical to the protection of public health. As discussed above, this rule is about the significant public health issues associated with lead in drinking water that is both nationally significant and has had a particular impact, in some instances overwhelming, on some American communities, particularly some minority and low income communities. As noted above, stakeholders that represent some of these communities have raised concerns that the LCRR, which is a revision of an existing lead drinking water rule, is not sufficient to provide needed protection from the dangers of lead in drinking water and that it may, in some respects, actually represent a retreat from protections provided by the existing rule. For example, in a March 4, 2021, letter, stakeholders raised concerns about key aspects of the rule, including whether to have a maximum contaminant level, whether the lead action level of 15 ppb is too high, the pace of lead service line replacements, and the flexibilities in the LCRR for small water systems, as well as whether the Agency complied with SDWA rulemaking requirements such as those governing risk assessment, management and communication and the opportunity for public hearing. Indeed, representatives of these stakeholders have asked EPA to suspend the rule for 6 months for these and other reasons. EPA has concluded, as a result, that it is critical to engage these stakeholders and other interested parties in reexamining the rule to ensure that it is maintaining and enhancing public protection from lead in drinking water for all Americans. EPA believes it is vital and in the public interest to engage this community in a review of this rule before it goes into effect.

At the same time, EPA recognizes that water systems and States must expend funds and begin to make near term and significant programmatic and legal changes in order to be in compliance with the rule within the three year timeframe provided by the statute. These changes include assigning and training personnel, obtaining funds, developing lead service line inventories, preparing plans, adopting new rules and/or obtaining legislative authorization, and modifying data systems. If after the review of the rule, EPA concludes that significant portions of the rule should change, these activities, and the funds that support them will have been expended in ways that could be less protective of public health from the significant adverse effects from lead in drinking water than if these communities made expenditures after the Agency has determined what constitutes the best approach to addressing this problem under the SDWA. The Agency feels strongly that the diversion of funds from cash-strapped communities and public agencies in this manner should be avoided. As a result, it is also in the public interest to delay the effective date during the time that EPA is reviewing the rule so that critically limited public funds needed to address this public health crisis are not wasted on implementation activities that may not be warranted after reexamination of the rule. It is further in the public interest to briefly delay this rule in order to take comment from affected parties on whether a longer delay of the effective date and compliance date is necessary and appropriate.

EPA has acted quickly during the transition to address concerns about this rule. Within a short period of time after the transition, the Agency determined that it was critically important to engage with the public and interested stakeholders through multiple

avenues—including an opportunity for written public comments, meetings with stakeholders—prior to completing its review of the LCRR and allowing it to become effective. This document was expeditiously prepared by the Agency in order to be published within less than two months of the change in Administration.

EPA is promulgating this delay to allow time for the public to comment on whether to further extend the effective date of the LCRR. That proposal is published elsewhere in this issue of the **Federal Register**. This opportunity for public input on whether to allow the rule to go into effect as it currently stands, would be foreclosed if EPA were to provide for pre-promulgation notice and comment. EPA has weighed carefully the fact that this objective is being achieved by deferring the effective date through use of the good cause exception under the APA. The Agency has concluded that the LCRR presents the exceptional case in which reliance on good cause to forgo pre-promulgation notice and comment is appropriate due to the impacts of allowing the rule to go into effect without further public input and engagement. EPA finds that the totality of the circumstances here—the short duration of and important purpose served by the delay, the serious issues raised by the stakeholders and litigants which deserve careful evaluation by the Agency prior to the rule becoming effective, the concerns raised by stakeholders about potential harm from allowing the rule to go into effect, and that, at the same time as publishing this final rule, EPA is also publishing a proposed rule inviting public comment on whether the effective date should be delayed—provide good cause to forego notice and an opportunity for comment in these limited circumstances.

Section 553(d)(3) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . as otherwise provided by the agency for good cause.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.'' *Gavrilovic,* 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately where, as explained above, the impact of this rule is to provide affected persons additional time before the LCCR goes into effect.

Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the APA ''good cause'' exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538. The action imposes no enforceable duty on any State, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have 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.

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

This action does not have tribal implications as specified in Executive Order 13175. This action is not subject to Executive Order 13175 because it will not have a substantial direct effect on tribes or on the relationship between the national government and tribes.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are economically significant per the definition of ''covered regulatory action'' in Section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because the delay of the effective date, by itself is not economically significant.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

This action is not subject to Executive Order 12898 (59 FR 7629, Feb. 16, 1994) because it does not establish an environmental health or safety standard. This action delays the effective date that, by itself, does not concern an environmental health risk or safety risk.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). EPA has made a good cause finding for this rule as discussed in the **SUPPLEMENTARY INFORMATION** section of this document, including the basis for that finding.

Jane Nishida,

Acting Administrator.

[FR Doc. 2021–05271 Filed 3–11–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0695; FRL–10021–11–Region 7]

Air Plan Approval; Missouri; Missouri Reid Vapor Pressure Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Missouri. This final action will amend the SIP to remove the Kansas City, Missouri low Reid Vapor Pressure (RVP) fuel requirement which required gasoline sold in the Kansas City, Missouri area to have a seven pounds per square inch Reid Vapor Pressure from June 1 to September 15. The majority of the state is subject to the Clean Air Act (CAA) nine pounds per square inch Reid Vapor Pressure fuel requirement from June 1 to September 15. In addition, the EPA has issued a separate proposal for the Kansas side of the Kansas City metropolitan area.

DATES: This final rule is effective on April 12, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2020–0695. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Jed D. Wolkins, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7588; email address: *wolkins.jed@epa.gov.*

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

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VII. Statutory and Executive Order Reviews

I. What is being addressed in this document?

The EPA is approving a revision to the Missouri SIP, submitted by the Missouri Department of Natural Resources (MoDNR) on September 15, 2020. The revision removes the seven pounds per square inch (psi) Reid Vapor Pressure (RVP) fuel requirement for the Kansas City, Missouri, area; consisting of Clay, Jackson, and Platte Counties. The former SIP-approved rule, 10 CSR 10–2.330, required gasoline sold in the three counties to have a RVP of seven psi or less from June 1 through September 15. After the effective date of this final action, the Kansas City, Missouri area will only be subject to the CAA RVP fuel requirement of nine psi or less from June 1 through September 15.

II. Background

The EPA established a 1-hour ozone national ambient air quality standard (NAAQS) in 1971.[1] See 36 FR 8186 (April 30, 1971). On March 3, 1978, the EPA designated Clay, Platte and Jackson Counties (hereinafter referred to in this document as the ''Kansas City area'') in nonattainment of the 1971 1-hour ozone NAAQS, as required by the CAA Amendments of 1977. See 43 FR 8962 (March 3, 1978). On February 8, 1979, the EPA revised the 1-hour ozone NAAQS, referred to as the 1979 ozone NAAQS. See 44 FR 8202 (February 8, 1979).

The EPA redesignated the Kansas City area to attainment of the 1979 1-hour ozone standard and approved Missouri's ozone maintenance plan for the Kansas City area on July 23, 1992. See 57 FR 27939 (June 23, 1992). Pursuant to section 175A of the CAA, the first 10-year maintenance period for the 1-hour ozone standard began on July 23, 1992, the effective date of the redesignation approval.

In 1995, the Kansas City area violated the 1979 1-hour ozone standard. Missouri revised the control strategy and contingency measures in the maintenance plan, which was approved on June 24, 2002. See 67 FR 20036 (April 24, 2002). The revised control strategy included 10 CSR 10–2.330, *Control of Gasoline Reid Vapor Pressure.*

On January 1, 1997, Missouri adopted the seven and two tenths (7.2) psi RVP limit from June 1 to September 15.[2] The EPA approved this rule into the SIP on April 24, 1998.[3] On April 3, 2001, Missouri revised the rule to seven (7.0) psi RVP limit from June 1 to September 15.[4] The EPA approved this rule into the SIP on February 13, 2002.[5]

On July 18, 1997, the EPA established a new 8-hour ozone NAAQS (hereafter the 1997 8-hour ozone NAAQS). See 62 FR 38856 (July 18, 1997). This newly established 8-hour ozone NAAQS replaced the prior 1-hour ozone NAAQS.

On April 30, 2004, the EPA published a final rule in the **Federal Register** stating the 1979 1-hour ozone NAAQS would no longer apply (*i.e.,* would be revoked) for an area one year after the effective date of the area's designation for the 1997 8-hour ozone NAAQS. See 69 FR 23951 (April 30, 2004). The Kansas City Area was designated as an unclassifiable area for the 1997 8-hour ozone NAAQS, effective June 15, 2004. *See id.* However, on May 3, 2005, the EPA published a final rule designating the Kansas City area as an attainment area for the 1997 8-hour ozone NAAQS based on new monitoring data. *See* 70 FR 22801 (May 3, 2005). The effective date of the revocation of the 1979 1-hour ozone standard for the Kansas City area was June 15, 2005. *See* 70 FR 44470 (August 3, 2005). Missouri achieved the required maintenance of the 1979 1-hour ozone standard in 2014.

On September 15, 2020, Missouri requested that the EPA remove 10 CSR 10–2.330 from the SIP. Section 110(l) of the CAA prohibits the EPA from approving a SIP revision that interferes with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. As detailed in the proposal, Missouri adequately demonstrated that removal of this rule will not affect the area's ability to attain or maintain any air quality standards.

[1] The 1-hour ozone NAAQS was originally promulgated as a photochemical oxidant standard. See 36 FR 8186 (April 30, 1971). In 1979, the EPA substituted the word ''ozone'' for ''photochemical oxidant.'' See 44 FR 8202 (February 8, 1979). In doing so, the EPA stated that ''(t)he intent of the standard (total-oxidant reduction), the control strategies, and the index of Progress toward attainment (measured ozone levels) remain unchanged.'' Id. at 8203.

[2] The Missouri rule allowed an additional one psi for gasoline containing 9 to 10% ethanol.

[3] See 63 FR 20318.

[4] The Missouri rule allows an additional one psi for gasoline containing 9 to 10% ethanol.

[5] See 67 FR 6658.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from February 18, 2020 to April 2, 2020 and held a public hearing on March 26, 2020. Missouri received three comments. Missouri adequately responded to the comments but did not change the removal request based on the comments. In addition, as explained in the proposal, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.[6]

IV. What action is the EPA taking?

The EPA is taking final action to approve Missouri's removal of the state RVP requirement from the SIP for the Kansas City, Missouri area. As discussed in the proposal the removal of the RVP requirement will not affect the area's ability to attain or maintain any air quality standard.

The EPA published the proposed approval of Missouri's removal of the state RVP requirement from the SIP for the Kansas City, Missouri area on December 23, 2020. The thirty-day public comment period closed on January 22, 2021. The EPA received no public comments on the proposal. However, the proposal contained an error concerning 40 CFR 52.1323, paragraph (n), as it included a rescinded date, February 22, 2021. The date should have contained a placeholder that indicated that the effective date of the rescission was 30 days following publication of the final rule in the **Federal Register**. We are noting the error here and are correcting 40 CFR 52.1323 paragraph (n) to reflect the correct effective date of the rescission.

V. Impacts on the Boutique Fuels List

Section 1541(b) of the Energy Policy Act of 2005 required the EPA, in consultation with the U.S. Department of Energy, to determine the number of fuels programs approved into all SIPs as of September 1, 2004 and to publish a list of such fuels. On December 28, 2006, the EPA published the original list of boutique fuels. See 71 FR 78192 (December 28, 2006). On December 4, 2020 the EPA updated the list of boutique fuels to remove boutique fuels that were no longer in approved SIPs. See 85 FR 78412 (December 4, 2020). The EPA maintains the current list of boutique fuels on its website at: *https://www.epa.gov/gasoline-standards/state-fuels.* The boutique fuels list is based on a fuel type approach. CAA section 211(c)(4)(C)(v)(III) requires that the EPA remove a fuel from the published list if it is either identical to a Federal fuel or is removed from the SIP in which it is approved. Under the adopted fuel type approach, the EPA interpreted this requirement to mean that a fuel would have to be removed from all states' SIPs in which it was approved in order to remove the fuel type from the list. See 71 FR 78195 (December 28, 2006). The 7.0 psi RVP fuel program as approved into Missouri's SIP, is a fuel type that is included in the EPA's boutique fuel list. See 85 FR 78412 (December 4, 2020). Subsequent to the effective date of today's action, the EPA will update the State Fuels web page to remove Missouri's 7.0 psi RVP program from the list of boutique fuels.

VI. Incorporation by Reference

In this document, the EPA is amending regulatory text that includes incorporation by reference. As described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Missouri Regulations from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 11, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it

[6] See 85 FR 83877 (December 23, 2020).

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: March 2, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by removing the entry ''10–2.330'' under the heading ''Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area''.

■ 3. In § 52.1323, add paragraph (n) to read as follows:

§ 52.1323 Approval status.

* * * * *

(n) Missouri rule 10 CSR 10–2.330 was rescinded on April 12, 2021.

* * * * *

[FR Doc. 2021–04764 Filed 3–11–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8365

[212.LLAZP00000.L12200000.PM0000. LXSSA3610000]

Final Supplementary Rules for Selected Public Lands in Gila, Maricopa, Pima, Pinal and Yavapai Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is finalizing supplementary rules on selected public lands administered by the Hassayampa and Lower Sonoran Field Offices. These rules are being established by the Arizona State Director of the BLM to provide for public health and safety and to reduce user conflicts within developed recreation areas (or sites), including recreational shooting sports sites.

DATES: These supplementary rules are effective April 12, 2021.

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

- *Mail:* BLM, Phoenix District, Attention: Braden Yardley, 21605 North 7th Avenue, Phoenix, AZ 85027.
- *Email: BLM_AZ_PDO@blm.gov.*

FOR FURTHER INFORMATION CONTACT: John (Jake) Szympruch, District Chief Law Enforcement Ranger at email: *jszympru@blm.gov;* Lane Cowger, Hassayampa Field Office Manager at email: *lcowger@blm.gov;* or Edward J. Kender, Lower Sonoran Field Office Manager at email: *ekender@blm.gov;* or at 623–580–5500. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact one of the above individuals. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background

These final supplementary rules are necessary for the protection of public lands and resources and for the protection, well-being, and health and safety of those using public lands. In January 2020, the BLM Phoenix District approved the construction of five recreational shooting sports sites (Baldy Mountain, Box Canyon, Church Camp Road, Narramore Road, and Saddleback Mountain) in the Recreational Shooting Sports Project Final Environmental Assessment (EA). The EA supports the establishment of the final supplementary rules and is in conformance with the two applicable land use plans: The Bradshaw-Harquahala Approved Resource Management Plan and Record of Decision (Bradshaw-Harquahala RMP (BLM 2010)) and the Lower Sonoran Approved Resource Management Plan and Record of Decision (Lower Sonoran RMP (BLM 2012)). As a result of improvements, each site would meet the ''developed recreation site and area'' definition found in 43 Code of Federal Regulations (CFR) 8360.0–5. Existing rules associated with developed recreation sites and areas (43 CFR part 8365) apply in addition to these final supplementary rules.

To promote safe use and operation of each site, these supplementary rules are necessary to manage behavior. Within developed recreation areas established for recreational shooting sports, the discharge of firearms is allowed where authorized (see 43 CFR 8365.2–5). Each recreation area will be posted with appropriate signage at access points.

II. Discussion of Public Comments and Final Supplementary Rules

The BLM Arizona State Director proposed these supplementary rules in the **Federal Register** on August 17, 2020 (85 FR 49995). Final supplementary rules 1 through 4 apply to existing developed recreation areas throughout the Phoenix District, and to future developed recreation areas. The rest of the final supplementary rules apply only to the recreational shooting sports sites and any future recreational shooting sports sites within the district.

The notice announced a 60-day public comment period on the proposed supplementary rules including the long-term closure of the Hazardous Exclusion Areas to public entry for public safety. The Hazardous Exclusion Area is the area within a recreational shooting sports site where errant/ricochet projectiles could potentially land. The BLM notified by email approximately 215 individuals, organizations, and agencies of the comment period. This notification included Arizona Game and Fish Department and the Federal Lands Hunting, Fishing and Shooting Sports Roundtable. The BLM also published a news release and legal notice advertising the comment period. The news release was published in the *Wickenburg Sun and Daily Independent* on August 17, 2020. The legal notice was published in the *Arizona Business Gazette* on August 20, 2020.

The comment period ended on October 16, 2020. The BLM received 11 comment emails and letters to consider. Most of the commenters supported the supplementary rules without further substantive comments. A coalition of 18 recreation and conservation organizations endorsed the proposed long-term closures as needed for public safety. One commenter stated the long-term closure areas should be expanded. According to the John D. Dingell, Jr. Conservation, Management, and Recreation Act, closures should be the smallest area required for public safety. The Hazardous Exclusion Areas were based on Department of Energy guidance for calculating areas that could

be impacted by ricochet/errant bullets. No changes were made to the Hazardous Exclusion Area rule (supplementary rule 13), implementing the long-term closures, resulting from public comments. A final decision authorizing the long-term closure of approximately 539 acres within the Hazardous Exclusion Areas is available online at: *https://eplanning.blm.gov/eplanning-ui/project/2000693/510.*

The BLM received several comments primarily focused on rules 8 (hours of operation), 10 (authorized targets), and 12 (authorized ammunition). A commenter raised concerns that proposed supplementary rules 8, 10 and 12 referenced future operating plans that have not yet been created and were not provided for public review. Rule 8 addresses the shooting site operation hours. The commenter requested that the BLM consider designating operating hours from 9:00 a.m. to 5:00 p.m. The commenter proposed these hours, more restrictive than state statutory requirements, due to concerns of user conflicts from other public land users and to provide harmony with adjacent properties. Proposed Rules 10 and 12 were not specific regarding restrictions on targets and ammunition but deferred to future operating plans. A commenter requested the BLM provide specific language about these restrictions in the regulatory language. The BLM agrees with the commenter in part and the following paragraph explains how the BLM modified final rules 8, 10, and 12 to address these comments.

Prior to the opening of a site, an operating plan for it will be available to the public at the Phoenix District Office (see **ADDRESSES**) and at *www.blm.gov.* Related to rule 8, the range hours will be set within the restricted time frame listed in Arizona Revised Statute section 17–604, which prohibits outdoor shooting ranges from operating from 10:00 p.m. through 7:00 a.m. The operating hours will be disclosed in each site's operating plan and posted at each site. Proposed Rule 10 has been revised in the final rules to define and give examples of authorized targets that can be used at those sites where shooters are allowed to supply their own targets. Final Rule 10 also addresses prohibited targets. These will also be further described in the operating plan for each site. Final Rule 12 has been revised to specify the ammunition restrictions for rifles, handguns, and shotguns. It specifies that rifles and handgun ammunition is restricted to .50 caliber or less and it prohibits the use of steel core, armor-piercing, incendiary, and tracer ammunition, and paintball equipment.

Proposed Rules 3, 6, 7, and 14 were revised in the Final Rule based on recommendations from BLM staff. Rule 3 has been revised to define ''disorderly conduct.'' Final Rule 6 has been clarified to say that no projectile device may be discharged while an individual is beyond the designated firing line. Final Rule 7 added the line, ''as defined by State and/or Federal law'' to clarify the laws pertaining to the use and consumption of alcohol and illegal drugs at the shooting sports site. The word ''berms'' was removed from Rule 14 to clarify that firearms may only be discharged at authorized targets with a developed or designated backstop and not into side berms constructed to delineate shooting lanes.

III. Procedural Matters

Executive Orders 12866 and 13563, Regulatory Planning and Review

These final supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules do not have an effect of $100 million or more on the economy.

These final supplementary rules establish rules for recreational shooting sports sites to protect public health and safety and avoid user conflicts. These final supplementary rules do not adversely affect, in a material way, the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities. These final supplementary rules do not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These final supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, nor do these rules raise novel legal or policy issues. These supplementary rules protect resources and human health and safety, and enable BLM law enforcement personnel to efficiently enforce, where appropriate, regulations pertaining to unlawful usage of a recreation area (or site) in a manner consistent with state and local laws, ordinances, regulations, or orders on public lands.

National Environmental Policy Act

The BLM prepared an EA and found that these supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The BLM completed a 30-day scoping period and a 15-day public review of the draft EA in 2019.

The BLM completed the EA to analyze the construction and operation of the recreational shooting sports sites which included the proposed supplementary rules. The Decision Record for this EA was signed in January 2020. The BLM has placed the EA and associated documents in the administrative record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601, *et seq.,* to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These final supplementary rules do not pertain specifically to commercial or governmental entities of any size but contain rules to protect the health and safety of the public and reduce user conflicts on public lands within the Hassayampa and Lower Sonoran Field Office areas. Therefore, the BLM has determined, under the RFA, that these final supplementary rules do not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These final supplementary rules do not constitute ''major rules'' as defined at 5 U.S.C. 804(2). These final supplementary rules are intended to manage behavior and establish rules of conduct in developed recreation areas (or sites) within the Hassayampa and Lower Sonoran Field Office areas. These final supplementary rules have no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

These final supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year, nor do the final supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. The final supplementary rules do not require anything of state, local, or tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These final supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. These final supplementary rules do not address property rights in any form and do not cause the impairment of anyone's property rights. Therefore, the BLM has determined that these final supplementary rules do not cause a taking of private property or require further discussion of takings implications under this executive order.

Executive Order 13132, Federalism

These final supplementary rules do not have a substantial, direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. These final supplementary rules apply in only one state, Arizona, and do not address jurisdictional issues involving the Arizona State government. Therefore, in accordance with Executive Order 13132, the BLM has determined that these final supplementary rules do not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that these final supplementary rules do not unduly burden the judicial system and that the rules meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these final supplementary rules do not include policies that have tribal implications and have no bearing on trust lands or on lands for which title is held in fee status by Indian tribes or U.S. Government-owned lands managed by the Bureau of Indian Affairs. Since these final supplementary rules do not change BLM policy and do not involve Indian reservation lands or resources, we have determined that the government-to-government relationships remain unaffected. These final supplementary rules affect developed recreation areas (or sites), including recreational shooting sports sites on public lands managed by the BLM Hassayampa and Lower Sonoran Field Offices.

Executive Order 13352, Facilitation of Cooperative Conservation

Under Executive Order 13352, the BLM has determined that these final supplementary rules do not impede the facilitation of cooperative conservation. These final supplementary rules take appropriate account of, and consider the interests of, persons with ownership or other legally recognized interests in land or other natural resources; properly accommodate local participation in the Federal decision-making process; and provide that the programs, projects, and activities are consistent with protecting public health and safety.

Information Quality Act

In developing these final supplementary rules, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

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

The final supplementary rules do not constitute a significant energy action since they have no impact on energy supplies, production, or consumption, and have no connection with energy policy.

Paperwork Reduction Act

These final supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Final Supplementary Rules

Author

The principal author of these supplementary rules is Braden Yardley, Project Manager, Phoenix District Office, Bureau of Land Management.

For the reasons stated in the preamble, and under the authority for supplementary rules at 43 U.S.C. 1740 and 43 CFR 8365.1–6, the Arizona State Director, BLM, establishes the following supplementary rules for all BLM developed recreation sites and areas, in addition to supplementary rules specific to recreational shooting sports sites, within the Phoenix District boundary, Arizona, to read as follows:

Definitions

Developed recreation sites and areas, as defined by 43 CFR 8360.0–5(c), means sites and areas that contain structures or capital improvements primarily used by the public for recreation purposes.

Hazardous Exclusion Area means a designated area within a recreational shooting sports site where errant/ricochet projectiles could potentially land.

Recreational shooting sports site means a developed recreation site or area meeting the definition found at 43 CFR 8360.0–5(c) and where the primary purpose is recreational shooting.

Rules and Prohibited Acts Within Developed Recreation Sites and Areas

(1) You must not block, restrict, place signs, create a hazardous condition, or otherwise interfere with the use of a road, gate, or other legal access to and/or through a developed recreation site or area boundary.

(2) You must pick up and properly dispose of pet excrement in the trash.

(3) You must not engage in disorderly conduct including, but not limited to: Fighting, violent or seriously disruptive behavior; using abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person; refusing to obey a lawful order; or recklessly handling, displaying or discharging a deadly weapon or dangerous instrument.

(4) You must not shoot at wildlife, livestock, or vegetation.

Rules and Prohibited Acts Within Recreational Shooting Sports Sites

In addition to the preceding supplementary rules, the following rules will apply within a recreational shooting sports site:

(5) You must not leave any personal property unattended within a site.

(6) You must not discharge a firearm or any other projectile device while an individual is beyond the designated firing line.

(7) You must not use, possess, consume, or be under the influence of alcohol or controlled substances as defined by State and/or Federal law.

(8) You must only use a site during the designated operating hours as defined in the BLM Phoenix District's operating plan, which will also be posted at each site and listed on the BLM's website *www.blm.gov,* and consistent with State law.

(9) You must not climb on any buildings or structures, occupied or unoccupied.

(10) You must only use authorized stationary targets as specified in the operating plan for each site. These targets may be made of cardboard, paper, self-healing, steel, and

biodegradable clay (clay targets). All other items, such as aluminum cans, glass bottles, bowling pins, plastic bottles and other items which may leave debris, are not authorized to be used as targets. Exploding targets are prohibited. All user-supplied steel targets must be specifically designed for use with firearms and must be used at a distance of 100 yards or greater. Target frames must be designed to be reusable. The use of wooden pallets and other items not specifically designed as target frames are not authorized. All user-supplied targets, target frames, and debris must be removed from the site and disposed of properly after use and before leaving the site.

(11) You must not enter a site for any purpose other than activities associated with recreational shooting.

(12) Rifles and handguns are restricted to ammunition that is .50 caliber or less. Common shotgun ammunition, such as birdshot, buckshot, and slugs, is authorized. Sporting clay and skeet ranges are restricted to birdshot only. Steel core, armor-piercing, incendiary, and tracer ammunition and paintball equipment is prohibited.

(13) You must not enter the Hazardous Exclusion Areas.

(14) You must discharge a firearm only from a designated firing line towards an authorized target with a developed or designated backstop.

(15) You must not exceed the maximum occupancy posted at each site.

(16) Children under 16 must be accompanied by a responsible adult while in a site.

Exemptions

The following persons are exempt from these supplementary rules: (1) Any Federal, State, and local government employee, including law enforcement, fire fighting, and search and rescue, acting within the scope of their duties and (2) persons, agencies, municipalities, or companies holding a special use permit or written authorization from an authorized officer and operating within the scope of their permit or authorization.

Penalties

On public lands under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8360.0–7), any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to enhanced fines provided for by 18 U.S.C. 3571.

Raymond Suazo,

State Director, Bureau of Land Management, Arizona.

[FR Doc. 2021–05174 Filed 3–11–21; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 210308–0050; RTID 0648–XX070]

Fisheries of the Northeastern United States; Monkfish Fishery; 2021 Monkfish Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: We are implementing specifications for the 2021 monkfish fishery. This action is necessary to ensure allowable monkfish harvest levels that will prevent overfishing and allow harvesting of optimum yield. This action is intended to establish the allowable 2021 harvest levels, consistent with the Monkfish Fishery Management Plan and previously announced multi-year specifications.

DATES: The final specifications for the 2021 monkfish fishery are effective May 1, 2021, through April 30, 2022.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281–9122.

SUPPLEMENTARY INFORMATION: The New England and Mid-Atlantic Fishery Management Councils jointly manage the monkfish fishery. The Monkfish Fishery Management Plan includes a specifications process that requires the Councils to recommend quotas on a triennial basis. This action would finalize 2021 specifications approved by the Councils in Framework Adjustment 12 to the Monkfish Fishery Management Plan, which included specifications for fishing years 2020–2022.

On September 17, 2020, we approved Framework 12 measures for the 2020 fishing year (85 FR 57986), based on a recent stock assessment update and consistent with the New England Council's Scientific and Statistical Committee recommendations. At that time, we also projected a continuation of those same specifications for 2021 and 2022. Final 2021 total allowable landings in both the Northern and Southern Fishery Management Areas are summarized in Table 1. These 2021 measures are the same as those implemented in 2020. All other requirements remain the same.

TABLE 1—MONKFISH SPECIFICATIONS FOR FISHING YEAR 2021

[In metric tons]

Catch limits	Northern area	Southern area
Acceptable Biological Catch	8,351	12,316
Annual Catch Limit	8,351	12,316
Management Uncertainty	3 percent	3 percent
Annual Catch Target (Total Allowable Landings + discards)	8,101	11,947
Discards	1,477	6,065
Total Allowable Landings	6,624	5,882

We have reviewed available 2020 fishery information. There have been no annual catch limit or total allowable landings overages, nor is there any new biological information that would require altering the projected 2021 specifications. Based on this, we are implementing the fishing year 2021 specifications announced in the Framework 12 final rule (85 FR 57986, September 17, 2020). The 2021 specifications will be effective until April 30, 2022. We will finalize the 2022 fishing year specifications prior to May 1, 2022, by publishing another final rule.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Monkfish Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law.

This rule is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), we find good cause to waive prior public notice and opportunity for public comment on the catch limit and allocation adjustments because allowing time for notice and comment is unnecessary. The Framework 12 proposed rule provided the public with the opportunity to comment on the 2020–2022 specifications (85 FR 39157, June 30, 2020). No comments were received on the proposed rule. Thus, the proposed and final rules that contained the projected 2020–2022 specifications provided a full opportunity for the public to comment on the substance and process of this action. Furthermore, no circumstances or conditions have changed in the monkfish fishery that would cause new concern or necessitate reopening the comment period. Finally, the final 2021 specifications being implemented by this rule are unchanged from those projected in the Framework 12 final rule.

The Chief Counsel for Regulation, Department of Commerce, previously certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that the 2020–2022 monkfish specifications would not have a significant economic impact on a substantial number of small entities. Implementing status quo specifications for 2021 will not change the conclusions drawn in that previous certification to the SBA. Because advance notice and the opportunity for public comment are not required for this action under the Administrative Procedure Act, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply to this rule. Therefore, no new regulatory flexibility analysis is required and none has been prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 8, 2021.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2021–05123 Filed 3–11–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210217–0022]

RTID 0648–XA821

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS is reallocating the projected unused amounts of the Community Development Quota (CDQ) pollock directed fishing allowance (DFA) from the Aleutian Islands subarea to the Bering Sea subarea. This action is necessary to provide opportunity for harvest of the 2021 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 12, 2021, until the effective date of the final 2021 and 2022 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kurt Iverson, 907–586–7210.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Aleutian Islands subarea, the portion of the 2021 pollock total allowable catch (TAC) allocated to the CDQ DFA is 1,900 metric tons (mt) as established by the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021).

As of January 19, 2021, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 1,900 mt of pollock CDQ DFA in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 1,900 mt of pollock CDQ DFA from the Aleutian Islands subarea to the Bering Sea subarea. The 1,900 mt of pollock 2021 Aleutians Islands CDQ DFA is added to the 2021 Bering Sea CDQ DFA. The 2021 Bering Sea subarea pollock incidental catch allowance remains at 49,500 mt. As a result, the 2021 harvest specifications for pollock in the Aleutian Islands subarea included in the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021) are revised as follows: 0 mt to CDQ DFA. Furthermore, pursuant to § 679.20(a)(5), Table 4 of the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021) is revised to make 2021 pollock allocations consistent with this reallocation. This reallocation results in an adjustment to the 2021 CDQ pollock allocation established at § 679.20(a)(5).

TABLE 4—FINAL 2021 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2021 allocations	2021 A season [1]		2021 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,376,900	n/a	n/a	n/a
CDQ DFA	139,400	62,730	39,032	76,670
ICA [1]	49,500	n/a	n/a	n/a

TABLE 4—FINAL 2021 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

Area and sector	2021 allocations	2021 A season [1]		2021 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Total Bering Sea non-CDQ DFA	1,188,000	534,600	332,640	653,400
AFA Inshore	594,000	267,300	166,320	326,700
AFA Catcher/Processors [3]	475,200	213,840	133,056	261,360
Catch by CPs	434,808	195,664	n/a	239,144
Catch by CVs [3]	40,392	18,176	n/a	22,216
Unlisted CP Limit [4]	2,376	1,069	n/a	1,307
AFA Motherships	118,800	53,460	33,264	65,340
Excessive Harvesting Limit [5]	207,900	n/a	n/a	n/a
Excessive Processing Limit [6]	356,400	n/a	n/a	n/a
Aleutian Islands subarea ABC	58,384	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	19,000	n/a	n/a	n/a
CDQ DFA			n/a	
ICA	2,400	1,250	n/a	1,250
Aleut Corporation	14,700	14,700	n/a	
Area harvest limit [7]	n/a	n/a	n/a	n/a
541	18,515	n/a	n/a	n/a
542	8,758	n/a	n/a	n/a
543	2,919	n/a	n/a	n/a
Bogoslof District ICA [8]	250	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (4 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (CP)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(i) through (iii), the annual Aleutian Islands pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the AI pollock ABC.

[2] In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), 8.5 percent of the DFA allocated to listed CPs shall be available for harvest only by eligible catcher vessels with a CP endorsement delivering to listed CPs, unless there is a CP sector cooperative for the year.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

[8] Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Aleutian Islands pollock. Since the pollock fishery opened January 20, 2021, it is important to immediately inform the industry as to the Bering Sea subarea pollock CDQ DFA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased seasonal pollock allocations while value is optimum. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 25, 2021.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 8, 2021.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–05124 Filed 3–11–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210210–0018; RTID 0648–XA781]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal to 50 Feet (15.2 Meters) Length Overall Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 50 feet (15.2 meters (m)) length overall using hook-and-line (HAL) gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2021 total allowable catch (TAC) of catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 9, 2021, through 1200 hours, A.l.t., June 10, 2021.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2021 Pacific cod TAC apportioned to catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA is 569 metric tons (mt) as established by the final 2021 and 2022 harvest specifications for groundfish in the GOA (86 FR 10184, February 19, 2021.

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2021 Pacific cod TAC apportioned to catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 500 mt and is setting aside the remaining 69 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 8, 2021.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 9, 2021.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–05175 Filed 3–9–21; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210210–0018]

RTID 0648–XA882

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2021 total allowable catch of pollock in the West Yakutat District of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 9, 2021, through 2400 hours, A.l.t., December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Allyson Olds, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2021 total allowable catch (TAC) of pollock in the West Yakutat District of the GOA is 5,412 metric tons (mt) as established by the final 2021 and 2022 harvest specifications for groundfish in the GOA (86 FR 10184, February 19, 2021).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2021 TAC of pollock in the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,212 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 640 in the GOA.

NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 8, 2021.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 9, 2021.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–05166 Filed 3–9–21; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 47
Friday, March 12, 2021

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–2021–0137; Project Identifier MCAI–2020–00269–E]

RIN 2120–AA64

Airworthiness Directives; Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.) Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2014–04–06, which applies to all Safran Helicopter Engines, S.A. (Safran Helicopter Engines) Arrius 2B1, 2B1A, 2B2, and 2K1 model turboshaft engines. AD 2014–04–06 requires initial and repetitive inspections of the hydro-mechanical metering unit (HMU) high pressure pump drive gear shaft splines, cleaning and inspections of the sleeve assembly splines, and replacement of the sleeve assembly on the affected high pressure pump drive gear shaft or replacement of the HMU if the HMU fails inspection. Since the FAA issued AD 2014–04–06, the manufacturer has published new service information that revises the inspections for certain HMUs and reduces compliance times for initial inspections. This proposed AD would require revised inspections and continue to require cleaning of the sleeve assembly splines, and replacement of the sleeve assembly on the affected high pressure pump drive gear shaft or replacement of the HMU if the HMU fails an inspection. 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 April 26, 2021.

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

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

For service information identified in this NPRM, contact Safran Helicopter Engines, S.A., Avenue du 1er Mai, Tarnos, France; phone: +33 (0) 5 59 74 45 11. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0137; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7134; fax: (781) 238–7199; email: *wego.wang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0137; Project Identifier MCAI–2020–00269–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2014–04–06, Amendment 39–17764 (79 FR 9990, February 24, 2014), (AD 2014–04–06), for all Turbomeca S.A. Arrius 2B1, 2B1A, 2B2, and 2K1 model turboshaft engines. AD 2014–04–06 was prompted by in-flight shutdowns caused by interrupted fuel supply at the HMU. AD 2014–04–06 requires initial and repetitive inspections of the HMU high pressure pump drive gear shaft splines, cleaning and inspections of the sleeve assembly splines, and replacement of the sleeve assembly on the affected high pressure pump drive gear shaft or replacement of the HMU if the HMU fails inspection. The agency issued AD 2014–04–06 to prevent in-flight shutdown and damage to the engine.

Actions Since AD 2014–04–06 Was Issued

Since the FAA issued AD 2014–04–06, the manufacturer has published new service information that revises the inspections for certain HMUs, reduces compliance times for initial inspections, and allows application of non-cumulative tolerance of 10% of operating hours to be applied to the timing of the repetitive inspection of HMUs installed on certain engines.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2020–0033, dated February 25, 2020 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

A number of in-flight shutdown (IFSD) occurrences have been reported for ARRIUS 2 engines. The results of the technical investigations concluded that these events were caused by deterioration of the splines on the high pressure (HP)/low pressure (LP) pump assembly drive shaft of the HMU, which eventually interrupted the fuel supply to the engine.

This condition, if not detected and corrected, could lead to further cases of engine IFSD, possibly resulting in forced landing with consequent damage to the helicopter and injury to occupants. To address these occurrences, Turbomeca published MSB 319 73 2825 (up to version G) to provide instructions for inspection of the HMU and sleeve assembly. Consequently, EASA issued AD 2013–0082 to require repetitive inspections of the drive gear shaft splines of the HP pump, and, depending on findings, accomplishment of applicable corrective action(s).

Since that [EASA] AD was issued, SAFRAN published the MSB to provide specific inspection instructions for HMU installed on a helicopter after 31 January 2013, to reduce the compliance time for the initial inspection of Group 1 engines that were not previously inspected in accordance with version G or later of the MSB, and to provide some operational margin before the first inspection in all possible scenarios.

For the reason described above, this [EASA] AD retains the requirements of AD 2013–0082, which is superseded, and requires accomplishment of the actions in accordance with the instructions of the MSB, as defined in this [EASA] AD.

You may obtain further information by examining the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0137.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Safran Helicopter Engines Mandatory Service Bulletin (MSB) No. 319 73 2825, Version J, dated March 15, 2019. The MSB describes procedures for inspecting the HMU high pressure pump drive gear shaft splines and cleaning and inspecting the sleeve assembly splines. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2014–04–06. This proposed AD would require initial and repetitive inspections of the HMU high pressure pump drive gear shaft splines. This proposed AD would require cleaning of the sleeve assembly splines. This proposed AD would also require replacing the HMU or the sleeve assembly on the affected high pressure pump drive gear shaft if the HMU fails inspection.

Differences Between This Proposed AD and the Service Information or the MCAI

EASA AD 2020–0033 identifies applicable engines as Safran Helicopter Engines Arrius 2B1, 2B1A, 2B2, 2G1, 2K1 and 2K2 model turboshaft engines, all serial numbers. This AD does not include Safran Helicopter Engines Arrius 2G1 and 2K2 model turboshaft engines in its applicability since these engines are not type certificated in the United States.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 194 engines installed on helicopters of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Visual inspection of drive gear shaft splines; cleaning and inspection of sleeve assembly splines.	2 work-hours × $85 per hour = $170	$900	$1,070	$207,580

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that might need these replacements.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace sleeve assembly on high-pressure pump drive gear shaft.	1 work-hour × $85 per hour = $85	$898	$983
Replace HMU	1 work-hour × $85 per hour = $85	45,000	45,085

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2014–04–06, Amendment 39–17764 (79 FR 9990, February 24, 2014), and

■ b. Adding the following new airworthiness directive:

Safran Helicopter Engines, S.A. (Type Certificate previously held by Turbomeca, S.A.): Docket No. FAA–2021–0137; Project Identifier MCAI–2020–00269–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by April 26, 2021.

(b) Affected ADs

This AD replaces AD 2014–04–06, Amendment 39–17764 (79 FR 9990, February 24, 2014).

(c) Applicability

This AD applies to Safran Helicopter Engines, S.A. (Type Certificate previously held by Turbomeca, S.A.) Arrius 2B1, 2B1A, 2B2, and 2K1 model turboshaft engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7320—Fuel Controlling System.

(e) Unsafe Condition

This AD was prompted by in-flight shutdowns caused by interrupted fuel supply at the hydro-mechanical metering unit (HMU). The FAA is issuing this AD to prevent interrupted fuel supply at the HMU. The unsafe condition, if not addressed, could result in engine in-flight shutdown, forced landing of the helicopter, damage to the helicopter and injury to occupants.

(f) Compliance

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

(g) Required Actions

(1) Within the compliance time specified in Table 1 to paragraph (g)(1) of this AD, as applicable, and before re-installation of the HMU after each removal from the engine, visually inspect the drive gear shaft splines of the high pressure pump, and clean and inspect the sleeve assembly splines in accordance with paragraphs 2.4.2 and 2.4.3, or 4.4.2 and 4.4.3, as applicable, of Safran Helicopter Engines Mandatory Service Bulletin (MSB) 319 73 2825, Version J, dated March 15, 2019.

TABLE 1 TO PARAGRAPH (g)(1)

HMU group/condition	Compliance time
Group 1/150 HMU operating hours or more accumulated since new or since last overhaul..	Within 50 HMU operating hours after the effective date of this AD.
Group 1/Less than 150 HMU operating hours accumulated since new or since last overhaul..	Before exceeding 200 HMU operating hours after the effective date of this AD.
Group 2	Within 500 HMU operating hours since the last inspection or since first installation of the HMU.

(2) Repeat the inspection required by paragraph (g)(1) of this AD at intervals not to exceed 500 HMU operating hours since the previous inspection.

Note 1 to paragraph (g)(2): A non-cumulative tolerance of 10% of HMU operating hours (hrs) may be applied to the timing of each repetitive inspection, with a maximum allowable tolerance of +50 HMU operating hrs. For example, counting from the initial inspection, the repeat inspections would occur at the following times, with the tolerance noted in parentheses; 500 HMU operating hrs (+50 hrs), 1000 HMU operating hrs (+50 hrs), 1500 HMU operating hrs (+50 hrs).

(3) If a rejectable indication is found during any inspection required by paragraphs (g)(1) or (2) of this AD, replace the sleeve assembly on the affected high-pressure pump drive gear shaft or replace the affected HMU in accordance with paragraph 2.4.2 or 4.4.2 of the MSB.

(h) Definitions

(1) A Group 1 HMU is an HMU that was first installed on or before January 31, 2013, and that has not previously been inspected in accordance with Safran Helicopter Engines MSB 319 73 2825 version G or later.

(2) A Group 2 HMU is an HMU that was first installed after January 31, 2013, or a HMU that has previously been inspected in accordance with Safran Helicopter Engines MSB 319 73 2825 version G or later.

(i) No Reporting Requirement

The reporting requirements specified in the Accomplishment Instructions, paragraph 2.4.2, of the MSB are not required by this AD.

(j) Credit for Previous Actions

You may take credit for any initial inspection or replacement of an HMU or the sleeve assembly on the affected high-pressure pump drive gear shaft required by paragraph (g) of this AD if you performed the inspection or replacement in accordance with Safran Helicopter Engines MSB 319 73 2825, version G, dated January 24, 2013; version H, dated

September 1, 2014; or version I, dated April 26, 2016.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Related Information

(1) For more information about this AD, contact Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7134; fax: (781) 238–7199; email: *wego.wang@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0033, dated February 25, 2020, for more information. You may examine the EASA AD in the AD docket at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2021–0137.

(3) For service information identified in this AD, contact Safran Helicopter Engines, S.A., Avenue du 1er Mai, Tarnos, France; phone: +33 (0) 5 59 74 40 00. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

Issued on March 5, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–05047 Filed 3–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25084; Project Identifier 2005–SW–38–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is reopening the comment period for an earlier proposed rulemaking (NPRM) for certain Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 206L series helicopters. The NPRM proposed to require replacing certain low fuel level detector switch units (switch units) and testing certain other switch units to determine if replacement is required. The NPRM was prompted by a manufacturing flaw that could cause the switch units to hang in the high position and fail to indicate a low fuel condition. This action reopens the comment period because a significant amount of time has elapsed since the NPRM was published. This action also revises the NPRM by updating the type certificate holder's name, updating the estimated cost information, clarifying and expanding the applicability, clarifying the requirements, adding a compliance time, and adding parts installation prohibitions. The FAA is proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, the agency is requesting comments on this SNPRM.

DATES: The FAA must receive comments on this SNPRM by April 26, 2021.

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

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

For service information identified in this SNPRM, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *https://www.bellcustomer.com.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2006–25084; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, this SNPRM, the Transport Canada AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–25084; Project Identifier 2005–SW–38–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may again revise this proposal because of those comments.

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

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 SNPRM 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 SNPRM, 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 SNPRM. Submissions containing

CBI should be sent to Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to Bell Helicopter Textron, Inc., Model 206L series helicopters with a switch unit part number 206–063–613–003, serial numbers (S/Ns) 1413, 1414, 1415, 1424, 1428, 1430, 1432, and 1433, installed. The NPRM published in the **Federal Register** on June 22, 2006 (71 FR 35836). In the NPRM, the FAA proposed to require inspecting the switch unit to determine if it is an affected serial-numbered switch unit and replacing each affected switch unit with an airworthy switch unit that has an S/N other than those listed in the applicability. If the S/N is missing or unreadable; the mounting flange of the switch unit is not colored red; and the purchase date of the switch unit is between April 19 and July 26, 2004, or could not be determined, the NPRM proposed to require an operational test. If the switch unit failed the operational test, the NPRM proposed to require replacing the switch unit with an airworthy switch unit that has an S/N other than those listed in the applicability. The NPRM was prompted by Canadian AD CF–2004–24, dated November 24, 2004, issued by Transport Canada, which is the aviation authority for Canada, to correct an unsafe condition for Model 206L series helicopters. Transport Canada advised that eight low fuel level detectors of listed S/Ns may have been installed on Model 206L series helicopters. These detectors could hang in the high position and fail to indicate the low fuel condition. Accordingly, Transport Canada advised removing the affected switch units from service.

Actions Since the NPRM Was Issued

Since the NPRM was issued, a significant amount of time has elapsed requiring the FAA to reopen the comment period to allow the public a chance to comment on the proposed actions.

The NPRM also inadvertently identified the type certificate holder's name as, ''Bell Helicopter Textron Canada'' and ''Bell Helicopter Textron, Inc.'' instead of the correct name of ''Bell Helicopter Textron Canada Limited.'' Additionally, since the FAA issued the NPRM, Bell Helicopter Textron Canada Limited has changed its name to Bell Textron Canada Limited. This SNPRM reflects those changes and updates the contact information to obtain service documents. This SNPRM also updates the estimated cost information.

Additional review also revealed necessary changes to address the unsafe condition. This SNPRM proposes to clarify the applicability by identifying the specific model helicopters in the series that are applicable, clarify affected model designations, expand the applicability by adding switch units with a missing or illegible S/N or with an S/N that cannot be determined, add a compliance time that was missing in the NPRM, and add parts installation prohibitions. This SNPRM also updates the AD format. As a result, paragraph identifiers have changed, the proposed requirements have been revised by removing unnecessary information, and the information in a figure has changed to a note.

Lastly, the FAA's Aircraft Certification Service has changed its organizational structure. The new structure replaces product directorates with functional divisions. The FAA has revised some of the office titles and nomenclature throughout this proposed AD to reflect the new organizational changes. Additional information about the new structure can be found in the Notice published on July 25, 2017 (82 FR 34564).

Comments

The following discussion presents the comments received on the NPRM and the FAA's response.

Request

The Modification and Replacement Parts Association comments in support of replacing certain defective switch units with airworthy switch units. However, the Modification and Replacement Parts Association stated that specifying the particular part that must be installed conflicts with 14 CFR 21.303 by invalidating previous approvals under parts manufacturer approval (PMA) and prohibiting the development, manufacture, and installation of PMA parts designed to be free of the noted defects. In light of this, the Modification and Replacement Parts Association requested allowing equivalent replacement parts to correct the unsafe condition under PMA (other than identicality) in the AD.

The FAA agrees and has changed instances of replacing an affected switch unit with an airworthy switch unit that does not have a serial number listed in the applicability. This SNPRM proposes to require removing affected switch units from service instead. It is assumed that an approved and airworthy part will be installed in order to return the helicopter to service.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD after determining the unsafe condition described previously is likely to exist or develop in other helicopters of the same type designs. Certain changes described above expand the scope of the NPRM. As a result, it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Related Service Information

The FAA reviewed Bell Helicopter Textron Alert Service Bulletin No. 206L–04–132, Revision A, dated October 4, 2004. This service information specifies procedures for determining whether any of eight specified serial-numbered detector switch units are installed because they may fail to indicate a low fuel condition. If the S/N is missing or unreadable, the service information specifies inspecting the switch unit to determine if it is an affected switch unit. The service information also specifies removing each affected switch unit.

Proposed AD Requirements in This SNPRM

This proposed AD would require removing certain switch units from service and prohibit installing those switch units.

This proposed AD would also require accomplishing an operational test of certain other switch units, and if the operational test fails, removing the switch unit from service. This proposed AD would also prohibit installing those certain other switch units unless they pass an operational test.

Differences Between This SNPRM and the Transport Canada AD

This proposed AD applies to switch units with a missing or illegible S/N or with an S/N that cannot be determined, and requires certain actions for those switch units, whereas the Transport Canada AD does not.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect up to 558 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Replacing a switch unit would take about 4 work-hours and parts would cost about $921 for an estimated cost of $1,261 per switch unit and up to $703,638 for the U.S. fleet. Accomplishing an operational test would take about 4 work-hours for an estimated cost of $340 per switch unit and up to $189,720 for the U.S. fleet.

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, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited): Docket No. FAA–2006–25084; Project Identifier 2005–SW–38–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by April 26, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, certificated in any category, with a low fuel level detector switch unit (switch unit) part number (P/N) 206–063–613–003:

(1) With a switch unit serial number (S/N) 1413, 1414, 1415, 1424, 1428, 1430, 1432, or 1433 installed, or

(2) With a missing or illegible switch unit S/N or if the S/N cannot be determined, installed.

Note 1 to paragraph (c): Helicopters with a 206L–1+ designation are Model 206L–1 helicopters. Helicopters with a 206L–3+ designation are Model 206L–3 helicopters.

Note 2 to paragraph (c): The switch unit is located on the aft fuel boost pump assembly. The P/N and S/N for the switch unit could be on the outside face of the attachment flange, in the cross hatched area of the switch unit.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2842, Fuel Quantity Sensor.

(e) Unsafe Condition

This AD was prompted by a manufacturing flaw that could cause a switch unit to hang in the high position and fail to indicate a low fuel condition. The FAA is issuing this AD to prevent failure of the switch unit to indicate a low fuel condition that could lead to fuel exhaustion and which if not addressed, could result in a subsequent forced landing.

(f) Compliance

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

(g) Required Actions

(1) For a switch unit identified in paragraph (c)(1) of this AD, on or before the next 100-hour time-in-service inspection after the effective date of this AD, remove the switch unit from service.

(2) For a switch unit identified in paragraph (c)(2) of this AD, on or before the next 100-hour time-in-service inspection after the effective date of this AD:

(i) Determine the color of the switch unit mounting flange. If the mounting flange color is any color other than red, determine the purchase date. If the purchase date of the switch unit is between April 19 and July 26, 2004, or cannot be determined, do an operational test.

(ii) If the switch unit fails the operational test, before further flight, remove the switch unit from service.

(3) As of the effective date of this AD, do not install a switch unit identified in paragraph (c)(1) of this AD on any helicopter.

(4) As of the effective date of this AD, do not install a switch unit identified in paragraph (c)(2) of this AD on any helicopter unless the actions in paragraphs (g)(2)(i) and (ii) of this AD have been accomplished.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

(2) For service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *https://www.bellcustomer.com.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in Transport Canada AD CF–2004–24, dated November 24, 2004. You may view the Transport Canada AD on the internet at *https://www.regulations.gov* in the AD Docket.

Issued on March 8, 2021.

Ross Landes,

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

[FR Doc. 2021–05149 Filed 3–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0143; Product Identifier 2019–SW–024–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Helicopters Deutschland GmbH Model BO–105A, BO–105C, BO–105S, and BO–105LS A–3 helicopters. This proposed AD was prompted by the FAA's determination that aging of the elastomeric material in a tension torsion strap (TT-strap) could affect the structural characteristics of the TT-strap. This proposed AD would require replacement of certain TT-straps with serviceable parts and implementation of a new storage life limit for TT-straps, as specified in a European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 26, 2021.

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

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

For material that is proposed for IBR in this AD, 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 material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0143.

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–2021–0143; 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: Blaine Williams, Aviation Safety Engineer, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone 562–627–5371; email *blaine.willaims@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0143; Product Identifier 2019–SW–024–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

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 Blaine Williams, Aviation Safety Engineer, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone 562–627–5371; email *blaine.willaims@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The EASA (now European Union Aviation Safety Agency), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0024, dated February 4, 2019 (EASA AD 2019–0024) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus Helicopters Deutschland GmbH Model BO–105A, BO–105C, BO–105D, BO–105S, and BO–105LS A–3 helicopters. Model BO–105D helicopters are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those helicopters in the applicability.

This proposed AD was prompted by the FAA's determination that aging of the elastomeric material in a TT-strap could affect the structural characteristics of the TT-strap. The FAA is proposing this AD to address aging of the elastomeric material in a TT-strap, which could lead to premature failure of a TT-strap, resulting in loss of control of the helicopter. See the MCAI for additional background information.

Relationship Between This Proposed AD and AD 2016–25–14

This proposed AD would not supersede AD 2016–25–14, Amendment 39–18740 (81 FR 94944, December 27, 2016) (AD 2016–25–14). This proposed AD would require replacement of certain TT-straps with serviceable parts. Accomplishment of the proposed replacement would then terminate all of the requirements of AD 2016–25–14 for Model BO–105LS A–3 helicopters only.

Related Service Information Under 1 CFR Part 51

EASA AD 2019–0024 describes procedures for replacing certain TT-straps with serviceable parts and requires a storage life limit for TT-straps.

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 bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD after evaluating all the relevant information and determining the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0024, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the MCAI.''

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 2019–0024 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0024 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 2019–0024 that is required for compliance with EASA AD 2019–0024 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0143 after the FAA final rule is published.

Differences Between This Proposed AD and the MCAI

Although EASA AD 2019–0024 does not specify a life limit for the Lord TT-Straps part number (P/N) J17322–1 and P/N 117–14111, this proposed AD does specify a life limit for those parts.

Where EASA AD 2019–0024 specifies that installation of a Lord TT-Strap is allowed provided the first flight of that helicopter after that installation is accomplished before the storage life of that Lord TT-Strap exceeds 5 years, for this proposed AD, the installation of a Lord TT-Strap is allowed provided the first flight of that helicopter after that installation is accomplished before 5 years since the TT-strap's date of manufacture.

Where EASA AD 2019–0024 defines ''serviceable part'' as a Lord TT-Strap having a storage life not exceeding 5 years, for this proposed AD, a serviceable part is Lord TT-straps P/N J17322–1 and P/N 117–14111 having less than 5 years since that TT-strap's date of manufacture.

Where EASA AD 2019–0024 specifies that the ''cure date'' of a TT-Strap can be determined using the information provided in the applicable service information specified in EASA AD 2019–0024, or contacting Airbus Helicopters for applicable instructions, for this proposed AD, the option of contacting Airbus Helicopters is not required.

Costs of Compliance

The FAA estimates that this proposed AD affects 61 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340.	Up to $4,800	Up to $5,140	Up to $313,540.

According to the manufacturer, some or all of the costs of this proposed 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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters Deutschland GmbH: Docket No. FAA–2021–0143; Product Identifier 2019–SW–024–AD.

(a) Comments Due Date

The FAA must receive comments by April 26, 2021.

(b) Affected Airworthiness Directives (ADs)

This AD affects AD 2016–25–14, Amendment 39–18740 (81 FR 94944, December 27, 2016) (AD 2016–25–14).

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model BO–105A, BO–105C, BO–105S, and BO–105LS A–3 helicopters, certificated in any category, equipped with a tension torsion strap (TT-strap) as identified in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2019–0024, dated February 4, 2019 (EASA AD 2019–0024).

(d) Subject

Joint Aircraft System Component (JASC) Code 6200, Main Rotor System.

(e) Reason

This AD was prompted by the FAA's determination that aging of the elastomeric material in a TT-strap could affect the structural characteristics of the TT-strap. The FAA is issuing this AD to address aging of the elastomeric material in a TT-strap, which could lead to premature failure of a TT-strap, resulting in loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0024.

(h) Exceptions to EASA AD 2019–0024

(1) Where EASA AD 2019–0024 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0024 does not apply to this AD.

(3) Where EASA AD 2019–0024 and the service information referenced in EASA AD 2019–0024 specify contacting Airbus Helicopters Deutschland if the storage time for a TT-strap is equal to or greater than 5 years, this AD requires repair using a method approved by the Manager, International Validation Branch, FAA. For a repair method to be approved by the Manager, International Validation Branch, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(4) Although the service information referenced in EASA AD 2019–0024 specifies to scrap certain parts, this AD requires removing those parts from service instead.

(5) Where paragraph (1) of EASA AD 2019–0024 specifies to replace each Lord TT-Strap and Bendix TT-Strap ''in accordance with the instructions of the applicable ASB,'' the replacement must be done using FAA-approved procedures.

(6) Where EASA AD 2019–0024 refers to the airworthiness limitations items of the airworthiness limitations section of the aircraft maintenance manual (AMM) for the definition of service life limit (SLL), this AD requires using the life limits specified in paragraphs (h)(6)(i) through (iii) of this AD, as applicable:

(i) For Bendix TT-Strap part number (P/N) 2604067 and P/N 117–14110: Before 10 years or 40,000 flight cycles on the part, whichever occurs first.

(ii) For Bendix TT-Strap P/N 2602559 and P/N 2606576: Before 10 years, 2,400 hours time-in-service, or 40,000 flight cycles on the part, whichever occurs first.

(iii) For Lord TT-Strap P/N J17322–1 and P/N 117–14111: Before 12 years or 40,000 flight cycles on the part, whichever occurs first.

(7) Where paragraph (3) of EASA AD 2019–0024 specifies that installation of a Lord TT-Strap is allowed provided the first flight of that helicopter after that installation is accomplished before the storage life of that Lord TT-Strap exceeds 5 years, for this AD, the installation of a Lord TT-Strap is allowed provided the first flight of that helicopter after that installation is accomplished before 5 years since the TT-strap's date of manufacture.

(8) Where EASA AD 2019–0024 defines ''serviceable part'' as a Lord TT-Strap having a storage life not exceeding 5 years, for this AD, a serviceable part is Lord TT-straps P/N J17322–1 and P/N 117–14111 having less than 5 years since that TT-strap's date of manufacture.

(9) Where EASA AD 2019–0024 specifies that the ''cure date'' of a TT-Strap can be determined using the information provided in the applicable service information specified in EASA AD 2019–0024, or contacting Airbus Helicopters for applicable instructions, for this AD, the option of contacting Airbus Helicopters is not required.

(i) Repetitive Replacement

After accomplishing the replacement specified in paragraph (1) of EASA AD 2019–0024, thereafter, replace the Lord TT-straps P/N J17322–1 and P/N 117–14111, at intervals not to exceed: Before 12 years or 40,000 flight cycles on the part, whichever occurs first.

(j) Terminating Action for AD 2016–25–14

For Model B0–105LS A–3 helicopters: After accomplishing the replacement specified in paragraph (1) of EASA AD 2019–0024 all of the actions required by AD 2016–15–14 are terminated for that helicopter only.

(k) Special Flight Permit

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

(l) Alternative Methods of Compliance (AMOCs):

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

(m) Related Information

(1) For EASA AD 2019–0024, 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, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0143.

(2) For more information about this AD, contact Blaine Williams, Aviation Safety Engineer, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712 4137; telephone 562–627–5371; email *blaine.williams@faa.gov.*

Issued on March 8, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–05148 Filed 3–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0161; Airspace Docket No. 21–ASW–5]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Yoakum, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Yoakum Municipal Airport, Yoakum, TX. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Yoakum non-directional beacon (NDB). The geographic coordinates of the airport would also be updated to coincide with the FAAs aeronautical database.

DATES: Comments must be received on or before April 26, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–0161/Airspace Docket No. 21–ASW–5, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Yoakum Municipal Airport, TX, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–0161/Airspace Docket No. 21–ASW–5.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface within a 6.3-mile (decreased from 7.2-mile) radius of Yoakum Municipal Airport, Yoakum, TX; and updating geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review due to the decommissioning of the Yoakum NDB which provided

navigation information for the instrument procedures at this airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

ASW TX E5 Yoakum, TX [Amended]

Yoakum Municipal Airport, TX
(Lat. 29°18′47″ N, long. 97°08′18″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Yoakum Municipal Airport.

Issued in Fort Worth, Texas, on March 8, 2021.

Martin A. Skinner,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–05139 Filed 3–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 780, 788 and 795

RIN 1235–AA34

Independent Contractor Status Under the Fair Labor Standards Act; Withdrawal

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This notice of proposed rulemaking (NPRM) proposes to withdraw the final rule titled ''Independent Contractor Status under the Fair Labor Standards Act,'' which was published on January 7, 2021 and the effective date of which is currently May 7, 2021.

DATES: Submit written comments on or before April 12, 2021.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA34, by either of the following methods: *Electronic Comments:* Submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. *Mail:* Address written submissions to Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW, Washington, DC 20210. *Instructions:* Please submit only one copy of your comments by only one method. Commenters submitting file attachments on *www.regulations.gov* are advised that uploading text-recognized documents—*i.e.,* documents in a native file format or documents which have undergone optical character recognition (OCR)—enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration. Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *https://www.regulations.gov,* including any personal information provided. The Department will post comments gathered and submitted by a third-party organization as a group under a single document ID number on *https://www.regulations.gov.* All comments must be received by 11:59 p.m. EST on April 12, 2021 for consideration. The Department strongly recommends that commenters submit their comments electronically via *http://www.regulations.gov* to ensure timely receipt prior to the close of the comment period, as the Department continues to experience delays in the receipt of mail. Submit only one copy of your comments by only one method. *Docket:* For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this proposal may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Legal Background

The Fair Labor Standards Act (FLSA or Act) requires all covered employers to pay nonexempt employees at least the federal minimum wage for every hour worked in a non-overtime workweek.[1] In an overtime workweek, for all hours worked in excess of 40 in a workweek, covered employers must pay a

[1] 29 U.S.C. 206(a).

nonexempt employee at least one and one-half times the employee's regular rate.[2] The FLSA also requires covered employers to make, keep, and preserve certain records regarding employees.[3]

The FLSA's minimum wage and overtime pay requirements apply only to employees.[4] Section 3(e) generally defines ''employee'' to mean ''any individual employed by an employer.''[5] Section 3(d) of the Act defines ''employer'' to ''include[ ] any person acting directly or indirectly in the interest of an employer in relation to an employee.''[6] Section 3(g) defines ''employ'' to ''include[ ] to suffer or permit to work.''[7]

The Supreme Court, in interpreting these definitions, has stated that ''[a] broader or more comprehensive coverage of employees within the stated categories would be difficult to frame,'' and that ''the term 'employee' had been given 'the broadest definition that has ever been included in any one act.' ''[8] The Supreme Court has further stated that the ''striking breadth'' of the FLSA's definition of ''employ''—''to suffer or permit to work''—''stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles.''[9] Thus, the FLSA expressly rejects the common law standard for determining whether a worker is an employee.[10]

Though the FLSA's definition of employee is broader than the common law definition, the Supreme Court has also recognized that the Act was ''not intended to stamp all persons as employees.''[11] The Supreme Court has acknowledged that even a broad definition of employee ''does not mean that all who render service to an industry are employees.''[12] One category of workers that has been recognized as being outside the FLSA's broad definition of ''employees'' is ''independent contractors.''[13] Courts have thus recognized a need to delineate between employees, who fall under the protections of the FLSA, and independent contractors, who do not.

The Supreme Court has repeatedly emphasized that the test for whether an individual is an employee under the FLSA is one of ''economic reality.''[14] Under this test, the ''technical concepts'' used to label a worker as an employee or independent contractor do not drive the analysis, but rather it is the economic realities of the relationship between the worker and the employer that is determinative.[15]

In *United States* v. *Silk,* 331 U.S. 704, 712 (1947), an early case applying an economic realities test under the Social Security Act, the Supreme Court acknowledged that ''[p]robably it is quite impossible to extract from the statute a rule of thumb'' regarding the distinction between employees and independent contractors.[16] The Court suggested that federal agencies and courts ''will find that degrees of control, opportunities for profit or loss, investment in facilities, permanency of relation and skill required in the claimed independent operation are important for decision.''[17] The Court cautioned that no single factor is controlling and that the list is not exhaustive.[18] The Court went on to note that the workers in that case were ''from one standpoint an integral part of the businesses'' of the employer, supporting a conclusion that some of the workers in that case were employees.[19]

The same day that the Supreme Court issued its decision in *Silk,* it also issued *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722 (1947), in which it affirmed a circuit court decision that analyzed an FLSA employment relationship based on its economic realities.[20] The Court rejected an approach based on ''isolated factors'' and again considered ''the circumstances of the whole activity.''[21] The Court considered several of the factors that it listed in *Silk* as they related to meat boners on a slaughterhouse's production line, ultimately determining that the boners were employees.[22] The Court noted, among other things, that the boners did a specialty job on the production line, had no business organization that could shift to a different slaughter-house, and were best characterized as ''part of the integrated unit of production under such circumstances that the workers performing the task were employees of the establishment.''[23]

Since *Silk* and *Rutherford Food,* federal courts of appeals have applied the economic realities test to distinguish independent contractors from employees who are entitled to the FLSA's protections. Recognizing that the common law concept of ''employee'' had been rejected for FLSA purposes, courts of appeals followed the Supreme Court's instruction that '''employees are those who as a matter of economic realities are dependent upon the business to which they render service.' ''[24]

All of the courts of appeals have followed the economic realities test, and nearly all of them analyze the economic realities of an employment relationship using the factors identified in *Silk.*[25] No court of appeals considers any factor or combination of factors to universally predominate over the others in every case.[26] For example, the Ninth Circuit

[2] 29 U.S.C. 207(a).

[3] 29 U.S.C. 211(c).

[4] *See* 29 U.S.C. 206 (minimum wage) and 207 (overtime pay).

[5] 29 U.S.C. 203(e)(1).

[6] 29 U.S.C. 203(d).

[7] 29 U.S.C. 203(g).

[8] *United States* v. *Rosenwasser,* 323 U.S. 360, 362, 363 n.3 (1945) (quoting 81 Cong. Rec. 7657 (statement of Senator Black)).

[9] *Nationwide Mut. Ins.* v. *Darden,* 503 U.S. 318, 326 (1992).

[10] *See id.; Walling* v. *Portland Terminal Co.,* 330 U.S. 148, 150–51 (1947) (''But in determining who are 'employees' under the Act, common law employee categories or employer-employee classifications under other statutes are not of controlling significance. This Act contains its own definitions, comprehensive enough to require its application to many persons and working relationships, which prior to this Act, were not deemed to fall within an employer-employee category.'' (citation omitted)).

[11] *Portland Terminal,* 330 U.S. at 152; *see also Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, 729 (1947) (workers may not be employees when their work does not ''in its essence . . . follow[ ] the usual path of an employee'').

[12] *United States* v. *Silk,* 331 U.S. 704, 712 (1947) (analyzing the definition of employee under the Social Security Act).

[13] *Rutherford Food,* 331 U.S. at 729 (''There may be independent contractors who take part in production or distribution who would alone be responsible for the wages and hours of their own employees.'').

[14] *Tony & Susan Alamo Found.* v. *Sec'y of Labor,* 471 U.S. 290, 301 (1985) (quoting *Goldberg* v. *Whitaker House Coop., Inc.,* 366 U.S. 28, 33 (1961)).

[15] *Goldberg,* 366 U.S. at 32–33.

[16] 331 U.S. at 716. At the time, the Supreme Court noted that ''[d]ecisions that define the coverage of the employer-[e]mployee relationship under the Labor and Social Security acts are persuasive in the consideration of a similar coverage under the Fair Labor Standards Act.'' *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, 723–23 (1947). However, Congress amended the Social Security Act in 1948.

[17] 331 U.S. at 716.

[18] *See id.*

[19] *Id.*

[20] *See Rutherford Food,* 331 U.S. at 727.

[21] *Id.* at 730.

[22] *See id.*

[23] *Id.* at 729–30.

[24] *Usery* v. *Pilgrim Equip. Co.,* 527 F.2d 1308, 1311 (5th Cir. 1976) (quoting *Bartels* v. *Birmingham,* 332 U.S. 126, 130 (1947)).

[25] *See Baystate Alternative Staffing, Inc.* v. *Herman,* 163 F.3d 668, 675 (1st Cir. 1998); *Brock* v. *Superior Care, Inc.,* 840 F.2d 1054, 1058–59 (2d Cir. 1988); *Donovan* v. *DialAmerica Mktg., Inc.,* 757 F.2d 1376, 1382–83 (3d Cir. 1985); *McFeeley* v. *Jackson Street Entm't, LLC,* 825 F.3d 235, 241 (4th Cir. 2016); *Acosta* v. *Off Duty Police Services, Inc.,* 915 F.3d 1050, 1055 (6th Cir. 2019); *Secretary of Labor, U.S. Dep't of Labor* v. *Lauritzen,* 835 F.2d 1529, 1534 (7th Cir. 1987); *Karlson* v. *Action Process Service & Private Investigation, LLC,* 860 F.3d 1089, 1092 (8th Cir. 2017); *Real* v. *Driscoll Strawberry Associates, Inc.,* 603 F.2d 748, 754 (9th Cir. 1979); *Acosta* v. *Paragon Contractors Corp.,* 884 F.3d 1225, 1235 (10th Cir. 2018); *Scantland* v. *Jeffry Knight, Inc.,* 721 F.3d 1308, 1311 (11th Cir. 2013); *Morrison* v. *Int'l Programs Consortium, Inc.,* 253 F.3d 5, 11 (D.C. Cir. 2001).

[26] *See, e.g., Parrish* v. *Premier Directional Drilling, L.P.,* 917 F.3d 369, 380 (5th Cir. 2019)

has explained that some of the factors ''which may be useful in distinguishing employees from independent contractors for purposes of social legislation such as the FLSA'' are: (1) The degree of the employer's right to control the manner in which the work is to be performed; (2) the worker's opportunity for profit or loss depending upon his or her managerial skill; (3) the worker's investment in equipment or materials required for his or her task, or employment of helpers; (4) whether the service rendered requires a special skill; (5) the degree of permanence of the working relationship; and (6) whether the service rendered is an integral part of the employer's business.[27] The Ninth Circuit repeated the Supreme Court's instruction that no individual factor is conclusive and that the ultimate determination depends upon the circumstances of the whole activity.[28]

Some courts of appeals have applied the factors with some variations. For example, the Fifth Circuit typically does not list the ''integral part'' factor as one of the considerations that guides the analysis.[29] Nevertheless, the Fifth Circuit—recognizing that the listed factors are not exhaustive—has considered the extent to which a worker's function is integral to a business as part of its economic realities analysis.[30] The Second Circuit varies in that it treats the employee's opportunity for profit or loss and the employee's investment as a single factor, but it still uses the same considerations as the other circuits to inform its economic realities analysis.[31]

In sum, since the 1940s, federal courts have consistently analyzed the question of employee status under the FLSA by examining the economic realities of the employment relationship to determine whether the worker is dependent on the employer for work or is in business for him or herself.[32] In doing so, courts have looked to the six factors first articulated in *Silk* as useful guideposts while acknowledging that those factors are not exhaustive and should not be applied mechanically.[33]

B. Prior Wage and Hour Division Guidance

Since at least 1954, the Wage and Hour Division (WHD) has applied variations of this multifactor analysis when considering whether a worker is an employee under the FLSA or an independent contractor.[34] In a guidance document issued in 1964, WHD stated, ''The Supreme Court has made it clear that an employee, as distinguished from a person who is engaged in a business of his own, is one who as a matter of economic reality follows the usual path of an employee and is dependent on the business which he serves.'' [35] Like the courts, WHD has consistently applied a multifactor economic realities analysis when determining whether a worker is an employee under the FLSA or an independent contractor.[36]

The Department's primary sub-regulatory guidance addressing this topic, WHD Fact Sheet #13, ''Employment Relationship Under the Fair Labor Standards Act (FLSA),'' similarly states that, when determining whether an employment relationship exists under the FLSA, the test is the ''economic reality'' rather than an application of ''technical concepts,'' and that status ''is not determined by common law standards relating to master and servant.'' [37] Instead, ''it is the total activity or situation which controls,'' and ''an employee, as distinguished from a person who is engaged in a business of his or her own, is one who, as a matter of economic reality, follows the usual path of an employee and is dependent on the business which he or she serves.'' The fact sheet identifies seven economic realities factors; in addition to factors that are similar to the six factors used by the federal courts of appeals and discussed above, it also identifies the worker's ''degree of independent business organization and operation.'' The fact sheet identifies certain other factors that are immaterial to determining whether a worker is an employee covered under the FLSA or independent contractor, including the place where work is performed, the absence of a formal employment agreement, and whether an alleged independent contractor is licensed by a State or local government.[38]

In 1969 and 1972, WHD promulgated regulations relevant to specific industries after Congress amended the FLSA to change the way it applied to those industries.[39] Those regulations applied a multifactor analysis under the FLSA for determining whether a worker is an employee or independent contractor in those specific contexts.[40] Further, WHD promulgated a regulation in 1997 applying a multifactor economic realities analysis for distinguishing between employees and independent contractors under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).[41]

On July 15, 2015, WHD issued Administrator's Interpretation No. 2015–1, ''The Application of the Fair Labor Standards Act's 'Suffer or Permit'

(stating that it ''is impossible to assign to each of these factors a specific and invariably applied weight'' (citation omitted)); *Martin* v. *Selker Bros.,* 949 F.2d 1286, 1293 (3d Cir. 1991) (''It is a well-established principle that the determination of the employment relationship does not depend on isolated factors . . . neither the presence nor the absence of any particular factor is dispositive.''); *Scantland,* 721 F.3d at 1312 n.2 (the relative weight of each factor ''depends on the facts of the case'').

[27] *Real,* 603 F.2d at 754.

[28] *See id.*

[29] *See Usery,* 527 F.2d at 1311.

[30] *See Hobbs* v. *Petroplex Pipe and Constr., Inc.,* 946 F.3d 824, 836 (5th Cir. 2020).

[31] *See, e.g., Franze* v. *Bimbo Bakeries USA, Inc.,* 826 F. App'x 74, 76 (2d Cir. 2020).

[32] *See, e.g., Franze,* 826 F. App'x at 76; *Razak* v. *Uber Techs., Inc.,* 951 F.3d 137, 142–43 (3d Cir. 2020); *Gilbo* v. *Agment, LLC,* 831 F. App'x 772, 775 (6th Cir. 2020).

[33] *See, e.g., Superior Care,* 840 F.2d at 1054.

[34] *See* WHD Opinion Letter (Aug. 13, 1954) (applying six factors very similar to the six economic realities factors currently used by courts of appeals).

[35] WHD Opinion Letter FLSA–795 (Sept. 30, 1964).

[36] *See, e.g.,* WHD Opinion Letter, 2002 WL 32406602, at *2 (Sept. 5, 2002); WHD Opinion Letter, 2000 WL 34444342, at *3 (Dec. 7, 2000); WHD Opinion Letter, 2000 WL 34444352, at *1 (Jul. 5, 2000); WHD Opinion Letter, 1999 WL 1788137, at *1 (Jul. 12, 1999); WHD Opinion Letter, 1995 WL 1032489, at *1 (June 5, 1995); WHD Opinion Letter, 1995 WL 1032469, at *1 (Mar. 2, 1995); WHD Opinion Letter, 1986 WL 740454, at *1 (June 23, 1986); WHD Opinion Letter, 1986 WL 1171083, at *1 (Jan. 14, 1986); WHD Opinion Letter WH–476, 1978 WL 51437, at *2 (Oct. 19, 1978); WHD Opinion Letter WH–361, 1975 WL 40984, at *1 (Oct. 1, 1975); WHD Opinion Letter (Sept. 12, 1969); WHD Opinion Letter (Oct. 12, 1965).

[37] Fact Sheet #13 is available at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs13.pdf* (last visited March 9, 2021).

[38] WHD maintains additional sub-regulatory guidance addressing whether a worker is an employee or independent contractor under the FLSA. For example, WHD's Field Operations Handbook, in its section titled ''Test of the employment relationship,'' cross-references Fact Sheet #13. *See* Section 10b05 of Chapter 10 (''FLSA Coverage: Employment Relationship, Statutory Exclusions, Geographical Limits'') of WHD's Field Operations Handbook, available at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch10.pdf* (last visited March9, 2021); *see also https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/misclassification-facts.pdf* (last visited March9, 2021). And the section of WHD's elaws Advisor compliance-assistance materials addressing independent contractors provides guidance very similar to that of Fact Sheet #13. *See https://webapps.dol.gov/elaws/whd/flsa/scope/ee14.asp* (last visited March9, 2021).

[39] *See* 37 FR 12084 (explaining that Part 780 was revised in order to adapt to the changes made by the Fair Labor Standards Amendments of 1966 (80 Stat. 830) and implementing 29 CFR 780.330(b) to apply a six-factor economic realities test to determine whether a sharecropper or tenant is an employee under the Act or an independent contractor); 34 FR 15794 (explaining that Part 788 was revised in order to adapt to the changes made by the 1966 Amendments and implementing 29 CFR 788.16(a) to apply a six-factor economic realities test to determine whether workers in certain forestry and logging operations are employees under the Act or independent contractors).

[40] *See id.*

[41] *See* 62 FR 11734 (amending 29 CFR 500.20(h)(4)).

Standard in the Identification of Employees Who Are Misclassified as Independent Contractors'' (AI 2015–1).[42] AI 2015–1 reiterated that the economic realities of the relationship are determinative and that the ultimate inquiry is whether the worker is economically dependent on the employer or truly in business for him or herself. It identified six economic realities factors that followed the six factors used by most federal courts of appeals: (1) The extent to which the work performed is an integral part of the employer's business; (2) the worker's opportunity for profit or loss depending on his or her managerial skill; (3) the extent of the relative investments of the employer and the worker; (4) whether the work performed requires special skills and initiative; (5) the permanency of the relationship; and (6) the degree of control exercised or retained by the employer. AI–2015–1 further emphasized that the factors should not be applied in a mechanical fashion and that no one factor was determinative. AI 2015–1 was withdrawn on June 7, 2017.[43]

In 2019, WHD issued an opinion letter, FLSA2019–6, regarding whether workers who worked for companies operating self-described ''virtual marketplaces'' were employees covered under the FLSA or independent contractors.[44] Like WHD's prior guidance, the letter stated that the determination depended on the economic realities of the relationship and that the ultimate inquiry was whether the workers depend on someone else's business or are in business for themselves.[45] The letter identified six economic realities factors that differed slightly from the factors typically articulated by WHD previously: (1) The nature and degree of the employer's control; (2) the permanency of the worker's relationship with the employer; (3) the amount of the worker's investment in facilities, equipment, or helpers; (4) the amount of skill, initiative, judgment, and foresight required for the worker's services; (5) the worker's opportunities for profit or loss; and (6) the extent of the integration of the worker's services into the employer's business.[46] Opinion Letter FLSA2019–6 was withdrawn for further review on February 19, 2021.[47]

C. The January 2021 Independent Contractor Rule

On January 7, 2021, the Department published a final rule entitled ''Independent Contractor Status under the Fair Labor Standards Act'' with an effective date of March 8, 2021 (Independent Contractor Rule or Rule).[48] The Independent Contractor Rule would introduce into Title 29 of the Code of Federal Regulations a new part (Part 795) titled ''Employee or Independent Contractor Classification under the Fair Labor Standards Act'' that would provide a new generally applicable interpretation of employee or independent contractor status under the FLSA.[49] The Rule would also revise WHD's prior interpretations of independent contractor status in 29 CFR 780.330(b) and 29 CFR 788.16(a), both of which apply in limited contexts.[50]

The Department explained that the purpose of the Independent Contractor Rule would be to establish an economic realities test that improved on prior articulations that the Rule viewed as ''unclear and unwieldy.'' [51] It stated that the existing economic realities test applied by WHD and courts suffered from confusion regarding the meaning of ''economic dependence,'' a lack of focus in the multifactor balancing test, and confusion and inefficiency caused by overlap between the factors.[52] The Rule explained that the shortcomings and misconceptions associated with the test were more apparent in the modern economy and that additional clarity would promote innovation in work arrangements.[53]

The Independent Contractor Rule explained that independent contractors are not employees under the FLSA and are therefore not subject to the Act's minimum wage, overtime pay, or recordkeeping requirements.[54] The Rule would adopt an ''economic dependence'' test under which a worker is an employee of an employer if that worker is economically dependent on the employer for work.[55] In contrast, the worker would be an independent contractor if the worker is in business for him or herself.[56]

The Rule's new economic realities test would identify five economic realities factors that would guide the inquiry into a worker's status as an employee or independent contractor.[57] These factors would not be exhaustive, no one factor would be dispositive, and additional factors would be considered if they ''in some way indicate whether the [worker] is in business for him- or herself, as opposed to being economically dependent on the potential employer for work.'' [58] Two of the identified factors would be designated as ''core factors'' that would carry greater weight in the analysis. If both of those factors indicated the same classification, as either an employee or an independent contractor, there would be a ''substantial likelihood'' that classification is the worker's correct classification.[59]

The first core factor would be the nature and degree of control over the work, which would indicate independent contractor status to the extent that the worker exercised substantial control over key aspects of the performance of the work, such as by setting his or her own schedule, by selecting his or her projects, and/or through the ability to work for others, which might include the potential employer's competitors.[60] Requiring the worker to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships) would not constitute control.[61]

The second core factor would be the worker's opportunity for profit or loss.[62] This factor would weigh towards the worker being an independent contractor to the extent the worker has an opportunity to earn profits or incur losses based on either his or her exercise of initiative (such as managerial skill or business acumen or judgment) or his or her management of investment in or capital expenditure on, for example, helpers or equipment or material to

[42] AI 2015–1 is available at 2015 WL 4449086.

[43] *See* News Release 17–0807–NAT, ''US Secretary of Labor Withdraws Joint Employment, Independent Contractor Informal Guidance'' (Jun. 7, 2017), *available at https://www.dol.gov/newsroom/releases/opa/opa20170607* (last visited March9, 2021).

[44] *See* WHD Opinion Letter FLSA2019–6, 2019 WL 1977301 (Apr. 29, 2019) (withdrawn February 19, 2021).

[45] *See id.* at *3.

[46] *See id.* at *4.

[47] *See note at https://www.dol.gov/agencies/whd/opinion-letters/search?FLSA* (last visited March 9, 2021).

[48] *See* 86 FR 1168. WHD had published a notice of proposed rulemaking requesting comments on a proposal. *See* 85 FR 60600 (Sept. 25, 2020). The final rule adopted ''the interpretive guidance set forth in [that proposal] largely as proposed.'' 86 FR 1168.

[49] *See id.*

[50] *See id.*

[51] 86 FR 1172.

[52] 86 FR 1172–75.

[53] *See* 86 FR 1175.

[54] *See* 86 FR 1246 (section 795.105(a)).

[55] *See* 86 FR 1246 (section 795.105(b)).

[56] *See id.*

[57] *See* 86 FR 1246 (section 795.105(c)).

[58] 86 FR 1246–47 (sections 795.105(c) & (d)(2)(iv)).

[59] 86 FR 1246 (section 795.105(c)).

[60] *See* 86 FR 1246–47 (section 795.105(d)(1)(i)).

[61] *See id.*

[62] *See* 86 FR 1247 (section 795.105(d)(1)(ii)).

further the work.[63] While the effects of the worker's exercise of initiative and management of investment would both be considered under this factor, the worker would not need to have an opportunity for profit or loss based on both initiative and management of investment for this factor to weigh towards the worker being an independent contractor.[64] This factor would weigh towards the worker being an employee to the extent the worker is unable to affect his or her earnings or is only able to do so by working more hours or faster.[65]

The Rule would also identify three other factors: The amount of skill required for the work, the degree of permanence of the working relationship between the worker and the employer, and whether the work is part of an integrated unit of production (which is distinct from the concept of the importance or centrality of the worker's work to the employer's business).[66] The Rule would provide that these other factors would be ''less probative and, in some cases, [would] not be probative at all'' and would be ''highly unlikely, either individually or collectively, to outweigh the combined probative value of the two core factors.'' [67]

The Rule would further provide that the actual practice of the parties involved is more relevant than what may be contractually or theoretically possible.[68] The Rule would also provide five examples illustrating how different factors would inform the analysis.[69]

WHD issued Opinion Letters FLSA2021–8 and FLSA2021–9 on January 19, 2021 applying the Rule's analysis to specific factual scenarios, and then withdrew those opinion letters on January 26, 2021, explaining that the letters were issued prematurely because they were based on a Rule that had yet to take effect.[70]

D. Delay of Rule's Effective Date

On February 5, 2021, the Department published a proposal to delay the Independent Contractor Rule's effective date until May 7, 2021, 60 days after the original effective date of March 8, 2021.[71] On March 4, 2021, after considering the approximately 1,500 comments received in response to that proposal, the Department published a final rule delaying the effective date of the Independent Contractor Rule as proposed.[72] The Department explained that the delay was consistent with a January 20, 2021 memorandum from the Assistant to the President and Chief of Staff, titled ''Regulatory Freeze Pending Review.'' [73] The Department further explained that a delay would allow it additional time to consider ''significant and complex'' issues associated with the Rule, including whether the rule effectuates the FLSA's purpose to broadly cover workers as employees as well as the costs and benefits attributed to the rule, including its effect on workers.[74]

II. Proposal To Withdraw

The Department proposes to withdraw the Independent Contractor Rule, which has not yet taken effect. The Department's reasons for proposing to withdraw the Rule are explained below, and the Department requests comments on its proposal.

A. The Rule's Standard Has Never Been Used by Any Court or by WHD, and Is Not Supported by the Act's Text or Case Law

WHD recognizes that the cornerstone of the FLSA is the Act's broad definition of ''employ,'' which provides that an employee under the Act is any individual whom an employer suffers, permits, or otherwise employs to work.[75] Rather than being derived from the common law of agency, the FLSA's ''suffer or permit'' definition of ''employ'' originally came from state laws regulating child labor.[76] This standard was intended to expand coverage beyond employers who controlled the means and manner of performance.[77] The FLSA's breadth in defining the employment relationship, as well as its clear remedial purpose, comes from the statutory text itself as well as the legislative history.[78] This standard ''stretches the meaning of 'employee' [under the FLSA] to cover some parties who might not qualify as such under a strict application of traditional agency law principles.'' [79] The FLSA's overarching inquiry of economic dependence thus establishes a broader scope of employment than that which exists under the common law of agency.

Among the reasons the Department is proposing to withdraw the Rule is that, upon further review and consideration of the Rule, the Department questions whether the Rule is fully aligned with the FLSA's text and purpose or case law describing and applying the economic realities test.

1. The Choice To Elevate Control and Opportunity for Profit or Loss as the ''Most Probative'' Factors in Determining Employee Status Under the FLSA

The Rule would elevate two ''core'' factors, control and opportunity for profit or loss, above all other factors, and would provide that only in ''rare'' cases would the other factors outweigh the core factors.[80] For decades, WHD, consistent with case law, has applied a multi-factor balancing test to assess whether the worker, as a matter of economic reality, is economically dependent on the employer or is in business for him or herself.[81] Courts universally apply this analysis as well and have explained that ''economic reality'' rather than ''technical concepts'' is the test of employment

[63] *See id.*

[64] *See id.*

[65] *See id.*

[66] *See* 86 FR 1247 (section 795.105(d)(2)).

[67] 86 FR 1246 (section 795.105(c)).

[68] *See* 86 FR 1247 (section 795.110).

[69] *See* 86 FR 1247–48 (section 795.115).

[70] *See https://www.dol.gov/agencies/whd/opinion-letters/search?FLSA* (last visited March 9, 2021), noting the withdrawal of Opinion Letters FLSA2021–8 and FLSA2021–9.

[71] *See* 86 FR 8326.

[72] 86 FR 12535.

[73] *Id.* (citing January 20, 2021 memo from the Assistant to the President and Chief of Staff, titled ''Regulatory Freeze Pending Review,'' 86 FR 7424).

[74] *Id.*

[75] *See* 29 U.S.C. 203(e)(1), (g).

[76] *See Rutherford Food,* 331 U.S. at 728 & n.7.

[77] *See generally People ex rel. Price* v. *Sheffield Farms-Slawson-Decker Co.,* 225 N.Y. 25, 29–31 (N.Y. 1918).

[78] *See, e.g., Parrish,* 917 F.3d at 378 (''Given the remedial purposes of the [FLSA], an expansive definition of 'employee' has been adopted by the courts.'' (citation omitted)); *Off Duty Police,* 915 F.3d at 1054–55 (noting, directly under the heading ''Employment Relationship,'' that ''[t]he FLSA is 'a broadly remedial and humanitarian statute . . . designed to correct labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers''' (quoting *Donovan* v. *Brandel,* 736 F.2d 1114, 1116 (6th Cir. 1984) (some internal quotation marks omitted)). The FLSA's broad scope of employment, broader than the common law, was not changed by the Supreme Court's decision in *Encino Motorcars, LLC* v. *Navarro,* 138 S. Ct. 1134 (2018), which explained that the Act's statutory exemptions should be interpreted fairly because there is no textual indication that the exemptions should be construed narrowly. *See* 138 S. Ct. at 1142. Here, the Act's definition of ''employ'' as including ''to suffer or permit to work'' gives a clear textual basis for the breadth of employment under the FLSA. 29 U.S.C. 203(g); *see Off Duty Police,* 915 F.3d at 1062 (''[T]hese [economic reality] factors must be balanced in light of the FLSA's strikingly broad definition of employee.'' (quotations and citation omitted)).

[79] *Darden,* 503 U.S. at 326; *see also Portland Terminal,* 330 U.S. at 150 (in determining employee status under the FLSA, ''common law employee categories or employer-employee classifications under other statutes are not of controlling significance'').

[80] 86 FR 1201, 1246–47 (sections 795.105(c) and (d)).

[81] *See, e.g.,* Fact Sheet #13 (July 2008), available at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs13.pdf* (last visited March 9, 2021).

under the FLSA.[82] WHD and the courts of appeals generally consider and balance the following economic realities factors—derived from the Supreme Court's decisions in *Silk,* 331 U.S. at 716, and *Rutherford Food,* 331 U.S. at 729–30: The nature and degree of the employer's control over the work; the permanency of the worker's relationship with the employer; the degree of skill, initiative, and judgment required for the work; the worker's investment in equipment or materials necessary for the work; the worker's opportunity for profit or loss; whether the service rendered by the worker is an integral part of the employer's business; and the degree of independent business organization and operation.[83]

The Rule would set forth a new analysis elevating two factors (control and opportunity for profit or loss) as ''core'' factors above the other factors, and designating them as having greater probative value.[84] The Rule would further provide that if both core factors point towards the same classification—that the worker is either an employee or an independent contractor—then there would be a substantial likelihood that this is the worker's correct classification.[85] In addition, the preamble to the Rule disagreed that the economic realities test ''requires factors to be unweighted or equally weighted.'' [86] Although the Rule did identify three other factors, it made clear that these ''other factors are less probative and, in some cases, may not be probative at all, and thus are highly unlikely, either individually or collectively, to outweigh the combined probative value of the two core factors.'' [87] The Rule underscored that it ''is quite unlikely for the other, less probative factors to outweigh the combined weight of the core factors. In other words, where the two core factors align, the bulk of the analysis is complete, and anyone who is assessing the classification may approach the remaining factors and circumstances with skepticism, as only in unusual cases would such considerations outweigh the combination of the two core factors.'' [88] Similarly, the Rule would provide that unlisted additional factors may be considered, but that they are ''unlikely to outweigh either of the core factors.'' [89] The Rule noted that ''[w]hile all circumstances must be considered, it does not follow that all circumstances or categories of circumstance, *i.e.,* factors, must also be given equal weight.'' [90] Rather, the Rule would emphasize the control and opportunity for profit or loss factors as more probative than other factors in determining whether an individual is in business for him or herself, and provide that ''other factors are less probative and may have little to no probative value in some circumstances.'' [91]

WHD understands that no court has taken the Rule's approach in analyzing whether a worker is an employee or an independent contractor under the FLSA, and that the Rule would mark a departure from WHD's own longstanding approach. In view of this elevation of only two factors, the Department is concerned that the Rule's approach may be inconsistent with the position, expressed by the Supreme Court and federal courts of appeals, that no single factor in the analysis is dispositive.[92] WHD is not aware of any court that has, as a general and fixed rule, elevated a subset of the economic realities factors, and there is no clear statutory basis for such a predetermined weighting of the factors. Rather, WHD is cognizant of the voluminous case law that emphasizes that it '' 'is impossible to assign to each of these factors a specific and invariably applied weight.' '' [93] Undeniably, courts have generally refused to assign universal weights to certain factors; rather, courts emphasize that the analysis considers the totality of the circumstances and neither the presence nor absence of any particular factor is dispositive.[94]

Accordingly, the Department is concerned that the Rule's approach is in tension with the language of the Act as well as the position, expressed by the Supreme Court and in appellate cases from across the Circuits, that no single factor is determinative in the analysis of whether a worker is an employee or independent contractor and, as such, questions whether the Rule's ''core factor'' approach is supportable.

2. The Role of Control in the Rule's Analysis

As explained, the Independent Contractor Rule would identify two factors as ''core'' factors, would designate them as ''the most probative'' of whether a worker is an employee or independent contractor, and would provide that each core factor ''typically carries greater weight in the analysis than any other factor.'' [95] The nature and degree of control over the work would be one of the two core factors.[96] According to the Rule, ''review of case law indicates that courts of appeals have effectively been affording the control and opportunity factors greater weight, even if they did not always explicitly acknowledge doing so.'' [97] The Rule

[82] *Goldberg,* 366 U.S. at 33; *see also Tony & Susan Alamo,* 471 U.S. at 301 (''The test of employment under the Act is one of 'economic reality.' '') (quoting *Goldberg,* 366 U.S. at 33).

[83] *See, e.g., Razak,* 951 F.3d at 142–43; *Karlson,* 860 F.3d at 1092; *Keller* v. *Miri Microsystems LLC,* 781 F.3d 799, 807 (6th Cir. 2015); *Lauritzen,* 835 F.2d at 1534; *Real,* 603 F.2d at 754; Fact Sheet #13 (July 2008), available at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs13.pdf* (last visited March [insert], 2021).

[84] 86 FR 1246–47 (sections 795.105(c) & (d)).

[85] *See id.*

[86] *Id.* at 1197.

[87] *Id.* at 1246 (section 795.105(c)).

[88] *Id.* at 1197 (referencing the NPRM).

[89] *Id.*

[90] *Id.* at 1201 (internal quotation marks omitted).

[91] *Id.* at 1202.

[92] *See, e.g., Silk,* 331 U.S. at 716 (explaining that ''[n]o one [factor] is controlling'' in the economic realities test, including ''degrees of control''); *Parrish,* 917 F.3d at 380 (stating that it ''is impossible to assign to each of these factors a specific and invariably applied weight'' (citation omitted)); *Selker Bros.,* 949 F.2d at 1293 (''It is a well-established principle that the determination of the employment relationship does not depend on isolated factors . . . neither the presence nor the absence of any particular factor is dispositive.'').

[93] *Parrish,* 917 F.3d at 380 (quoting *Hickey* v. *Arkla Indus., Inc.,* 699 F.2d 748, 752 (5th Cir. 1983)); *see also Scantland,* 721 F.3d at 1312 n.2 (the relative weight of each factor ''depends on the facts of the case'').

[94] *See Razak,* 951 F.3d at 143 (citing *DialAmerica Mktg.,* 757 F.2d at 1382); *see also McFeeley,* 825 F.3d at 241 (''While a six-factor test may lack the virtue of providing definitive guidance to those affected, it allows for flexible application to the myriad different working relationships that exist in the national economy. In other words, the court must adapt its analysis to the particular working relationship, the particular workplace, and the particular industry in each FLSA case.''); *Ellington* v. *City of East Cleveland,* 689 F.3d 549, 555 (6th Cir. 2012) (''This 'economic reality' standard, however, is not a precise test susceptible to formulaic application. . . . It prescribes a case-by-case approach, whereby the court considers the 'circumstances of the whole business activity.' '') (quoting *Brandel,* 736 F.2d at 1116); *Morrison* v. *Int'l Programs Consortium, Inc.,* 253 F.3d 5, 11 (D.C. Cir. 2001) (''No one factor standing alone is dispositive and courts are directed to look at the totality of the circumstances and consider any relevant evidence.''); *Dole* v. *Snell,* 875 F.2d 802, 805 (10th Cir. 1989) (''It is well established that no one of these factors in isolation is dispositive; rather, the test is based upon a totality of the circumstances.''); *Superior Care,* 840 F.2d at 1059 (''No one of these factors is dispositive; rather, the test is based on a totality of the circumstances. . . . Since the test concerns the totality of the circumstances, any relevant evidence may be considered, and mechanical application of the test is to be avoided.''); *Lauritzen,* 835 F.2d at 1534 (''Certain criteria have been developed to assist in determining the true nature of the relationship, but no criterion is by itself, or by its absence, dispositive or controlling.''); *Hickey,* 699 F.2d at 752 (''It is impossible to assign to each of these factors a specific and invariably applied weight.''); *Usery,* 527 F.2d at 1311–12 (''No one of these considerations can become the final determinant, nor can the collective answers to all of the inquiries produce a resolution which submerges consideration of the dominant factor—economic dependence.'').

[95] 86 FR 1246 (section 795.105(c)).

[96] *See id.* at 1246–47 (section 795.105(d)(1)). The worker's opportunity for profit or loss would be the other core factor.

[97] *Id.* at 1198 (citing 85 FR 60619).

addressed and rejected comments which opined that focusing the analysis on two core factors—one of which would be control—would narrow the analysis to a common law control test.[98]

Although the standard for determining who is an employee and who is an independent contractor under the Rule is not the same as the common law control analysis, the Department is concerned that significant legal and policy implications could result from making control one of only two factors that would be ascribed greater weight. For example, the Supreme Court has repeatedly stated that the FLSA's definition of ''employ'' in section 3(g) means that the scope of employment under the Act is broader than under a common law control (*i.e.,* agency) analysis.[99] In light of the directive to consider as employment relationships under the FLSA a broader scope of relationships than those where the employer sufficiently controls the work, the outsized—even if not exclusive—role that control would have if the Rule's analysis were to apply may be contrary to the Act's text and case law. These considerations are further reasons the Department is proposing to withdraw the Rule.

3. The Rule's Narrowing of the Factors

The Department is also concerned that the Independent Contractor Rule's treatment of the factors would improperly narrow the application of the economic realities test. For example, the Rule would provide that the opportunity for profit or loss factor indicates independent contractor status if the worker has that opportunity based on either his or her exercise of initiative (such as managerial skill or business judgment) *or* management of his or her investment in or capital expenditure on helpers or equipment or material to further his or her work.[100] The worker ''does not need to have an opportunity for profit or loss based on both for this factor to weigh towards the individual being an independent contractor.'' [101] In other words, the factor would indicate independent contractor status if the worker either: (1) Made no capital investment but exercised managerial skill or (2) had a capital investment but exercised no managerial skill. The Rule would therefore erase from the analysis in certain situations the worker's lack of capital investment or lack of managerial skill—both of which are longstanding and well-settled indicators of employee status. The worker's investment and managerial skill would be considered only as the two prongs comprising the opportunity for profit or loss factor under the Rule, so if one indicates an opportunity for profit or loss, the other could not reverse or weigh against that finding even if it indicates employee status as a matter of economic reality.

In addition, the preamble to the Rule provided that ''comparing the individual worker's investment to the potential employer's investment should not be part of the analysis of investment.'' [102] In support, the Rule cited decisions from the Fifth and Eighth Circuits in which courts gave little weight to the comparison of the potential employer's investment in its business to the worker's investment in the work in light of the facts presented in those cases.[103] However, the decisions cited did make the comparison of the investments a part of the analysis, but found that the comparison had little relevance or accorded it little weight under those particular facts.[104] In any event, numerous other courts of appeals consider the worker's investment in the work in comparison to the potential employer's investment in its business,[105] as does WHD in enforcement actions. Despite this authority, the Rule would preclude comparing the worker's investment to the potential employer's investment.

The Rule would also recast the factor examining whether the worker's work ''is an integral part'' of the employer's business as whether the work ''is part of an integrated unit of production.'' [106] The Rule would reject as irrelevant to this factor whether the work is important or central (*i.e.,* integral) to the employer's business.[107] Instead, the Rule would provide that ''the relevant facts are the integration of the worker into the potential employer's production processes'' because ''[w]hat matters is the extent of such integration rather than the importance or centrality of the functions performed'' by the worker.[108] The Rule asserted that this recast articulation is supported by Supreme Court precedent,[109] but WHD and courts often consider whether the work is important or central, as the Rule acknowledges.[110]

Finally, in stressing the primacy of actual practice by providing that ''the actual practice of the parties involved is

[98] *See id.* at 1200–01.

[99] *See Darden,* 503 U.S. at 326 (''[T]he FLSA . . . defines the verb 'employ' expansively to mean 'suffer or permit to work.' This . . . definition, whose striking breadth we have previously noted, stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles.'' (citations omitted)); *Portland Terminal,* 330 U.S. at 150–51 (''But in determining who are 'employees' under the Act, common law employee categories or employer-employee classifications under other statutes are not of controlling significance. This Act contains its own definitions, comprehensive enough to require its application to many persons and working relationships, which prior to this Act, were not deemed to fall within an employer-employee category.'' (citations omitted)); *Rutherford Food,* 331 U.S. at 728 (''The [FLSA] definition of 'employ' is broad.''); *Rosenwasser,* 323 U.S. at 362–63 (''A broader or more comprehensive coverage of employees [than that of the FLSA] . . . would be difficult to frame.'').

[100] *See* 86 FR 1247 (section 795.105(d)(1)(ii)).

[101] *Id.*

[102] *Id.* at 1188.

[103] *See id.* The Fifth Circuit decisions cited were *Parrish* v. *Premier Directional Drilling, L.P.,* 917 F.3d 369, 383 (5th Cir. 2019), and *Hopkins* v. *Cornerstone America,* 545 F.3d 338, 344–46 (5th Cir. 2008).

[104] *See Parrish,* 917 F.3d at 383; *Hopkins,* 545 F.3d at 344–46. Indeed, the Fifth Circuit recently again articulated the investment factor as '''the extent of the relative investments of the worker and the alleged employer.''' *Hobbs,* 946 F.3d at 829 (quoting *Hopkins,* 545 F.3d at 343). In *Hobbs,* the Fifth Circuit affirmed the district court's finding that the relative investments—the potential employer's ''overall investment in the pipe construction projects'' as compared to the workers' individual investments—favored employee status. *Id.* at 831–32. The Fifth Circuit agreed with the district court's conclusion to give the factor ''little weight in its analysis'' in that case given the nature of the industry and work involved. *Id.* at 832 (citing *Parrish,* 917 F.3d at 383). In sum and contrary to what the Rule would provide, the Fifth Circuit routinely considers the relative investments of the worker and the potential employer even if the factor may ultimately be accorded little weight depending on the circumstances.

[105] *See, e.g., McFeeley,* 825 F.3d at 243 (comparing the potential employers' payment of rent, bills, insurance, and advertising expenses to the workers' ''limited'' investment in their work); *Keller,* 781 F.3d at 810 (''We agree that courts must compare the worker's investment in the equipment to perform his job with the company's total investment, including office rental space, advertising, software, phone systems, or insurance.''); *Baker* v. *Flint Eng'g & Constr. Co.,* 137 F.3d 1436, 1442 (10th Cir. 1998) (''In making a finding on this factor, it is appropriate to compare the worker's individual investment to the employer's investment in the overall operation.''); *Lauritzen,* 835 F.2d at 1537 (disagreeing that ''the overall size of the investment by the employer relative to that by the worker is irrelevant'' and finding that ''that the migrant workers' disproportionately small stake in the pickle-farming operation is an indication that their work is not independent of the defendants''); *see also Iontchev* v. *AAA Cab Service, Inc.,* 685 Fed. Appx. 548, 550 (9th Cir. 2017) (noting that the drivers ''invested in equipment or materials and employed helpers to perform their work'' but concluding that the investment factor was ''neutral'' because the cab company ''leased taxicabs and credit card machines to most of the [drivers]'').

[106] *See* 86 FR at 1193–96, 1247 (section 795.105(d)(2)(iii)).

[107] *See id.* at 1193–95.

[108] *Id.* at 1195.

[109] *See id.* at 1193–94. The Rule's discussion of precedent failed to consider a passage from the Supreme Court's decision in *Silk,* finding that ''unloaders'' were employees of a retail coal company as a matter of economic reality in part because they were ''*an integral part* of the businesses of retailing coal or transporting freight.'' 331 U.S. at 716 (emphasis added).

[110] *See id.* at 1193.

more relevant than what may be contractually or theoretically possible,'' [111] the Rule would advise that ''a business' contractual authority to supervise or discipline an individual may be of little relevance if in practice the business never exercises such authority.'' [112] In support of this guidance, the Rule's preamble asserted that ''the common law control test does not establish an irreducible baseline of worker coverage for the broader economic reality test applied under the FLSA,'' and that the FLSA ''does not necessarily include every worker considered an employee under the common law.'' [113] This understanding of the FLSA's scope of employment seems inconsistent with the Supreme Court's observations that ''[a] broader or more comprehensive coverage of employees'' than that contemplated under the FLSA ''would be difficult to frame,' '' [114] and that the FLSA ''stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles.'' [115]

In the each of the ways identified above, the Rule would narrow the scope of facts and considerations comprising the analysis of whether the worker is an employee or independent contractor. The Department proposes to withdraw the Rule in part because it eliminates from the economic realities test several facts and concepts that have deep roots in both the courts' and WHD's application of the analysis. The Department is further concerned that for this reason, the Rule's approach is inconsistent with the court-mandated totality-of-the-circumstances approach to determining whether a worker is an employee or an independent contractor.[116] In addition to these legal concerns, the Department is concerned, as a policy matter, that the Rule's narrowing of the analysis would result in more workers being classified as independent contractors not entitled to the FLSA's protections, contrary to the Act's purpose of broadly covering workers as employees. To the extent that women and people of color are overrepresented in low-wage independent contractor positions, as some commenters asserted as part of the Independent Contractor Rule rulemaking, this result could have a disproportionate impact on low-wage and vulnerable workers. For example, a report from the U.S. Treasury Department Office of Tax Analysis shows that independent contractors are more likely to be low-income than those who are primarily employees. The report finds that 42 percent of what it calls ''gig economy or platform workers'' and 45 percent of ''self-employed sole proprietors'' make less than $20,000 a year, compared to 14 percent of those who are employees earning wages.[117]

B. Whether the Rule Would Provide the Intended Clarity

One of the Independent Contractor Rule's primary stated purposes would be to ''significantly clarify to stakeholders how to distinguish between employees and independent contractors under the Act.'' [118] Although the intent of the Rule would be to provide clarity, it would also (as discussed above) introduce several concepts to the analysis that neither courts nor WHD have previously applied. The Department's proposal to withdraw the Rule arises in part from a concern regarding the possibility that these changes will cause confusion or lead to inconsistent outcomes rather than provide clarity or certainty, as intended.

For example, the Rule would identify two factors as ''core'' factors, would designate them as ''the most probative,'' and would provide that they carry ''greater weight'' than other factors.[119] The Rule would also provide that, if both core factors ''point towards the same classification . . . , there is a substantial likelihood that is the individual's accurate classification,'' and other factors would be ''highly unlikely, either individually or collectively, to outweigh'' the core factors.[120] Because neither courts nor WHD have previously pre-assigned certain factors a greater weight than other factors or grouped the factors into categories of ''core'' and ''other'' factors, it may not be clear to courts, WHD, and/or the regulated community how the analysis and weighing of factors would work, and there could be inconsistent approaches and/or outcomes as a result.

In addition, the Rule would recast several factors as discussed above. As one example, the factor that many courts articulate as whether the work ''is an integral part'' of the employer's business would be recast as whether the work ''is part of an integrated unit of production.'' [121] The Rule asserts that this revision is supported by Supreme Court precedent.[122] However, as the Rule acknowledges,[123] this more limited articulation has not generally been applied by courts or WHD and would thus be unfamiliar to employers, workers, courts, and WHD. As a result, there could be inconsistent approaches and/or outcomes in its application.

In sum, the Rule would make numerous changes to an economic realities test that courts and WHD are familiar with applying. Given that courts and WHD could struggle with applying the new concepts introduced by the Rule, the Department is uncertain whether the Rule would provide the clarity that it intends.

C. The Costs and Benefits of the Rule, Particularly the Assertion That the Rule Will Benefit Workers as a Whole

As part of its analysis of possible costs, transfers, and benefits, the Independent Contractor Rule quantified some possible costs (regulatory familiarization) and some possible cost savings (increased clarity and reduced litigation).[124] The Rule identified and discussed—but did not quantify—numerous other costs, transfers, and benefits possibly resulting from the Rule, including ''possible transfers among workers and between workers and businesses.'' [125] The Rule ''acknowledge[d] that there may be transfers between employers and employees, and some of those transfers may come about as a result of changes in earnings,'' but determined that these transfers cannot ''be quantified with a reasonable degree of certainty for purposes of [the Rule].'' [126] The Economic Policy Institute (EPI) had submitted a comment during the rulemaking estimating that the annual transfers from workers to employers as a result of the Rule would be $3.3 billion in pay, benefits, and tax payments.[127] The Rule discussed its disagreements with various assumptions underlying EPI's estimate and explained its reasons for not adopting the estimate.[128] The Rule concluded that

[111] *Id.* at 1247 (section 795.110).

[112] *Id.; but see Razak,* 951 F.3d at 145 (''[A]ctual control of the manner of work is not essential; rather, it is the right to control which is determinative.'').

[113] 86 FR 1205.

[114] *Rosenwasser,* 323 U.S. at 362.

[115] *Darden,* 503 U.S. at 326.

[116] *See* footnote 94, *supra.*

[117] Emilie Jackson, Adam Looney, and Shanthi Ramnath, ''The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage,'' The Department of the Treasury; Office of Tax Analysis (January 2017), available at *https://home.treasury.gov/system/files/131/WP-114.pdf* (last visited March 9, 2021).

[118] 86 FR 1168.

[119] *Id.* at 1246 (section 795.105(c)).

[120] *Id.*

[121] *See id.* at 1170, 1193–96, 1247 (section 795.105(d)(2)(iii)).

[122] *See id.* at 1193–94.

[123] *See id.* at 1193.

[124] *See id.* at 1211.

[125] *Id.* at 1214–16.

[126] *Id.* at 1223.

[127] *See id.* at 1222.

[128] *See id.* at 1222–23.

''workers as a whole will benefit from [the Rule], both from increased labor force participation as a result of the enhanced certainty provided by [the Rule], and from the substantial other benefits detailed [in the Rule].'' [129] Although the Rule did not use EPI's analysis to quantify transfers, upon further consideration, the Department believes that the analysis may be useful in illustrating the types of impacts that the Rule would have on workers.

Upon review, the Department does not believe the Rule fully considered the likely costs, transfers, and benefits that could result from the Rule. This concern is premised in part on WHD's role as the agency responsible for enforcing the FLSA and its experience with cases involving the misclassification of employees as independent contractors. The consequence for a worker of being classified as an independent contractor is that the worker is excluded from the protections of the FLSA. Without the protections of the FLSA, workers need not be paid at least the federal minimum wage for all hours worked, and are not entitled to overtime compensation for hours worked over 40 in a workweek. These impacts can be significant and must be evaluated further. In addition, a recent Presidential Memorandum began a process for agencies to better ''take into account the distributional consequences of regulations.'' [130] WHD also questions whether a rule that could increase the number of independent contractors,[131] effectuates the FLSA's purpose, recognized repeatedly by the Supreme Court, to broadly provide employees with its protections.[132] These concerns are an additional reason that the Department is proposing to withdraw the Rule.

D. Withdrawal Would Not Be Disruptive Because the Rule Has Yet to Take Effect

Because the Independent Contractor Rule has yet to take effect, the Department does not believe that withdrawing it would be disruptive. Courts have not applied the Rule in deciding cases. Moreover, WHD has not implemented the Rule. For example, WHD's Fact Sheet #13, titled ''Employment Relationship Under the Fair Labor Standards Act (FLSA)'' and dated July 2008, does not contain the Rule's analysis for determining whether a worker is an employee or independent contractor.[133] WHD's Field Operations Handbook addresses independent contractor status by simply cross-referencing Fact Sheet #13 and likewise does not contain the Rule's new economic realities test.[134] WHD's elaws Advisor compliance-assistance information regarding independent contractors likewise does not contain the Rule's analysis.[135] And on January 26, 2021, Wage and Hour withdrew two opinion letters that it had issued on January 19, 2021 applying the Rule's analysis to several factual scenarios.[136] WHD explained that the letters were ''issued prematurely because they are based on [a Rule] that ha[s] not gone into effect.'' [137] Accordingly, the regulated community has been functioning under the current state of the law and the Department does not believe that it would be negatively affected by continuing to do so were the Rule to be withdrawn. In particular, any businesses currently engaging independent contractors or individuals who are now independent contractors would be able to continue to operate without any effect brought about by the absence of new regulations. Even if the Department withdraws the Rule, businesses that had taken steps in preparation for the Rule taking effect will not be precluded from adjusting their relationships with workers or paying for new services from workers, and can rely on past court decisions and WHD guidance to determine whether those workers are employees under the FLSA or independent contractors.

E. Effect of Proposed Withdrawal

If the Independent Contractor Rule is withdrawn as proposed: (1) The guidance that the Rule would have introduced as Part 795 of Title 29 of the Code of Federal Regulations will not be introduced and Part 795 will be reserved; and (2) the revisions that the Rule would have made to 29 CFR 780.330(b) and 29 CFR 788.16(a) will not occur and their text will remain unchanged. The Department is not proposing any regulatory guidance to replace the guidance that the Independent Contractor Rule would have introduced as Part 795, so any commenter feedback addressing or suggesting such a replacement or otherwise requesting that the Department adopt any specific guidance if the Rule is withdrawn will be considered to be outside the scope of this NPRM. In addition to the reasons for the proposed withdrawal explained above, withdrawal of the Rule would allow WHD an additional opportunity to consider legal and policy issues relating to the FLSA and independent contractors.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) and its attendant regulations require an agency to consider its need for any information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. This NPRM does not contain a collection of information subject to Office of Management and Budget approval under the PRA.

IV. Executive Order 12866, Regulatory Planning and Review; and Executive Order 13563, Improved Regulation and Regulatory Review

A. Introduction

Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and OMB review.[138] Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as economically significant); (2) create serious inconsistency or otherwise

[129] *Id.* at 1223.

[130] Modernizing Regulatory Review: Memorandum for the Heads of Executive Departments and Agencies (Jan. 20, 2021), published at 86 FR 7223 (Jan. 26, 2021).

[131] *See* 86 FR 1210.

[132] *See, e.g., Rutherford Food,* 331 U.S. at 729 (''This Act contains its own definitions, comprehensive enough to require its application to many persons and working relationships, which prior to this Act, were not deemed to fall within an employer-employee category.''') (quoting *Portland Terminal,* 330 U.S. at 150); *Rosenwasser,* 323 U.S. at 362–63 (''A broader or more comprehensive coverage of employees [than that of the FLSA] . . . would be difficult to frame.'').

[133] Fact Sheet #13 is available at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs13.pdf* (last visited March 9, 2021).

[134] Chapter 10 of Wage and Hour's Field Operations Handbook, entitled ''FLSA Coverage: Employment Relationship, Statutory Exclusions, Geographical Limits'', is available at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch10.pdf* (last visited March 9, 2021). The relevant provision, Section 10b05 (''Test of the employment relationship''), is on page 6.

[135] *See https://webapps.dol.gov/elaws/whd/flsa/scope/ee14.asp* (last visited March 9, 2021).

[136] *See https://www.dol.gov/agencies/whd/opinion-letters/search?FLSA* (last visited March 9, 2021), noting the withdrawal of Opinion Letters FLSA2021–8 and FLSA2021–9.

[137] *Id.*

[138] *See* 58 FR 51735 (Sept. 30, 1993).

interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This proposed withdrawal will be economically significant under section 3(f) of Executive Order 12866 because it is withdrawing an economically significant rule.

Executive Order 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits.[139] Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The analysis below outlines the impacts that the Department anticipates may result from this proposed withdrawal and was prepared pursuant to the above-mentioned executive orders.

B. Background

On January 7, 2021, WHD published a final rule titled ''Independent Contractor Status under the Fair Labor Standards Act'' (Independent Contractor Rule or Rule).[140] The Department is proposing to withdraw the Rule, which has not taken effect. If this withdrawal goes forward as proposed, the Rule will never have been in effect. Aside from minimal rule familiarization costs, the Department also provides below a qualitative discussion of the transfers that may be avoided by withdrawing the Rule.

C. Costs

1. Rule Familiarization Costs

Withdrawing the Independent Contractor Rule would impose direct costs on businesses that will need to review the withdrawal. To estimate these regulatory familiarization costs, the Department determined: (1) The number of potentially affected entities, (2) the average hourly wage rate of the employees reviewing the withdrawal, and (3) the amount of time required to review the withdrawal. It is uncertain whether these entities would incur regulatory familiarization costs at the firm or the establishment level.[141] For example, in smaller businesses there might be just one specialist reviewing the withdrawal, while larger businesses might review it at corporate headquarters and determine policy for all establishments owned by the business. To avoid underestimating the costs of the withdrawal, the Department uses both the number of establishments and the number of firms to estimate a potential range for regulatory familiarization costs. The lower bound of the range is calculated assuming that one specialist per firm will review the withdrawal, and the upper bound of the range assumes one specialist per establishment.

The most recent data on private sector entities at the time this NPRM was drafted are from the 2017 Statistics of U.S. Businesses (SUSB), which reports 5,996,900 private firms and 7,860,674 private establishments with paid employees.[142] Because the Department is unable to determine how many of these businesses are interested in using independent contractors, this analysis assumes all businesses will undertake review.

The Department believes ten minutes per entity, on average, to be an appropriate review time here. This rulemaking would withdraw the Independent Contractor Rule and would not set forth any new regulations in its place. Additionally, the Department believes that many entities do not use independent contractors and thus would not spend any time reviewing the withdrawal. Therefore, the ten-minute review time represents an average of no time for the entities that do not use independent contractors, and potentially more than ten minutes for review by some entities that might use independent contractors.

The Department's analysis assumes that the withdrawal would be reviewed by Compensation, Benefits, and Job Analysis Specialists (SOC 13–1141) or employees of similar status and comparable pay. The median hourly wage for these workers was $31.04 per hour in 2019, the most recent year of data available.[143] The Department also assumes that benefits are paid at a rate of 46 percent[144] and overhead costs are paid at a rate of 17 percent of the base wage, resulting in a fully loaded hourly rate of $50.60.

The Department estimates that the lower bound of regulatory familiarization cost range would be $50,675,004 (5,996,900 firms × $50.60 × 0.167 hours), and the upper bound, $66,424,267 (7,860,674 establishments × $50.60 × 0.167 hours). The Department estimates that all regulatory familiarization costs would occur in Year 1.

Additionally, the Department estimated average annualized costs of this proposed withdrawal over 10 years. Over 10 years, it would have an average annual cost of $6.7 million to $8.8 million, calculated at a 7 percent discount rate ($5.8 million to $7.6 million calculated at a 3 percent discount rate). All costs are in 2019 dollars.

2. Other Costs

In the Independent Contractor Rule, the Department estimated cost savings associated with increased clarity, as well as cost savings associated with reduced litigation. The Department does not anticipate that this withdrawal would increase costs in these areas, or result in greater costs as compared to the Rule. Although the intent of the Rule would be to provide clarity, it would also introduce several concepts to the analysis that neither courts nor WHD have previously applied. Because the Rule would be unfamiliar and could lead to inconsistent approaches and/or outcomes, and because withdrawal would maintain the status quo, the Department does not believe that a withdrawal of the Independent Contractor Rule would result in decreased clarity for stakeholders.

One of the main benefits discussed in the Rule was the increased flexibility associated with independent contractor status. The Department acknowledges that although many independent contractors report that they value the flexibility in hours and work, employment and flexibility are not mutually exclusive. Many employees

[139] *See* 76 FR 3821 (Jan. 21, 2011).

[140] *See* 86 FR 1168. WHD had published a notice of proposed rulemaking requesting comments on a proposal. *See* 85 FR 60600 (Sept. 25, 2020). The final rule adopted ''the interpretive guidance set forth in [that proposal] largely as proposed.'' 86 FR 1168.

[141] An establishment is a single physical location where one predominant activity occurs. A firm is an establishment or a combination of establishments.

[142] Statistics of U.S. Businesses 2017, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html,* 2016 SUSB Annual Data Tables by Establishment Industry.

[143] Occupational Employment and Wages, May 2019, *https://www.bls.gov/oes/current/oes131141.htm.*

[144] The benefits-earnings ratio is derived from the Bureau of Labor Statistics' Employer Costs for Employee Compensation data using variables CMU1020000000000D and CMU1030000000000D.

similarly value and enjoy such flexibility.

The Department welcomes any comments and data on other costs associated with this proposed withdrawal.

D. Transfers

The Department believes that it is important to provide a qualitative discussion of the transfers that would have occurred under the Rule. In the economic analysis accompanying the Rule, the Department assumed that the Rule would lead to an increase in the number of independent contractor arrangements, and acknowledged that some of this increase could be due to businesses reclassifying employees as independent contractors. As discussed in the Rule and again below, an increase in independent contracting could have resulted in transfers associated with employer-provided fringe benefits, tax liabilities, and minimum wage and overtime pay. By withdrawing the Rule, these transfers from employees (and, in some cases, from state or local governments) to employers are avoided. The Department welcomes any comments and data on the transfer impacts associated with this proposed withdrawal.

1. Employer Provided Fringe Benefits

The reclassification of employees as independent contractors, or the use of independent contracting relationships as opposed to employment, decreases access to employer-provided fringe benefits such as health care or retirement benefits. According to the BLS Current Population Survey (CPS) Contingent Worker Supplement (CWS), 79.4 percent of self-employed independent contractors have health insurance, compared to 88.3 percent of employees.[145] This gap between independent contractors and employees is also true for low-income workers. Using CWS data, the Department compared health insurance rates for workers earning less than $15 per hour and found that 71.0 percent of independent contractors have health insurance compared with 78.5 percent of employees.

Additionally, a major source of retirement savings is employer-sponsored retirement accounts. According to the CWS, 55.5 percent of employees have a retirement account with their current employer; in addition, the BLS Employer Costs for Employee Compensation (ECEC) found that employers pay 5.3 percent of employees' total compensation in retirement benefits on average ($1.96/$37.03). If a worker shifts from employee to independent contractor status, that worker may no longer receive employer-provided retirement benefits.

2. Tax Liabilities

As self-employed workers, independent contractors are legally obligated to pay both the employee and employer shares of the Federal Insurance Contributions Act (FICA) taxes. Thus, as discussed in the Rule, if workers' classifications change from employees to independent contractors, there may be a transfer in federal tax liabilities from employers to workers.[146] Although the Rule only addressed whether a worker is an employee or an independent contractor under the FLSA, the Department assumes in this analysis that employers are likely to keep the status of most workers the same across all benefits and requirements, including for tax purposes.[147] These payroll taxes include the 6.2 percent employer component of the Social Security tax and the 1.45 percent employer component of the Medicare tax.[148] In sum, independent contractors are legally responsible for an additional 7.65 percent of their earnings in FICA taxes (less the applicable tax deduction for this additional payment).

In addition to affecting tax liabilities for workers, some commenters claimed that the Rule would have an impact on state tax revenue and budgets. In their comment to the NPRM proposing the Independent Contractor Rule, several States' Attorneys General asserted that misclassifying employees as independent contractors leads to losses in unemployment insurance and workers' compensation funds, as well as increases in the cost of providing health care coverage to uninsured workers. Because independent contractors do not receive benefits like health insurance, workers compensation, and retirement plans from an employer, these commenters suggested that a rule that increases the prevalence of independent contracting could shift this burden to State and Federal governments.

3. Minimum Wage and Overtime Requirements

When workers are shifted from employee to independent contractor status, the minimum wage and overtime pay requirements of the FLSA no longer apply. Independent contractors are more likely to earn less than the minimum wage: The 2017 CWS data indicate that independent contractors are more likely than employees to report earning less than the FLSA minimum wage of $7.25 per hour (8 percent for self-employed independent contractors, 5 percent for other independent contractors, and 2 percent for employees). Research on drivers who work for online transportation companies in California and New York also finds that many drivers receive significantly less than the applicable state minimum wages.[149]

V. Regulatory Flexibility Act (RFA) Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (1996), requires federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Accordingly, the Department examined this proposed withdrawal to determine whether it would have a significant economic impact on a substantial number of small entities.

The most recent data on private sector entities at the time this NPRM was drafted are from the 2017 Statistics of U.S. Businesses (SUSB), which reports 5,996,900 private firms and 7,860,674 private establishments with paid

[145] Bureau of Labor Statistics, ''Contingent and Alternative Employment Arrangements—May 2017,'' USDL–18–0942 (June 7, 2018), *https://www.bls.gov/news.release/pdf/conemp.pdf.*

[146] *See* 86 FR 1218.

[147] Courts have noted that the FLSA has the broadest conception of employment under federal law. *See, e.g., Darden,* 503 U.S. at 326. To the extent that businesses making employment status determinations base their decisions on the most demanding federal standard, a rulemaking addressing the standard for determining whether a worker is an FLSA employee or an independent contractor may affect the businesses' classification decisions for purposes of benefits and legal requirements under other federal laws.

[148] Internal Revenue Service, ''Publication 15, (Circular E), Employer's Tax Guide'' (Dec. 23, 2019), *https://www.irs.gov/pub/irs-pdf/p15.pdf.* The social security tax has a wage base limit of $137,700 in 2020. An additional Medicare Tax of 0.9 percent applies to wages paid in excess of $200,000 in a calendar year for individual filers.

[149] M. Reich. ''Pay, Passengers and Profits: Effects of Employee Status for California TNC Drivers.'' University of California, Berkeley (October 5, 2020), *https://irle.berkeley.edu/files/2020/10/Pay-Passengers-and-Profits.pdf;* L. Moe, et al. ''The Magnitude of Low-Paid Gig and Independent Contract Work in New York State,'' The New School Center for New York City Affairs (February 2020), *https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5e424affd767af4f34c0d9a9/1581402883035/Feb112020_GigReport.pdf.*

employees.[150] Of these, 5,976,761 firms and 6,512,802 establishments have fewer than 500 employees. The per-entity cost for small business employers is the regulatory familiarization cost of $8.43, or the fully loaded mean hourly wage of a Compensation, Benefits, and Job Analysis Specialist ($50.60) multiplied by ⅙ hour (ten minutes). Because this cost is minimal for small business entities, and well below one percent of their gross annual revenues, which is typically at least $100,000 per year for the smallest businesses, the Department certifies that this proposed withdrawal would not have a significant economic impact on a substantial number of small entities. The Department welcomes any comments and data on this Regulatory Flexibility Act Analysis, including the costs and benefits of this proposed withdrawal on small entities.

VI. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA)[151] requires agencies to prepare a written statement for rules with a federal mandate that may result in increased expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $165 million ($100 million in 1995 dollars adjusted for inflation) or more in at least one year.[152] This statement must: (1) Identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate state, local, and tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative. This proposed withdrawal is not expected to result in increased expenditures by the private sector or by state, local, and tribal governments of $165 million or more in any one year.

VII. Executive Order 13132, Federalism

The Department has (1) reviewed this proposed withdrawal in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The proposed withdrawal would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

VIII. Executive Order 13175, Indian Tribal Governments

This proposed withdrawal would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Signed this 10th day of March, 2021.

Jessica Looman,

Principal Deputy Administrator, Wage and Hour Division.

[FR Doc. 2021–05256 Filed 3–11–21; 8:45 am]

BILLING CODE 4510–27–P

[150] Statistics of U.S. Businesses 2017, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html,* 2016 SUSB Annual Data Tables by Establishment Industry.

[151] *See* 2 U.S.C. 1501.

[152] Calculated using growth in the Gross Domestic Product deflator from 1995 to 2019. Bureau of Economic Analysis. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 791

RIN 1235–AA37

Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This notice of proposed rulemaking (NPRM) proposes to rescind the final rule entitled ''Joint Employer Status Under the Fair Labor Standards Act,'' which published on January 16, 2020 and took effect on March 16, 2020. The proposed rescission would remove the regulations established by that rule.

DATES: Submit written comments on or before April 12, 2021.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA37 by either of the following methods: *Electronic Comments:* Submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. *Mail:* Address written submissions to Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit only one copy of your comments by only one method. Commenters submitting file attachments on *www.regulations.gov* are advised that uploading text-recognized documents—*i.e.,* documents in a native file format or documents which have undergone optical character recognition (OCR)—enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration. Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *https://www.regulations.gov,* including any personal information provided. The Department will post comments gathered and submitted by a third-party organization as a group under a single document ID number on *https://www.regulations.gov.* All comments must be received by 11:59 p.m. EST on April 12, 2021 for consideration. The Department strongly recommends that commenters submit their comments electronically via *http://www.regulations.gov* to ensure timely receipt prior to the close of the comment period, as the Department continues to experience delays in the receipt of mail. Submit only one copy of your comments by only one method. *Docket:* For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this NPRM may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Labor Standards Act (FLSA or Act) requires all covered employers to pay nonexempt employees at least the federal minimum wage for every hour worked in a non-overtime workweek.[1] In an overtime workweek, for all hours worked in excess of 40 in a workweek, covered employers must pay a nonexempt employee at least one and one-half times the employee's regular

[1] *See* 29 U.S.C. 206(a).

rate.[2] The FLSA also requires covered employers to make, keep, and preserve certain records regarding employees.[3]

The FLSA does not define ''joint employer'' or ''joint employment.'' However, section 3(d) of the Act defines ''employer'' to ''include[ ] any person acting directly or indirectly in the interest of an employer in relation to an employee.'' [4] Section 3(e) generally defines ''employee'' to mean ''any individual employed by an employer'' [5] and identifies certain specific groups of workers who are not ''employees'' for purposes of the Act.[6] Section 3(g) defines ''employ'' to ''include[ ] to suffer or permit to work.'' [7]

A. Prior Guidance Regarding FLSA Joint Employment

In July 1939, a year after the FLSA's enactment, the Department's Wage and Hour Division (WHD) issued Interpretative Bulletin No. 13 addressing, among other topics, whether two or more companies may be jointly and severally liable for a single employee's hours worked under the FLSA.[8] WHD recognized in the Bulletin that there is joint employment liability under the FLSA and provided examples of situations where two companies are and are not joint employers of an employee.[9] For situations where an employee works hours for one company and works separate hours for another company in the same workweek, WHD focused on whether the two companies were ''acting entirely independently of each other with respect to the employment of the particular employee'' (in which case they were not joint employers) or, ''on the other hand, the employment by [the one company] [wa]s not completely disassociated from the employment by [the other company]'' (in which case they were joint employers and the hours worked for both would be aggregated for purposes of the Act).[10] WHD stated in the Bulletin that it ''will scrutinize all cases involving more than one employment and, at least in the following situations, an employer will be considered as acting in the interest of another employer in relation to an employee: If the employers make an arrangement for the interchange of employees or if one company controls, is controlled by, or is under common control with, directly or indirectly, the other company.'' [11]

In 1958, WHD published a rule introducing 29 CFR part 791, entitled ''Joint Employment Relationship under Fair Labor Standards Act of 1938.'' [12] Section 791.2(a) reiterated that there is joint employment liability under the Act and stated that the determination ''depends upon all the facts in the particular case.'' [13] It further stated that two or more employers that ''are acting entirely independently of each other and are completely disassociated'' with respect to the employee's employment are not joint employers, but joint employment exists if ''employment by one employer is not completely disassociated from employment by the other employer(s).'' [14] Section 791.2(b) explained that, ''[w]here the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees; or

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.'' [15]

In 1961, WHD amended a footnote in § 791.2(a) to clarify that a joint employer is also jointly liable for overtime pay.[16] Over the next several decades, WHD issued various guidance documents including Fact Sheets, opinion letters, as well as legal briefs reiterating the Department's position concerning joint employment. *See, e.g.,* Op. Letter, FLSA (Dep't of Labor Apr. 11, 2005), 2005 WL 2086804 (employees of health care system comprised of hospitals, nursing homes, and parent holding company); Op. Letter, FLSA (Dep't of Labor Aug. 24, 1999), 1999 WL 1788146 (private duty nurses); Op. Letter, FLSA (Dep't of Labor Jan. 27, 1998), 1998 WL 852621 (grocery vendor employees stocking grocery shelves); Op. Letter, FLSA (Dep't of Labor Aug. 9, 1989), 1989 WL 1632931 (enclave program).

In 2014, WHD issued an Administrator's Interpretation (Home Care AI) addressing how joint employment under the FLSA applies to certain home care workers.[17] The Home Care AI explained that the FLSA's definitions of ''employer,'' ''employee,'' and ''employ,'' ''and therefore the scope of employment relationships the Act covers, are exceedingly broad.'' [18] The Home Care AI discussed application of 29 CFR 791.2 and stated that its ''focus . . . is the degree to which the two possible joint employers share control with respect to the employee and the degree to which the employee is economically dependent on the purported joint employers.'' [19] WHD recognized that, ''when making joint employment determinations in FLSA cases, the exact factors applied may vary,'' but also stated that ''a set of factors that addresses only control is not consistent with the breadth of employment under the FLSA'' because an analysis based solely on the potential employer's joint control '' 'cannot be reconciled with [FLSA section 3(g)'s ''suffer or permit'' language], which necessarily reaches beyond traditional agency law.' '' [20] Accordingly, the Home Care AI applied a non-exclusive set of factors relating to the potential joint employer's control and other aspects of the relationship to provide guidance regarding the possibility of joint employment in numerous hypothetical scenarios specific to the home care industry.[21] WHD withdrew the Home Care AI on March 10, 2020.

In 2016, WHD issued an Administrator's Interpretation (Joint Employment AI) addressing joint employment generally under the FLSA and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), which uses the same definition

[2] *See* 29 U.S.C. 207(a).

[3] *See* 29 U.S.C. 211(c).

[4] 29 U.S.C. 203(d).

[5] 29 U.S.C. 203(e)(1).

[6] *See* 29 U.S.C. 203(e)(2)–(5).

[7] 29 U.S.C. 203(g).

[8] *See* Interpretative Bulletin No. 13, ''Hours Worked: Determination of Hours for Which Employees are Entitled to Compensation Under the Fair Labor Standards Act of 1938,'' ¶¶ 16–17. In October 1939 and October 1940, WHD revised other portions of the Bulletin that are not pertinent here.

[9] *See id.*

[10] *Id.* ¶ 17.

[11] *Id.*

[12] *See* 23 FR 5905 (Aug. 5, 1958).

[13] 29 CFR 791.2(a) (1958).

[14] *Id.*

[15] 29 CFR 791.2(b) (1958) (footnotes omitted).

[16] *See* 26 FR 7730, 7732 (Aug. 18, 1961).

[17] *See* Administrator's Interpretation No. 2014–2, ''Joint Employment of Home Care Workers in Consumer-Directed, Medicaid-Funded Programs by Public Entities under the Fair Labor Standards Act'' (Jun. 19, 2014), *available at* 2014 WL 2816951.

[18] *Id.* at *2.

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

[20] *Id.* at *2 n.5 (quoting *Zheng* v. *Liberty Apparel Co.,* 355 F.3d 61, 69 (2d Cir. 2003)).

[21] *See id.* at *7–14; *see also id.* at *3 (''[A]ny assessment of whether a public entity is a joint employer necessarily involves a weighing of all the facts and circumstances, and there is no single factor that is determinative[.]'') (citing *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, 730 (1947)).

of ''employ'' as the FLSA.[22] Relying on the text and history of FLSA section 3(g) and case law interpreting it, the Joint Employment AI explained that joint employment, like employment generally, is expansive under the FLSA and ''notably broader than the common law concepts of employment and joint employment.''[23] The Joint Employment AI further explained that ''the expansive definition of 'employ' as including 'to suffer or permit to work' rejected the common law control standard and ensures that the scope of employment relationships and joint employment under the FLSA and MSPA is as broad as possible.''[24] The AI described how ''suffer or permit'' or ''similar phrasing was commonly used in state laws regulating child labor and was 'designed to reach businesses that used middlemen to illegally hire and supervise children.' ''[25] The AI thus concluded that ''the 'suffer or permit to work' standard was designed to expand child labor laws' coverage beyond those who controlled the child laborer,'' ''prevent employers from using 'middlemen' to evade the laws' requirements,'' and ensure joint liability in a type of vertical joint employment situation (explained below).[26]

The Joint Employment AI discussed two types of joint employment. It discussed horizontal joint employment, which exists where an employee is separately employed by, and works separate hours in a workweek for, more than one employer, and the employers ''are sufficiently associated with or related to each other with respect to the employee'' such that they are joint employers.[27] The Joint Employment AI explained that ''the focus of a horizontal joint employment analysis is the relationship between the two (or more) employers'' and that 29 CFR 791.2 provided guidance on analyzing that type of joint employment, and the AI gave some additional guidance on applying § 791.2.[28] The Joint Employment AI also discussed vertical joint employment, which exists where an ''employee has an employment relationship with one employer (typically a staffing agency, subcontractor, labor provider, or other intermediary employer),'' another employer is ''receiv[ing] the benefit of the employee's labor,'' and ''the economic realities show that he or she is economically dependent on, and thus employed by,'' the other employer.[29] The Joint Employment AI explained that the vertical joint employment analysis does not focus on examining the relationship between the two employers but instead ''examines the economic realities'' of the relationship between the employee and the other employer that is benefitting from his or her labor.[30] The AI noted that ''several Circuit Courts of Appeals have also adopted an economic realities analysis for evaluating vertical joint employment under the FLSA,'' and that, ''[r]egardless of the exact factors, the FLSA and MSPA require application of the broader economic realities analysis, not a common law control analysis, in determining vertical joint employment.''[31] The AI advised that, ''because of the shared definition of employment and the coextensive scope of joint employment between the FLSA and MSPA,'' the non-exclusive, multi-factor economic realities analysis set forth by WHD in its MSPA joint employment regulation should be applied in FLSA vertical joint employment cases to analyze the relationship between the employee and the other employer, and that doing so ''is consistent with both statutes and regulations.''[32] The AI provided some additional guidance on applying the analysis.[33] WHD withdrew the Joint Employment AI on June 7, 2017.[34]

B. 2020 Joint Employer Rule

In January 2020, WHD published a final rule entitled ''Joint Employer Status Under the Fair Labor Standards Act,'' which became effective on March 16, 2020 (Joint Employer Rule or Rule).[35] The Joint Employer Rule rewrote 29 CFR part 791. Currently, § 791.1 contains an introductory statement, § 791.2 contains the substance of the Rule and addresses both vertical joint employment (which it refers to as ''the first joint employer scenario'') and horizontal joint employment (which it refers to as ''the second joint employer scenario''), and § 791.3 contains a severability provision.[36]

1. Joint Employer Rule's Vertical Joint Employment Standard

For vertical joint employment, § 791.2(a)(1) states that ''[t]he other person [that is benefitting from the employee's labor] is the employee's joint employer *only* if that person is acting directly or indirectly in the interest of *the* employer in relation to the employee'' and then cites FLSA section 3(d)'s definition of ''employer.''[37] The Joint Employer Rule provided that section 3(d) is the sole statutory provision in the FLSA for determining ''joint employer status'' under the Act—to the exclusion of sections 3(e) and 3(g).[38] The Joint Employer Rule further provided that the definitions of ''employee'' and ''employ'' in sections 3(e) and 3(g) ''determine whether an individual worker is an employee under the Act.''[39] Citing section 3(d)'s definition of ''employer'' as including ''any person acting directly or indirectly in the interest of an employer in relation to an employee,'' the Rule stated that ''only this language from section 3(d) contemplates the possibility of a person in addition to the employer who is also an employer and therefore jointly liable for the employee's hours worked.''[40] The Rule concluded that this language from section 3(d), ''by its plain terms, contemplates an employment relationship between an employer and an employee, as well as another person who may be an employer too—which exactly fits the [vertical] joint employer scenario under the Act.''[41] The Rule relied on the Supreme Court's decision in *Falk* v. *Brennan*[42] and the Court of Appeals for the Ninth Circuit's decision in *Bonnette* v. *California Health &*

[22] *See* Administrator's Interpretation No. 2016–1, ''Joint Employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act'' (Jan. 20, 2016), *available at* 2016 WL 284582; *see also* 29 U.S.C. 1802(5) (''employ'' under MSPA has ''the meaning given such term under section 3(g) of the [FLSA]'').

[23] *Id.* at *3 (citing, *inter alia, Torres-Lopez* v. *May,* 111 F.3d 633, 639 (9th Cir. 1997); *Antenor* v. *D & S Farms,* 88 F.3d 925, 929 (11th Cir. 1996)).

[24] *Id.*

[25] *Id.* (quoting *Antenor,* 88 F.3d at 929 n.5).

[26] *Id.*

[27] *Id.* at *4.

[28] *Id.* at *4–8.

[29] *Id.* at *2.

[30] *Id.* at *4.

[31] *Id.*

[32] *Id.* at *5 (citing WHD's multi-factor economic realities analysis for joint employment under MSPA set forth at 29 CFR 500.20(h)(5)). WHD issued its current MSPA joint employment regulation in 1997 via a final rule following notice-and-comment rulemaking. *See* 62 FR 11734 (Mar. 12, 1997).

[33] *See* 2016 WL 284582, at *8–12.

[34] *See* News Release 17–0807–NAT, ''US Secretary of Labor Withdraws Joint Employment, Independent Contractor Informal Guidance'' (Jun. 7, 2017), *available at https://www.dol.gov/newsroom/releases/opa/opa20170607.*

[35] *See* 85 FR 2820 (Jan. 16, 2020). WHD had published a notice of proposed rulemaking requesting comments on a proposal. *See* 84 FR 14043 (Apr. 9, 2019). The final rule adopted ''the analyses set forth in the NPRM largely as proposed.'' 85 FR 2820.

[36] *See* 29 CFR 791.1, 791.2, and 791.3.

[37] 29 CFR 791.2(a)(1) (citing 29 U.S.C. 203(d)) (emphasis added).

[38] *See generally* 85 FR 2825–28.

[39] *Id.* at 2827.

[40] *Id.* (citing 29 U.S.C. 203(d)); *see also id.* (''This language from section 3(d) makes sense only if there is an employer and employee with an existing employment relationship and the issue is whether another person is an employer.'').

[41] *Id.*

[42] 414 U.S. 190 (1973).

Welfare Agency[43] to ''support focusing on section 3(d) as determining joint employer status.''[44]

Section 791.2(a)(1) states that ''four factors are relevant to the determination'' of whether the other employer is a joint employer in the vertical joint employment situation.[45] Those four factors are whether the other employer: (1) Hires or fires the employee; (2) supervises and controls the employee's work schedule or conditions of employment to a substantial degree; (3) determines the employee's rate and method of payment; and (4) maintains the employee's employment records.[46] The Joint Employer Rule stated that its four-factor test was ''derived from'' *Bonnette.*[47] In *Bonnette,* the Ninth Circuit affirmed a finding of vertical joint employment after considering whether the other employer: (1) Had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records.[48]

The Joint Employer Rule's four-factor analysis deviated from *Bonnette's* analysis in several ways. First, the Rule articulates the first factor as whether the other employer ''[h]ires or fires the employee'' as opposed to whether it had ''the power'' to hire and fire.[49] Section 791.2(a)(3)(i) states that the ''potential joint employer must actually exercise . . . one or more of these indicia of control to be jointly liable under the Act,'' and that ''[t]he potential joint employer's ability, power, or reserved right to act in relation to the employee may be relevant for determining joint employer status, but such ability, power, or right alone does not demonstrate joint employer status without some actual exercise of control.''[50] Second, the Joint Employer Rule changed the second factor to consider whether the potential joint employer supervises and controls work schedules or conditions of employment ''to a substantial degree.'' This phrase is absent from the test articulated in *Bonnette* (although *Bonnette* found that, on the factual record before it, the potential joint employers ''exercised considerable control'' in that area).[51] Third, § 791.2(a)(2) states that ''[s]atisfaction of the maintenance of employment records factor alone will not lead to a finding of joint employer status,'' but *Bonnette* did not provide that limitation.[52] Finally, § 791.2(b) states that ''[a]dditional factors may be relevant for determining joint employer status in this scenario, but only if they are indicia of whether the potential joint employer exercises significant control over the terms and conditions of the employee's work.''[53] *Bonnette,* however, stated that its four factors ''provide a useful framework for analysis in this case,'' but ''are not etched in stone and will not be blindly applied,'' and that ''[t]he ultimate determination must be based 'upon the circumstances of the whole activity.' ''[54]

In addition to generally excluding factors that are not indicative of the potential joint employer's control over the employee's work, the Joint Employer Rule specifically excluded any consideration of the employee's economic dependence on the potential joint employer.[55] The Rule asserted that ''economic dependence is relevant when applying section 3(g) and determining whether a worker is an employee under the Act; however, determining whether a worker who is an employee under the Act has a joint employer for his or her work is a different analysis that is based on section 3(d).''[56] The Rule further asserted that, ''[b]ecause evaluating control of the employment relationship by the potential joint employer over the employee is the purpose of the Department's four-factor balancing test, it is sensible to limit the consideration of additional factors to those that indicate control.''[57]

2. Joint Employer Rule's Horizontal Joint Employment Standard

To determine horizontal joint employment, the Joint Employer Rule adopted the standard in the prior version of 29 CFR 791.2 with non-substantive revisions.[58] Section 791.2(e)(2) states that, in this ''second joint employer scenario'', ''if the employers are acting independently of each other and are disassociated with respect to the employment of the employee,'' they are not joint employers.[59] It further states that, ''if the employers are sufficiently associated with respect to the employment of the employee, they are joint employers and must aggregate the hours worked for each for purposes of determining compliance with the Act.''[60] It identifies the same three general examples of sufficient association as the prior version of 29 CFR 791.2.[61]

3. Joint Employer Rule's Additional Provisions

The Joint Employer Rule adopted additional provisions that apply to both vertical and horizontal joint employment. Section 791.2(f) addresses the consequences of joint employment and provides that ''[f]or each workweek that a person is a joint employer of an employee, that joint employer is jointly and severally liable with the employer and any other joint employers for compliance'' with the Act.[62] Section 791.2(g) provides 11 ''illustrative examples'' of how the Rule may apply to specific factual situations implicating both vertical and horizontal joint employment.[63]

C. Decision Vacating Most of the Joint Employer Rule

In February 2020, 17 States and the District of Columbia (the States) filed a lawsuit in the United States District Court for the Southern District of New York against the Department asserting that the Joint Employer Rule violated the Administrative Procedure Act (APA).[64] The Department moved to dismiss the lawsuit on the grounds that the States did not have standing. The district court denied that motion on June 1, 2020.[65] The district court issued an order on June 29, 2020 permitting the International Franchise Association, the Chamber of Commerce of the United States of America, the National Retail Federation, the Associated Builders and Contractors, and the American Hotel and Lodging Association (Intervenors) to intervene as defendants in the case.[66]

[43] 704 F.2d 1465 (9th Cir. 1983), *abrogated on other grounds, Garcia* v. *San Antonio Metro. Transit Auth.,* 469 U.S. 528 (1985).

[44] 85 FR 2827.

[45] 29 CFR 791.2(a)(1).

[46] *See* 29 CFR 791.2(a)(1)(i)–(iv).

[47] 85 FR 2830.

[48] *See* 704 F.2d at 1469–1470.

[49] *Compare* 29 CFR 791.2(a)(1)(i) *with Bonnette,* 704 F.2d at 1469–1470.

[50] 29 CFR 791.2(a)(3)(i) (citing 29 U.S.C. 203(d)).

[51] *Compare* 29 CFR 791.2(a)(1)(ii) *with Bonnette,* 704 F.2d at 1469–1470.

[52] *Compare* 29 CFR 791.2(a)(2) *with Bonnette,* 704 F.2d at 1469–1470.

[53] 29 CFR 791.2(b).

[54] 704 F.2d at 1470 (quoting *Rutherford Food,* 331 U.S. at 730).

[55] 29 CFR 791.2(c) (''[T]o determine joint employer status, no factors should be used to assess economic dependence.'').

[56] 85 FR 2821.

[57] *Id.* at 2836.

[58] *Id.* at 2844–45.

[59] 29 CFR 791.2(e)(2).

[60] *Id.*

[61] *Compare* 29 CFR 791.2(e)(2)(i)–(iii) *with* 29 CFR 791.2(b)(1)–(3) (1958).

[62] 29 CFR 791.2(f).

[63] 29 CFR 791.2(g).

[64] *See New York, et al.* v. *Scalia,* No. 1:20–cv–01689 (S.D.N.Y. complaint filed Feb. 26, 2020). The APA requires courts to hold unlawful and set aside agency actions that are ''arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'' 5 U.S.C. 706(2)(A).

[65] *See* 464 F. Supp.3d 528.

[66] *See* 2020 WL 3498755.

The parties filed cross-motions for summary judgment, which the district court decided on September 8, 2020.[67]

The district court vacated the Joint Employer Rule's ''novel standard for vertical joint employer liability'' because its ''revisions to that scenario are flawed in just about every respect.'' [68] The district court found that the Rule violated the APA because it was contrary to the law—specifically, it conflicted with the FLSA.[69] The district court identified three conflicts: The Rule's reliance on the FLSA's definition of ''employer'' in section 3(d) as the sole textual basis for joint employment liability; its adoption of a control-based test for determining vertical joint employer liability; and its prohibition against considering additional factors beyond control, such as economic dependence.[70] In addition, the district court found that the Rule was ''arbitrary and capricious'' in violation of the APA for three reasons: The Rule did not adequately explain why it departed from WHD's prior interpretations; the Rule did not consider the conflict between it and WHD's MSPA joint employment regulations; and the Rule did not adequately consider its cost to workers.[71]

The district court concluded that the Joint Employer Rule's ''novel interpretation for vertical joint employer liability'' was unlawful under the APA and vacated all of § 791.2 except for § 791.2(e).[72] The court determined that, because the Rule's ''non-substantive revisions to horizontal joint employer liability are severable,'' § 791.2(e) ''remains in effect.'' [73] The Department and the Intervenors appealed the district court's decision, and the appeal is pending before the Court of Appeals for the Second Circuit.[74] The Department and the Intervenors each filed an opening brief with the Second Circuit on January 15, 2021 in support of the Rule; the States' response brief is due on April 16, 2021.

II. Proposal To Rescind

The Department proposes to rescind the Joint Employer Rule. Although the Rule went into effect on March 16, 2020, the U.S. District Court for the Southern District of New York vacated most of the Rule in a September 8, 2020 decision.[75] The Department's reasons for proposing to rescind the Joint Employer Rule are explained below, and the Department requests comments on its proposal.

A. Further Consideration of the Statutory Analysis and Whether the Test for Vertical Joint Employment Is Unduly Narrow

The statutory analysis and test for vertical joint employment set forth in the Joint Employer Rule is different from the analyses and tests applied by every court to have considered joint employer questions prior to the Rule's issuance, as well as WHD's previous enforcement approach. In reviewing the Rule, the Southern District of New York concluded that it was contrary to law and arbitrary and capricious. Further consideration is needed in order to fully analyze and possibly address the concerns raised by the court. As such, the Department proposes to rescind the Rule to allow it to engage in further legal analysis, in order to ensure that lawful and clear guidance is being provided to the regulated community.

1. Statutory Basis of the Rule

In *New York, et al.* v. *Scalia,* the district court found that the Rule conflicts with the FLSA and was thus contrary to law in violation of the APA. The court raised several issues regarding the Rule's statutory analysis of the Act. First, the district court rejected the Rule's assertion that the FLSA's definition of ''employer'' in section 3(d) is the sole textual basis under the FLSA for determining joint employment. Because section 3(d) defines ''employer'' by referencing employees, and section 3(e)(1) in turn defines ''employee'' by referencing ''employ'' (defined in section 3(g)), ''all three definitions are relevant to determining joint employer status under the FLSA.'' [76] The district court faulted the Rule for bifurcating the statutory definitions and using ''different tests for 'primary' and 'joint' employment.'' [77] According to the district court, ''[t]here is . . . no independent test for joint employment under the FLSA,'' ''[a]n entity is an employer if it meets the FLSA's definition,'' and ''[i]t is a joint employer if it meets the definition and another entity also meets the definition.'' [78] The district court concluded that the Rule's ''novel interpretation that section 3(d) is the sole textual basis for joint employer liability conflicts with the FLSA'' and ''is reason enough to conclude that the [Rule] must be set aside.'' [79]

Looking to the language of the statute itself, WHD is concerned that the text of section 3(d) alone may not easily encompass all scenarios in which joint employment may arise; multiple employers may ''suffer or permit'' an employee to work and could thus be joint employers under section 3(g) without one working ''in the interest of an employer'' under section 3(d).[80] Moreover, the district court in *New York* v. *Scalia* noted that the Rule ''disregarded'' the operative language of section 3(d) which begins with ''includes'' instead of ''means.'' [81] The court explained that under principles of statutory construction, it is sufficient to prove employer status by showing that the entity acted directly or indirectly in the interest of an employer in relation to an employee, but the Rule wrongly converted this into a necessary condition for proving employer status.[82] WHD recognizes that under the FLSA, an ''employer'' ''*includes* any person acting directly or indirectly in the interest of an employer in relation to an employee,'' ''*includes* a public agency,'' but ''*does not include* any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization''; by its own terms, section 3(d) is not exhaustive.[83] Additionally, there is case law indicating that section 3(d) was written for the purpose of imposing responsibility upon the agents of employers, as the court observed in *Greenberg* v. *Arsenal Building Corp.,* 144 F. 2d 292, 294 (2d Cir. 1944) (explaining that ''the section would have little meaning or effect if such were not the case'').[84]

[67] *See* 2020 WL 5370871.

[68] *Id.* at *34.

[69] *See id.* at *15.

[70] *See id.* at *16–31.

[71] *See id.* at *31–34.

[72] *Id.* at *34.

[73] *Id.*

[74] *See New York, et al.* v. *Scalia,* No. 20–3806 (2d Cir. appeal docketed Nov. 6, 2020).

[75] *See* 2020 WL 5370871, at *34.

[76] *Id.* at *16.

[77] *Id.* at *17.

[78] *Id.*

[79] *Id.* at *25.

[80] For example, specific to the context of vertical joint employment, it may make littles sense to conceive of joint employers that are typically located higher in a hierarchical business structure (*e.g.,* general contractors and staffing agency clients) as ''acting directly or indirectly in the interest of'' acknowledged employers lower in the structure, such as subcontractors or staffing agencies.

[81] 2020 WL 5370871, at *18.

[82] *Id.*

[83] 29 U.S.C. 203(d) (emphasis added).

[84] The Supreme Court reversed an unrelated part of the Second Circuit's holding in *Greenberg. See* 324 U.S. 697, 714–16 (1945). *Greenberg* is not alone in concluding that section 3(d)'s ''includes any person acting directly or indirectly in the interest of an employer in relation to an employee'' language was intended to impose liability on an employer's agents. *See, e.g., Donovan* v. *Agnew,* 712 F.3d 1509, 1513 (1st Cir. 1983) (section 3(d) was ''intended to prevent employers from shielding themselves from responsibility for the acts of their agents''); *Dole* v. *Elliott Travel & Tours, Inc.,* 942 F.2d 962, 965–66 (6th Cir. 1991) (relying on section 3(d) to hold individually liable the owner/officer who exercised operational control of the employer);

According to the district court, the Rule also ignored the history and purpose of the ''suffer or permit'' language in section 3(g), which Congress adopted ''to expand joint employer liability.'' [85] The district court found that the Rule ''defies congressional intent'' by ignoring section 3(g).[86] Section 3(g)'s ''suffer or permit'' language was intended to include as an employer entities that used intermediaries to shield themselves from liability as employers.[87] Accordingly, the Rule's use of 3(d) to the exclusion of 3(g) may not be faithful to the Act's definitions or Congress' intent in enacting them.

WHD also notes that the Rule set forth a statutory basis for vertical joint employment, based on section 3(d), that applied a different analytical framework to different employers (*i.e.,* ''substantial control'' for ''joint employers'' vs. ''economic realities'' for ''employers''), and this approach has not been utilized by any court. Rather, all of the circuit courts of appeals to have considered joint employment under the FLSA have looked to the economic realities test as the proper framework, and have not identified section 3(d) as the sole textual basis for joint employment. In particular, the case law heavily relied upon in the Rule from the First, Third, and Fifth Circuits, as well as the *Bonnette* decision itself, all apply an economic realities analysis when determining joint employment under the FLSA.[88] Additionally, the Rule discussed the Supreme Court's decision in *Falk* v. *Brennan* at length, relying on it to buttress its statutory interpretation argument.[89] The district court, however, concluded that ''*Falk* cuts against the Department's argument that section 3(d) is the sole textual basis for joint employer liability'' because *Falk* cited to the statutory definition of ''employee'' as well as ''employer'' and observed that the FLSA's definition of employer is expansive.[90] The Rule's approach also represented a significant shift from WHD's longstanding analysis; WHD had never excluded sections 3(e) and (g) from the joint employment analysis and had instead consistently applied an economic realities framework that did not exclude the definitions of ''employ'' or ''employee'' when determining joint employer liability, as discussed above.

In view of the foregoing, WHD believes that further consideration is needed in order to ensure that its joint employment analysis is grounded in all relevant statutory definitions, and it tentatively questions whether the Rule's approach falls short of doing so in a supportable way. A textual analysis based only on section 3(d) may ignore the Act's other relevant statutory definitions and may needlessly bifurcate the analysis. Additionally, as a textual matter and as indicated above, section 3(d) may not easily encompass all scenarios in which joint employment may arise; multiple employers may simultaneously ''suffer or permit'' an employee to work and could thus be joint employers under section 3(g) without one working ''in the interest of an employer'' under section 3(d). Section 3(g) defined ''employ'' as it did with the intent of including as an employer entities that used intermediaries that employed workers but disclaimed that they themselves were employers of the workers.[91] WHD believes further analysis is needed in order to evaluate whether using 3(d) to the exclusion of 3(e) and 3(g) to determine joint employment is faithful to the Act's definitions and Congress' intent in enacting them.

2. Whether the Rule's Test Is Impermissibly Narrow Because It Is Control-Based

For vertical joint employment, the Rule adopted a four-factor test focused on control.[92] It generally excluded factors that were not indicative of a potential joint employer's control, noting that additional factors may be considered ''but only if they are indicia of whether the potential joint employer exercises significant control over the terms and conditions of the employee's work,'' [93] and specifically excluded any consideration of the employee's economic dependence on the potential joint employer.[94]

The district court found that the test adopted by the Rule is ''impermissibly narrow'' because it ''unabashedly adopts a control-based test'' and is thus contrary to the FLSA's text and case law.[95] The district court cited *Nationwide Mutual Insurance Co.* v. *Darden* [96] and circuit courts of appeals decisions for the proposition that the FLSA rejects the common law control standard for employment.[97] The district court particularly relied on *Zheng* v. *Liberty Apparel* to explain that, although control can be sufficient to establish joint employer status, control is not necessary and cannot be the sole inquiry.[98] According to the district court, the ''Rule's emphasis on control as the touchstone of joint employer liability flows from [its] interpretive error'' of ''separating section 3(d) from sections 3(g) and 3(e).'' [99] The district court concluded that ''[b]ecause a control-based test for joint employer liability is unduly narrow, the [Rule] must be set aside.'' [100] The district court added that the ''Rule must also be vacated because it unlawfully limits the factors the Department will consider in the joint employer inquiry.'' [101] According to the district court, excluding economic dependence generally, certain economic dependence factors, and certain other considerations (such as allowing the operation of a store on one's premises) from the joint employer inquiry contradicts case law and WHD's prior views.[102]

As another reason for rescission, WHD believes it is necessary to consider and address these concerns that the Rule is unduly narrow. WHD recognizes that while tests differ among the circuit courts of appeals, all courts consistently use a totality-of-the-circumstances economic realities approach to determine the scope of joint employment under the FLSA, rather than limiting the focus exclusively to control. In addition to *Bonnette,* upon which the Rule heavily relied, multiple other circuit court decisions relied upon by the Rule ground their joint employment analyses in the overarching totality-of-the-circumstances economic

Arias v. *Raimondo,* 860 F.3d 1185, 1191–92 (9th Cir. 2017) (Through section 3(d), ''Congress clearly means to extend [the FLSA's] reach beyond actual employers. [The attorney's] activity in this case on behalf of his clients illustrates the wisdom of this extension.''), *cert. denied,* 138 S. Ct. 673 (2018).

[85] 2020 WL 5370871, at *20; *see also* 29 U.S.C. 203(g).

[86] 2020 WL 5370871, at *20.

[87] *See Rutherford Food,* 331 U.S. at 728; *Salinas* v. *Commercial Interiors, Inc.,* 848 F.3d 125, 136–140 (4th Cir. 2017).

[88] *See, e.g., Baystate Alternative Staffing, Inc.* v. *Herman,* 163 F.3d 668, 675 (1st Cir. 1998); *In re Enterprise Rent-A-Car Wage & Hour Emp't Practices Litig.,* 683 F.3d 462, 469–470 (3d Cir. 2012); *Gray* v. *Powers,* 673 F.3d 352, 357 (5th Cir. 2012); *Bonnette,* 704 F.2d at 1469.

[89] *See* 85 FR 2822, 2827.

[90] 2020 WL 5370871, at *23.

[91] *See Rutherford Food,* 331 U.S. at 728; *Salinas,* 848 F.3d at 113.

[92] *See* 29 CFR 791.2(a)(1)(i–iv).

[93] 29 CFR 791.2(b) (emphasis added).

[94] *See* 29 CFR 791.2(c) (''[T]o determine joint employer status, no factors should be used to assess economic dependence.'').

[95] *See* 2020 WL 5370871, at *27.

[96] 503 U.S. 318 (1992). In *Darden,* the Court stated that the FLSA defines ''employ'' ''expansively'' and with ''striking breadth'' and ''stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles.'' *Id.* at 326.

[97] *See* 2020 WL 5370871, at *26 (citing cases).

[98] *See id.* (citing 355 F.3d at 69).

[99] *Id.* at *29.

[100] *Id.*

[101] *Id.*

[102] *See id.* at *29–30 (explaining that the ''Rule's enumeration of specific economic dependence factors as irrelevant also contravenes *Rutherford*'').

realities standard.[103] Likewise, the decisions that have not applied the *Bonnette* factors generally ground their joint employment analyses in the totality-of-the-circumstances economic realities standard too.[104]

In view of the foregoing, WHD proposes to rescind the Rule and reserve part 791 for further consideration because WHD believes that it is vitally important to ensure that its interpretation of the FLSA regarding joint employment is wholly consistent with the statutory language, purpose, and Congressional intent, as well as aligned with longstanding legal principles.

B. Taking Into Account Prior WHD Guidance

Not only is the vertical joint employment analysis set forth in the Joint Employer Rule different from the analyses applied by every court to have considered the issue prior to the Rule's issuance, but WHD had never before applied the Rule's analysis. Upon initial further review of the Joint Employer Rule, WHD understands the concern that the Rule did not sufficiently take into account and explain departures from WHD's prior joint employment guidance. This concern provides additional support for proposing to rescind the Rule.

It is well-settled that ''[a]gencies are free to change their existing policies as long as they provide a reasoned explanation for the change.'' [105] When an agency changes its position, ''it need not demonstrate . . . that the reasons for the new policy are *better* than the reasons for the old one.'' [106] ''But the agency must at least 'display awareness that it is changing position.' '' [107] The agency's explanation is sufficient if ''the new policy is permissible under the statute, . . . there are good reasons for it, and . . . the agency *believes* it to be better, which the conscious change of course adequately indicates.'' [108] And when explaining a changed position, ''an agency must also be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.' '' [109] In such cases, the policy change itself does not need ''further justification,'' but ''a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.'' [110] For these reasons, an unexplained inconsistency ''in agency policy is 'a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.' '' [111]

In the case of the Joint Employer Rule, the district court acknowledged that the Rule's ''justifications for engaging in rulemaking are valid'' and that ''[p]romoting uniformity and clarity given the (at least superficially) widely divergent tests for joint employer liability in different circuits is a worthwhile objective.'' [112] The court added that it was ''sympathetic to the [Rule's] concern that putative joint employers face uncertainty, and that this uncertainty is costly,'' and it made clear that its decision to vacate most of the Rule did ''not imply that the Department cannot engage in rulemaking to try to harmonize joint employer standards.'' [113]

The district court concluded, however, that the Joint Employer Rule ''did not adequately explain why it departed from its prior interpretations.'' [114] The district court described the Rule as ''a volte-face'' from WHD's MSPA joint employment regulation ''in multiple respects.'' [115] The court noted that WHD's 1997 MSPA final rule explained that MSPA joint employment rests on its statutory definition of ''employ,'' which is the same as the FLSA's definition of ''employ,'' and that WHD said then that the FLSA's definition of ''employ'' rejects the traditional common law control test.[116] The district court explained that the Joint Employer Rule ''failed to acknowledge that it had shifted its position from the [MSPA joint employment regulation], much less explain why'' even though it quoted a commenter who identified this change in position.[117] The court also concluded that the Joint Employer Rule did not ''satisfactorily explain why it departed from'' the Home Care AI and the Joint Employment AI, both of which, in contrast to the Rule, stated that the FLSA joint employment analysis cannot be limited to control.[118] The court determined that this ''inconsistency demands an explanation'' but the Rule ''did not acknowledge that it was departing from'' the Home Care AI and the Joint Employment AI nor ''explain why it now believes [that they] were wrong.'' [119]

Having initially considered the Joint Employer Rule in comparison to prior and existing guidance, WHD tentatively shares the concern that the Rule did not adequately account for inconsistencies with its previous guidance. WHD's MSPA joint employment regulation [120] and its 1997 final rule [121] implementing it remain in effect. And although the Home Care AI and the Joint Employment AI were withdrawn before the effective date of the Joint Employer Rule, WHD has not provided substantive reasons for withdrawing them in relation to the contrary guidance in the Rule. WHD believes that these circumstances are an additional reason for proposing to rescind the Joint Employer Rule.

C. The Joint Employer Rule's Vertical Joint Employment Analysis Has Not Been Widely Adopted by Courts

Since promulgation of the Joint Employer Rule, courts (including the Southern District of New York's decision vacating the analysis in *New York* v. *Scalia*) have declined to adopt the Rule's vertical joint employment analysis.[122] Indeed, WHD is aware of only two cases in which a court has adopted the Rule's vertical joint employment analysis.[123] Moreover, a

[103] *See, e.g., Baystate,* 163 F.3d at 675; *Enterprise,* 683 F.3d at 469; *Gray,* 673 F.3d at 354–55.

[104] *See, e.g., Zheng,* 355 F.3d at 69–75; *Salinas,* 848 F.3d at 142–43; *Torres-Lopez,* 111 F.3d at 639–644 (noting that an economic realities analysis applies when determining joint employment and that the concept of joint employment, like employment generally, ''should be defined expansively'' under the FLSA).

[105] *Encino Motorcars, LLC* v. *Navarro,* 136 S. Ct. 2117, 2125 (2016) (citing *Nat'l Cable & Telecomm. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 981–82 (2005); *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 863–64 (1984)).

[106] *F.C.C.* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).

[107] *Encino,* 136 S. Ct. at 2126 (quoting *Fox Television,* 556 U.S. at 515, and removing emphasis).

[108] *Fox Television,* 556 U.S. at 515.

[109] *Encino,* 136 S. Ct. at 2126 (quoting *Fox Television,* 556 U.S. at 515).

[110] *Fox Television,* 556 U.S. at 515–16.

[111] *Encino,* 136 S. Ct. at 2126 (quoting *Brand X,* 545 U.S. at 981).

[112] 2020 WL 5370871, at *33.

[113] *Id.*

[114] *Id.* at 31.

[115] *Id.*

[116] *See id.* (citing 62 FR 11734 & 11745).

[117] *Id.* (citing 85 FR 2833).

[118] *Id.* (citing 2014 WL 2816951, at *2 n.5 and 2016 WL 284582, at *9 and comparing them to 85 FR 2821).

[119] *Id.*

[120] *See* 29 CFR 500.20(h)(5).

[121] *See* 62 FR 11745–46.

[122] *See Reyes-Trujillo* v. *Four Star Greenhouse, Inc.,* No. 20–11692, 2021 WL 103636, at *7–9 (E.D. Mich. Jan. 12, 2021) (agreeing that the Joint Employer Rule's ''exclusive focus on the purported joint employer's control runs counter to the FLSA's expansive definition of 'employer' '' and thus declining to adopt the Rule's analysis); *Elsayed* v. *Family Fare LLC,* No. 1:18–cv–1045, 2020 WL 4586788, at *4 (M.D.N.C. Aug. 10, 2020) (finding ''it unnecessary to wade into whether the DOL's [Joint Employer] Rule is entitled to *Brand X* deference or whether the [Rule] is lawful under the APA'' and instead ''rely[ing] on established Fourth Circuit precedent'' regarding joint employment).

[123] *See Clyde* v. *My Buddy The Plumber Heating & Air, LLC,* No. 2:19–cv–00756–JNP–CMR, 2021 WL 778532 (D. Utah Mar. 1, 2021); *Sanders* v. *Glendale Rest. Concepts, LP,* No. 19–cv–01850–NYW, 2020 WL 5569786 (D. Colo. Sept. 17, 2020).

number of circuit courts of appeals previously established an analytical framework for vertical joint employment cases, and all of these analyses are different from the analysis in the Joint Employer Rule.[124] This judicial landscape suggests that withdrawing the Rule would not be disruptive. Among other things, the Rule has not significantly affected judicial analysis of FLSA joint employment cases, and rescinding the Rule could potentially alleviate any confusion over the joint employment standard applied by courts. In addition, WHD does not believe that it will be difficult or burdensome to educate and reorient its enforcement staff if the Joint Employer Rule is rescinded.

D. Effects on Employees of the Vertical Joint Employment Analysis

The Joint Employer Rule acknowledged that, although it would not change the wages due an employee under the FLSA in the vertical joint employment scenario, ''it may reduce the number of businesses currently found to be joint employers from which employees may be able to collect back wages due to them under the Act.'' [125] The Rule further acknowledged that, ''[t]his, in turn, may reduce the amount of back wages that employees are able to collect when their employer does not comply with the Act and, for example, their employer is or becomes insolvent.'' [126] One commenter—the Economic Policy Institute (EPI)—did submit a quantitative analysis of the monetary amount that would transfer from employees to employers as a result of the Rule.[127] WHD responded that, although it ''appreciates EPI's quantitative analysis,'' it ''does not believe there are data to accurately quantify the impact of this [R]ule.'' [128] WHD added that it ''lacks data on the current number of businesses that are in a joint employment relationship, or to estimate the financial capabilities (or lack thereof) of these businesses and therefore is unable to estimate the magnitude of a decrease in the number of employers liable as joint employers.'' [129] The Rule discussed in a qualitative manner some potential benefits to employees, such as ''promot[ing] innovation and certainty in business relationships'' and encouraging business to engage in certain practices with an employer that ''could benefit the employer's employees.'' [130]

The district court determined that the Joint Employer Rule ''does not adequately consider [its] cost to workers'' or ''try to account for this effect'' and was arbitrary and capricious for that reason, among others.[131] The district court stated that the Rule entirely disregarded its cost to workers and that its explanation for doing so—its inability to quantify those costs—was unsatisfactory.[132] The court noted that the Rule's ''inability-to-quantify rationale is especially unpersuasive'' because the Rule similarly failed to quantify its ''supposed benefits'' while taking those benefits into account.[133] Although the court recognized that rules do not have to provide quantitative explanations or precisely parse costs and benefits, it determined that ignoring the cost to workers was not justified in the circumstances of the Joint Employer Rule.[134]

WHD tentatively shares the concern that the Joint Employer Rule may not have adequately considered the costs for employees. This concern is premised in part on WHD's role as the agency responsible for enforcing the FLSA and for collecting back wages due to employees when it finds violations, as well as a recent Presidential Memorandum instructing the Director of the Office of Management and Budget to recommend new procedures for regulatory review that better ''take into account the distributional consequences of regulations.'' [135] As noted in the economic analysis, this rescission could impact the well-being and economic security of workers in low-wage industries, many of whom are immigrants and people of color, because FLSA violations are more severe and widespread in low-wage labor markets.[136] WHD also questions whether a rule that may result in employees being employed by fewer employers, as the Joint Employer Rule acknowledges may be its result, effectuates the FLSA's purpose, recognized repeatedly by the Supreme Court, to provide broad coverage to employees.[137] WHD believes that these potential negative effects on employees, which may make it more difficult for workers to collect back wages owed and incentivize workplace fissuring,[138] are serious concerns that may have a disproportionate impact on low-wage and vulnerable workers. These concerns are an additional reason for proposing to rescind the Joint Employer Rule.

E. Horizontal Joint Employment

In the horizontal joint employment scenario, one employer employs an employee for one set of hours in a workweek, and one or more other employers employs the same employee for separate hours in the same workweek. If the two (or more) employers jointly employ the employee, the hours worked by that employee for all of the employers must be aggregated for the workweek and all of the employers are jointly and severally liable.[139]

For horizontal joint employment, the Joint Employer Rule adopted the standard in the prior version of 29 CFR 791.2 with non-substantive revisions, reflecting the Department's historical position, which is also consistent with the relevant case law.[140] This analysis focuses on the degree of the employers' association with respect to the employment of the employee. Although this NPRM proposes to rescind the entire Rule, including the horizontal joint employment provisions for reasons discussed below, WHD is not considering revising its longstanding horizontal joint employment analysis.

The Rule structured 29 CFR 791.2 such that the horizontal joint employment provisions are intertwined with the vertical joint employment provisions, and it would be difficult, as a practical matter, for the horizontal joint employment provisions to stand alone. For example, the Rule's horizontal joint employment analysis is

[124] *See* 85 FR 2831 (comparing the Rule's four-factor analysis to the various analyses adopted by circuit courts of appeals).

[125] *Id.* at 2853.

[126] *Id.*

[127] *See id.*

[128] *Id.*

[129] *Id.*

[130] *Id.*

[131] 2020 WL 5370871, at *32; *see also id.* at *33 (The Rule ''effectively assumed that [it] would cost workers nothing—an obviously unreasonable assumption.'').

[132] *See id.* at *32–33.

[133] *Id.* at *33.

[134] *See id.* at *33 (citing cases).

[135] Modernizing Regulatory Review: Memorandum for the Heads of Executive Departments and Agencies (Jan. 20, 2021), published at 86 FR 7223 (Jan. 26, 2021).

[136] Annette Bernhardt, Ruth Milkman, et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities,* 2009, *available at https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf.*

[137] *See, e.g., Rutherford Food,* 331 U.S. at 729 (''This Act contains its own definitions, comprehensive enough to require its application to many persons and working relationships, which prior to this Act, were not deemed to fall within an employer-employee category.'') (quoting *Walling* v. *Portland Terminal Co.,* 330 U.S. 148, 150 (1947)); *United States* v. *Rosenwasser*, 323 U.S. 360, 362–63 (1945) (''A broader or more comprehensive coverage of employees [than that of the FLSA] . . . would be difficult to frame.'').

[138] The Joint Employer Rule described workplace fissuring as the increased reliance by employers on subcontractors, temporary help agencies, and labor brokers rather than hiring employees directly. *See* 85 FR 2853 n.100.

[139] *See* 29 CFR 791.2(e)(1).

[140] *See* 85 FR 2844–45.

located in subsection (e) of 29 CFR 791.2.[141] Section 791.2(f) addresses the consequences of joint employment for both the vertical and horizontal scenarios, and section 791.2(g) provides 11 ''illustrative examples'' of how the Rule may apply to specific factual situations implicating both vertical and horizontal joint employment.[142] Accordingly, because of the interconnected nature of section 791.2's provisions, WHD believes that simply retaining section 791.2(e) or some portions of part 791 would be unworkable and potentially confusing, and thus proposes to rescind the entire Rule. Nonetheless, the Department is not reconsidering the substance of its longstanding horizontal joint employment analysis.

F. Effect of Proposed Rescission

If the Joint Employer Rule is rescinded, as proposed here, Part 791 of Title 29 of the Code of Federal Regulations would be removed in its entirety and reserved. The Department is not proposing any regulatory guidance to replace the guidance currently located in Part 791, so any commenter feedback addressing or suggesting such a replacement or otherwise requesting that WHD adopt specific guidance if the Joint Employer Rule is rescinded will be considered to be outside the scope of this NPRM. In addition to the reasons for the proposed rescission explained above, rescission of the Joint Employer Rule and removal of Part 791 would allow WHD an additional opportunity to consider legal and policy issues relating to FLSA joint employment.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) and its attendant regulations[143] require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule.[144] This NPRM does not contain a collection of information subject to Office of Management and Budget approval under the PRA.

IV. Executive Order 12866, Regulatory Planning and Review; and Executive Order 13563, Improved Regulation and Regulatory Review

A. Introduction

Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and OMB review.[145] Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as economically significant); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OIRA has determined that this proposed rescission is economically significant under section 3(f) of Executive Order 12866.

Executive Order 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The analysis below outlines the impacts that the Department anticipates may result from this proposed rescission and was prepared pursuant to the above-mentioned executive orders.

B. Background

The FLSA requires a covered employer to pay nonexempt employees at least the federal minimum wage for every hour worked in a non-overtime workweek and (in an overtime workweek) premium pay of at least one and one-half times the employee's regular rate of pay for all hours worked in excess of 40. The FLSA defines ''employer'' to ''include[] any person acting directly or indirectly in the interest of an employer in relation to an employee''[146]; ''employee'' to generally mean ''any individual employed by an employer''[147]; and ''employ'' to ''include[] to suffer or permit to work.''[148] Two or more employers may jointly employ an employee and thus be jointly and severally liable for every hour worked by the employee in a workweek.

In January 2020, WHD published a final rule entitled ''Joint Employer Status Under the Fair Labor Standards Act,'' which became effective on March 16, 2020 (Joint Employer Rule or Rule). The Rule provides a four-factor test for determining joint employer status in vertical joint employment situations. Those four factors are whether the potential joint employer: (1) Hires or fires the employee; (2) supervises and controls the employee's work schedule or conditions of employment to a substantial degree; (3) determines the employee's rate and method of payment; and (4) maintains the employee's employment records. For horizontal joint employment situations, the Joint Employer Rule made non-substantive revisions to WHD's existing standard. For reasons discussed in Section II above, the Department is now proposing to rescind the Joint Employer Rule and to remove the regulations in 29 CFR part 791.

C. Costs

1. Rule Familiarization Costs

Rescinding the Joint Employer Rule would impose direct costs on businesses that will need to review the rescission. To estimate these regulatory familiarization costs, the Department determined: (1) The number of potentially affected entities, (2) the average hourly wage rate of the employees reviewing the rescission, and (3) the amount of time required to review the rescission. It is uncertain whether these entities would incur regulatory familiarization costs at the firm or the establishment level. For

[141] *See* 29 CFR 791.2(e).

[142] *See* 29 CFR 791.2(f), (g). The district court vacated sections 791.2(f) and (g) and all other provisions of section 791.2 except for subsection (e). *See* 2020 WL 5370871, at *34.

[143] *See* 44 U.S.C. 3501 *et seq.;* 5 CFR part 1320.

[144] *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8.

[145] *See* 58 FR 51,735, 51,741 (Oct. 4, 1993).

[146] 29 U.S.C. 203(d).

[147] 29 U.S.C. 203(e)(1).

[148] 29 U.S.C. 203(g).

example, in smaller businesses there might be just one specialist reviewing the rescission, while larger businesses might review it at corporate headquarters and determine policy for all establishments owned by the business. To avoid underestimating the costs of this proposed rescission, the Department uses both the number of establishments and the number of firms to estimate a potential range for regulatory familiarization costs. The lower bound of the range is calculated assuming that one specialist per firm will review the rescission, and the upper bound of the range assumes one specialist per establishment.

The most recent data on private sector entities at the time this NPRM was drafted are from the 2017 Statistics of U.S. Businesses (SUSB), which reports 5,996,900 private firms and 7,860,674 private establishments with paid employees.[149] Because the Department is unable to determine how many of these businesses have workers with one or more joint employers, this analysis assumes all businesses will undertake review.

The Department believes ten minutes per entity, on average, to be an appropriate review time here. This rulemaking is a proposed rescission and would not set forth any new regulations or guidance regarding joint employment. Additionally, as it believed when it issued the Joint Employer Rule, the Department believes that many entities are not joint employers and thus would not spend any time reviewing the proposed rescission. Therefore, the ten-minute review time represents an average of no time for the majority of entities that are not joint employers, and potentially more than ten minutes for review by some entities that might be joint employers.

The Department's analysis assumes that the proposed rescission would be reviewed by Compensation, Benefits, and Job Analysis Specialists (SOC 13–1141) or employees of similar status and comparable pay. The median hourly wage for these workers was $31.04 per hour in 2019, the most recent year of data available.[150] The Department also assumes that benefits are paid at a rate of 46 percent [151] and overhead costs are paid at a rate of 17 percent of the base wage, resulting in a fully loaded hourly rate of $50.60.

The Department estimates that the lower bound of regulatory familiarization cost range would be $50,675,004 (5,996,900 firms × $50.60 × 0.167 hours), and the upper bound, $66,424,267 (7,860,674 establishments × $50.60 × 0.167 hours). The Department estimates that all regulatory familiarization costs would occur in Year 1.

Additionally, the Department estimated average annualized costs of this proposed rescission over 10 years. Over 10 years, it would have an average annual cost of $6.7 million to $8.8 million, calculated at a 7 percent discount rate ($5.8 million to $7.6 million calculated at a 3 percent discount rate). All costs are in 2019 dollars.

2. Other Costs

The Department acknowledges that there may be other potential costs to the regulated community, such as reduced clarity from the lack of regulatory guidance. Because it lacks data on the number of businesses that are in a joint employment relationship or those that changed their policies as a result of the Joint Employer Rule, the Department has not quantified these potential costs, which are expected to be de minimis. Although the rescission would remove the regulations at 29 CFR part 791, the Department believes that this will not result in substantial costs or decreased clarity for the regulated community because, as discussed above, courts already apply a joint employment analysis different from the analysis in the Joint Employer Rule and generally have not adopted the Rule's analysis.

D. Transfers

The Department acknowledged that the Joint Employer Rule could limit the ability of workers to collect wages due to them under the FLSA because when there is only one employer liable, there are fewer employers from which to collect those wages and no other options if that sole employer lacks sufficient assets to pay.[152] Because the Joint Employer Rule provided new criteria for determining joint employer status under the FLSA and given the specifics of those criteria, it potentially reduced the number of businesses found to be joint employers from which employees may be able to collect back wages due to them under the Act. This, in turn, would reduce the amount of back wages that employees are able to collect when an employer does not comply with the Act and, for example, was or became insolvent.

Like the Joint Employer Rule, this rescission would not change the amount of wages due any employee under the FLSA. Rescinding the Joint Employer Rule could result in a transfer from employers to employees in the form of back wages that employees would thereafter be able to collect. The Department lacks data on the current number of businesses that are in a joint employment relationship, or to estimate the financial capabilities (or lack thereof) of these businesses and therefore is unable to estimate the magnitude of an increase in the number of employers liable as joint employers.

Although the Rule would not have changed the amount of wages due to an employee, the narrower standard for joint employment could have incentivized ''workplace fissuring.'' Research has shown that this type of domestic outsourcing can suppress workers' wages, especially for low-wage occupations.[153]

In 2019, the Economic Policy Institute (EPI) submitted a comment to the Joint Employer NPRM in which they calculated that the rule would result in transfers from employees to employers of over $1 billion.[154] EPI explained that these transfers would result from both an increase in workplace ''fissuring'' as well as from an increase in wage theft by employers. Rescinding this standard could help mitigate this impact. The Department is unable to determine to what extent these transfers occurred while the Joint Employer Rule was in effect, and therefore has not provided a quantitative estimate of transfers from employers to employees because of this rescission. The Department is also unable to estimate the increase in back wages that employees would be able to collect because of this change.

This proposed rescission could also benefit some small businesses, because the Joint Employer Rule's narrowing of the joint employment standard could make them solely liable and responsible for complying with the FLSA without relying on the resources of a larger business in certain situations.

[149] Statistics of U.S. Businesses 2017, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html,* 2016 SUSB Annual Data Tables by Establishment Industry.

[150] Occupational Employment and Wages, May 2019, *https://www.bls.gov/oes/current/oes131141.htm.*

[151] The benefits-earnings ratio is derived from the Bureau of Labor Statistics' Employer Costs for Employee Compensation data using variables CMU1020000000000D and CMU1030000000000D.

[152] *See* 85 FR 2853.

[153] Arindrajit Dube and Ethan Kaplan, ''Does Outsourcing Reduce Wages in the Low-Wage Service Occupations? Evidence from Janitors and Guards,'' *ILR Review* 63, no. 2 (January 2010): 287–306.

[154] Celine McNicholas and Heidi Shierholz, *EPI comments regarding the Department of Labor's proposed joint-employer standard,* June 25, 2019. *https://www.epi.org/publication/epi-comments-regarding-the-department-of-labors-proposed-joint-employer-standard/.*

The Department welcomes comments and data to help quantify these transfers.

E. Benefits

The Department believes that rescinding the Joint Employer Rule would result in benefits to workers and would strengthen wage and hour protections for vulnerable workers. Removing a standard for joint employment that is narrower than the standard applied by courts and WHD's prior standards may enable more workers to collect back wages to which they would already be entitled under the FLSA. This could particularly improve the well-being and economic security of workers in low-wage industries, many of whom are immigrants and people of color, because FLSA violations are more severe and widespread in low-wage labor markets.[155]

The Department welcomes any comments and data on quantifying the benefits associated with this proposed rescission.

V. Regulatory Flexibility Act (RFA) Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (1996), requires federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Accordingly, the Department examined this proposed rescission to determine whether it would have a significant economic impact on a substantial number of small entities. The most recent data on private sector entities at the time this NPRM was drafted are from the 2017 Statistics of U.S. Businesses (SUSB), which reports 5,996,900 private firms and 7,860,674 private establishments with paid employees.[156] Of these, 5,976,761 firms and 6,512,802 establishments have fewer than 500 employees. Because the Department is unable to determine how many of these businesses have workers with one or more joint employers, this analysis assumes all businesses will undertake review.

The per-entity cost for small business employers is the regulatory familiarization cost of $8.43, or the fully loaded mean hourly wage of a Compensation, Benefits, and Job Analysis Specialist ($50.60) multiplied by ⅙ hour (ten minutes). Because this cost is minimal for small business entities, and well below one percent of their gross annual revenues, which is typically at least $100,000 per year for the smallest businesses, the Department certifies that this proposed rescission will not have a significant economic impact on a substantial number of small entities.

The Department welcomes any comments and data on this Regulatory Flexibility Act Analysis, including the costs and benefits of this proposed rescission on small entities.

VII. Executive Order 13132, Federalism

The Department has (1) reviewed this proposed rescission in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The proposed rescission would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

VIII. Executive Order 13175, Indian Tribal Governments

This proposed rescission would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 29 CFR Part 791

Wages.

PART 791—[REMOVED AND RESERVED]

■ For the reasons set forth in the preamble, and under the authority of 29 U.S.C. 201–219, the Department proposes to remove and reserve 29 CFR part 791.

Signed this 4th day of March, 2021.

Jessica Looman,

Principal Deputy Administrator, Wage and Hour Division.

[FR Doc. 2021–04867 Filed 3–11–21; 8:45 am]

BILLING CODE 4510–27–P

[155] Annette Bernhardt, Ruth Milkman, et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities,* 2009, *available at https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf.*

[156] Statistics of U.S. Businesses 2017, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html,* 2016 SUSB Annual Data Tables by Establishment Industry.

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2020–OSERS–0179]

Proposed Priority, Requirement, and Definitions—National Comprehensive Center on Improving Literacy for Students With Disabilities

AGENCY: Offices of Elementary and Secondary Education and Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority, requirement, and definitions.

SUMMARY: The Department of Education (Department) proposes a priority, requirement, and definitions for the National Comprehensive Center on Improving Literacy for Students with Disabilities (Center) program, Assistance Listing Number 84.283D. The Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA), requires the Secretary to establish a comprehensive center for students at risk of not attaining full literacy skills due to a disability. The Department proposes a priority, requirement, and definitions that the Department may use in fiscal year (FY) 2021 and later years. We intend to use the priority, requirement, and definitions to award a cooperative agreement for a comprehensive center designed to improve literacy skills for students at risk of not attaining full literacy skills due to a disability and ultimately better prepare these students to compete in a global economy.

DATES: We must receive your comments on or before April 12, 2021.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priority, requirement, and definitions,

address them to Kristen Rhoads, U.S. Department of Education, 400 Maryland Avenue SW, Room 5175, Potomac Center Plaza, Washington, DC 20202–5076.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Kristen Rhoads, U.S. Department of Education, 400 Maryland Avenue SW, Room 5175, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6715. Email: *Kristen.Rhoads@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:

Invitation to Comment: We invite you to submit comments regarding the proposed priority, requirement, and definitions. To ensure that your comments have maximum effect in developing the notice of final priority requirement, and definitions, we urge you to identify clearly the specific section of the proposed priority, requirement, or definition that each comment addresses.

We are particularly interested in comments about whether the proposed priority, requirement, and definitions would be challenging for new applicants to meet and, if so, how the proposed priority, requirement, and definitions could be revised to address potential challenges and reduce burden.

Directed Question 1: For the proposed priority, the Department is considering a requirement that would limit the reimbursement of indirect costs based on the grantee's modified total direct cost (MTDC) base, as defined in 2 CFR 200.68.

Note: The MTDC is different from the total amount of the grant. Additionally, the MTDC is not the same as a percentage of each specific expenditure category or a specific expenditure category. If the grantee is billing based on the MTDC base, the grantee must make its MTDC documentation available to the program office and the Department's Indirect Cost Unit.

We are considering this requirement based on 2 CFR 200.414(c)(1), which allows a Federal awarding agency to use an indirect cost rate different from the negotiated rate when required by Federal statute or regulation or when approved by a Federal awarding agency head or delegate head based on documented justification when the Federal awarding agency implements, and makes publicly available, the policies, procedures, and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates. Federal discretionary grantees have historically been reimbursed for indirect costs at the rate that the grantee has negotiated with its cognizant Federal agency, and we believe that use of the negotiated rate is appropriate for most grants in most circumstances. However, the Department analyzed the indirect cost rates for all current comprehensive centers (Assistance Listing Number 84.283) and found a wide range of indirect cost rate agreements in place. The indirect cost rates ranged from 10 percent to over 125 percent, with an average of 52 percent. The percentage of indirect costs charged to the grant compared to total budget amounts varied across the current comprehensive centers from 9 percent to 39 percent, with 33 percent of grantees charging between 20 percent and 35 percent. We are considering limiting the indirect costs to maximize the availability of funds to provide technical assistance (TA) to a variety of stakeholders to meet the needs of students at risk of not attaining full literacy skills due to a disability, including dyslexia.

Consistent with our analysis, we have proposed a requirement that would set a reasonable cap in an amount between 20 percent to 35 percent for those administrative costs that are indirect costs for grantees, including subrecipients.

The Department invites comments on the practical implications of this proposed indirect cost limitation for the grantee and subrecipients, specific comments on the maximum indirect cost rate, including what a reasonable cap would be and the rationale for the proposed amount, and thoughts on allowing programs to seek and justify deviations.

Directed Question 2: The Department seeks information on the rigor of the evaluation that should be conducted by the Center. Paragraph (c) of the proposed priority outlines the proposed requirements related to a third-party evaluator. The Department is interested in comments related to the evaluation methods or research designs, cost, and personnel time needed to conduct a rigorous evaluation of the Center's effect on student literacy achievement and the capacity of educators to implement evidence-based (as defined in section 8101(21) of the ESEA) instruction and assessment. Relatedly, the Department invites comments on the appropriateness of using a ''third party'' or independent evaluator, particularly for the summative evaluation.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed priority, requirement, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority, requirement, and definitions by accessing *Regulations.gov.* Due to the current novel coronavirus 2019 (COVID–19) pandemic, the Department buildings are currently not open. However, upon reopening, you may also inspect the comments in person in Room 5175, 550 12th Street SW, Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority, requirement, and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The Comprehensive Centers program supports the establishment of not fewer than 20 comprehensive centers to provide capacity building services to State educational agencies (SEAs), regional educational agencies (REAs), local educational agencies (LEAs), and schools that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction. The purpose of the National Comprehensive Center on Improving Literacy for Students with Disabilities (Center) is to identify or develop evidence-based literacy assessment tools and professional development activities and identify evidence-based instruction, strategies, and accommodations for students at risk

of not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning. The Center will also disseminate its products and information on evidence-based literacy to families, SEAs, LEAs, REAs, and schools.

Program Authority: Section 203 of the Educational Technical Assistance Act of 2002 (ETAA) (20 U.S.C. 9602) and section 2244 of the ESEA (20 U.S.C. 6674).

Proposed Priority

This notice contains one proposed priority.

National Comprehensive Center on Improving Literacy for Students With Disabilities

Background: Section 2244 of the ESEA requires the Secretary to establish a comprehensive center on students at risk of not attaining full literacy skills due to a disability. Comprehensive centers are typically administered by the Office of Elementary and Secondary Education (OESE). OESE is funding this Center; however, because of the Center's subject matter, it will be administered jointly by OESE and the Office of Special Education and Rehabilitative Services (OSERS).

The project is designed to improve implementation of evidence-based literacy practices in both teacher classroom and remote learning environments. With respect to remote learning, the proposed priority is intended to ensure that teachers have the training and support they need to implement evidence-based literacy practices during remote instruction for students with disabilities, including students with dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning. Remote learning plays a critical role in regular instruction and can serve as a crucial link allowing high-quality teaching and learning to continue when regular instruction is disrupted.

The project will be awarded and must be operated in a manner consistent with nondiscrimination requirements contained in Federal civil rights laws.

Proposed Priority: The purpose of this proposed priority is to fund a cooperative agreement to establish and operate a National Comprehensive Center on Improving Literacy for Students with Disabilities (Center) for children in early childhood education programs through high school. The Center must—

(a) Identify or develop free or low-cost evidence-based assessment tools for identifying students at risk of not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning;

(b) Identify evidence-based literacy instruction, strategies, and accommodations, including assistive technology, designed to meet the specific needs of such students;

(c) Provide families of such students with information to assist such students;

(d) Identify or develop evidence-based professional development for teachers, paraprofessionals, principals, other school leaders, and specialized instructional support personnel to—

(1) Understand early indicators of students at risk of not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning;

(2) Use evidence-based screening assessments for early identification of such students beginning not later than kindergarten; [1] and

(3) Implement evidence-based instruction designed to meet the specific needs of such students; and

(e) Disseminate the products of the comprehensive center to regionally diverse SEAs, REAs, LEAs, and schools, including, as appropriate, through partnerships with other comprehensive centers established under section 203 of the Educational Technical Assistance Act of 2002 (20 U.S.C. 9602), and regional educational laboratories established under section 174 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9564).

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address current and emerging training and information needs of SEAs, REAs, LEAs, TA centers, schools, and practitioners to select and implement teacher classroom and remote learning environment evidence-based practices (EBPs) that will improve literacy outcomes for students with disabilities, including students with dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning. To meet this requirement, the applicant must—

(i) Demonstrate knowledge of current and emerging EBPs, which can be used in reading and literacy-related teacher classroom and remote learning environment instruction, screening, assessment, and identification or diagnosis of students at risk for not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning. This includes demonstrating knowledge of current and emerging reading and literacy-related EBPs for students who are English learners; students from a variety of settings (*e.g.,* rural, suburban, urban); students from low-income families; and other educationally disadvantaged students; or

(ii) Demonstrate knowledge of, previous experience with, and results of using creative approaches and implementing in-person and virtual TA strategies to provide capacity-building services and disseminate teacher classroom and remote learning environment EBPs to a variety of entities, including parents, SEAs, REAs, LEAs, schools, Head Start, and other early childhood programs;

(2) Demonstrate a record of improving outcomes in literacy achievement for students at risk for not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning, in order to better prepare them to compete in a global economy; and

(3) Demonstrate a record of improving the adoption, implementation, and sustainment of teacher classroom and remote learning environment EBPs in literacy instruction for students at risk for not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning.

(b) Demonstrate, in the narrative section of the application under

[1] Applicants are encouraged to identify or develop professional development for using evidence-based screening assessments for early identification of children in early childhood or prekindergarten programs as well.

''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, sex, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended short-term, intermediate, and long-term outcomes. To meet this requirement, the applicant must provide—

(i) A five-year plan for the Center to identify current and emerging training and information needs and to address the priority;

(ii) Measurable intended project outcomes; and

(iii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended short-term, intermediate, and long-term outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, and describe any underlying concepts, assumptions, expectations, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel, www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework,* and *www.govinfo.gov/content/pkg/FR-2019-04-04/pdf/2019-06583.pdf.*

(4) Be based on current research and make use of EBPs in the development and delivery of its products and services. To meet this requirement, the applicant must describe—

(i) The current research on teacher classroom and remote learning environment EBPs for literacy instruction for students at risk for not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning; and

(ii) The current research about adult learning principles in in-person and virtual settings and implementation science that will inform the proposed TA; and

(5) Develop products or refine or update publicly available existing products and provide in-person and virtual services that are of high quality and sufficient intensity and duration to achieve the intended measurable outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base in teacher classroom and remote learning environment literacy instruction for students at risk of not attaining full literacy skills due to a disability;

(ii) Its proposed approach to universal, general TA, which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA, which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach, a description of new or existing publicly available products that may be used and services that the Center proposes to make available, and the expected impact of those products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA, which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services, a description of new or existing publicly available products that may be used and services that the Center proposes to make available, and the expected impact of those products and services under this approach;

(B) Its proposed approach to measure the readiness of the target audiences to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA, REA, LEA, school, and early childhood education program levels;

(C) Its proposed plan for assisting SEAs, REAs, and LEAs to build or enhance in-person and virtual training systems that include capacity-building services and professional development based on adult learning principles and coaching; and

(D) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, districts, schools, early childhood education programs, families) to ensure that there is communication between each level and that there are systems in place to support the use of teacher classroom and remote learning environment EBPs for literacy instruction;

(6) Partner with the National Comprehensive Center and at least one of the other federally funded comprehensive centers, regional educational laboratories, equity assistance centers, OSEP- and other related federally funded TA Centers, parent training and information and community parent resource centers funded by the Department and OSEP (*e.g.,* Center for Parent Information and Resources and Parent Technical Assistance Centers), and other related organizations to refine or develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes; and

(7) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of in-person and virtual dissemination strategies, to promote awareness and use of the Center's products and services.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator. The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions, that are linked directly to the project's proposed logic model required in paragraph (b)(2)(iii) of this notice;

(2) Describe how progress in and fidelity of implementation, as well as project short-term, intermediate, and long-term outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report (APR); and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in collaboration with a ''third-party'' evaluator and the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will ensure equal access for employment for all, including those who are members of groups that have traditionally been underrepresented based on race, color, national origin, sex, age, religion, or disability;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications, subject-matter expertise, and technical experience to carry out the proposed activities, achieve the project's intended outcomes, and develop ongoing partnerships with leading experts and organizations nationwide to inform project activities;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

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

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes. The identified project director should be, at minimum, 0.5 full-time equivalency throughout the project period;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, general and special education teachers, TA providers, researchers, institutions of higher education, and policy makers, among others, in its development and operation.

(f) Address the following additional application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer, OESE staff, and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, or a virtual conference, during each year of the project period;

(iii) Two annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) At least monthly, communicate and collaborate with other Department-funded centers to achieve project objectives;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Include a plan for maintaining a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include a plan for ensuring that annual project progress toward meeting project goals is posted on the project website;

(6) Include, in Appendix A, a letter of agreement from each partnering organization or consultant. The letter of agreement should clearly specify the role of the partnering organization or consultant and the time needed to fulfill the commitment to the project; and

(7) Include, in Appendix A, an assurance to assist OSEP and OESE with the transfer of pertinent resources and products and to maintain the continuity of services to target audiences during the transition to this new award period and at the end of this award period, as appropriate.

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)).

Proposed Requirement

Background: We propose a requirement for this grant competition that would limit the reimbursement of indirect costs based on its modified total direct cost (MTDC) base, as defined in 2 CFR 200.68. The cap would apply to indirect administrative costs for grantees and subrecipients.

This requirement is based on 2 CFR 200.414(c)(1), which allows a Federal awarding agency to use an indirect cost rate different from the negotiated rate when required by Federal statute or regulation or when approved by a Federal awarding agency head or delegate head based on documented justification when the Federal awarding

agency implements, and makes publicly available, the policies, procedures, and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates.

Federal discretionary grantees have historically been reimbursed for indirect costs at the rate that the grantee has negotiated with its cognizant Federal agency, and we believe that use of the negotiated rate is appropriate for most grants in most circumstances. However, we would limit the indirect costs to maximize the availability of funds to provide TA to a variety of stakeholders and to meet the needs of students at risk of not attaining full literacy skills due to a disability, including dyslexia.

Requirement: Indirect costs are limited to no more than 35 percent of costs, based on a modified total direct cost (MTDC) base, as defined in 2 CFR 200.68.

Proposed Definitions

We propose the following definitions for use with the proposed priority. We propose these definitions to ensure that applicants have a clear understanding of how we are using these terms. We propose to use some definitions the Department has adopted elsewhere and provide the source of existing definitions in parentheses.

Capacity-building services means assistance that strengthens an individual's or organization's ability to engage in continuous improvement and achieve expected outcomes. (Final Priorities, Requirements, Definitions, and Performance Measures; Comprehensive Centers Program (84 FR 13122), April 4, 2019)

Fidelity means the delivery of instruction in the way in which it was designed to be delivered. (Final Priorities and Definitions; State Personnel Development Grants (77 FR 45944), August 2, 2012)

Intensive, sustained TA means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

Regional educational agency, for the purposes of this program, means ''Tribal Educational Agency'' as defined in ESEA section 6132(b)(3), as well as other educational agencies that serve regional areas. (Final Priorities, Requirements, Definitions, and Performance Measures; Comprehensive Centers Program (84 FR 13122), April 4, 2019)

TA services are defined as negotiated series of activities designed to reach a valued outcome.

Targeted, specialized TA means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

Third-party evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

Universal, general TA means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

Final Priority, Requirement, and Definitions

We will announce the final priority, requirement, and definitions in a document in the **Federal Register**. We will determine the final priority, requirement, and definitions after considering public comments and other information available to the Department. 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 this proposed priority, requirement, and definitions, we will invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by 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.

OMB has determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed 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 the proposed priority, requirement, and definitions based on a reasoned determination that the benefits would justify the 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 would 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.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make the proposed priority, requirement, and definitions easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of the preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

We invite comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief. The small entities that this proposed regulatory action would affect are public or private nonprofit agencies and organizations, including Indian Tribes and institutions of higher education that may apply. We believe that the costs imposed on an applicant by the proposed priority, requirement, and definitions would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priority, requirement, and definitions would outweigh any costs incurred by the applicant. There are very few entities who could provide the type of TA required under the proposed priority. For these reasons the proposed priority, requirement, and definitions would not impose a burden on a significant number of small entities.

Paperwork Reduction Act of 1995: The proposed priority, requirement, and definitions contain information collection requirements that are approved by OMB under OMB control number 1894–0006.

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: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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.

David Cantrell,

Deputy Director, Office of Special Education Programs, delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

Mark Washington,

Deputy Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2021–05247 Filed 3–10–21; 11:15 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0406; FRL–10020–82–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Regional Haze State and Federal Implementation Plans

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 State of North Dakota on August 3, 2020, addressing regional haze. Specifically, EPA is proposing to approve Amendment No. 2 to the North Dakota SIP for Regional Haze to satisfy certain requirements for the first implementation period of the Clean Air Act's (CAA) regional haze program. Amendment No. 2 adopts the same regional haze requirements for the Antelope Valley Station promulgated by EPA in our 2012 Federal Implementation Plan (FIP). In conjunction with this proposed approval of Amendment No. 2, we also propose to withdraw the portions of our 2012 FIP that apply to the Antelope Valley Station. EPA is proposing this action pursuant to sections 110 and 169A of the CAA.

DATES: *Comments:* Written comments must be received on or before May 11, 2021. *Public hearing:* If anyone contacts us requesting a public hearing on or before March 29, 2021, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document. Contact Aaron Worstell at (303) 312–6073, or at *worstell.aaron@epa.gov,* to request a hearing or to determine if a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2010–0406, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *www.regulations.gov.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Aaron Worstell, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, (303) 312–6073, *worstell.aaron@epa.gov.*

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

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I. Background

A. Requirements of the Clean Air Act and EPA's Regional Haze Rule

In CAA section 169A, Congress created a program for protecting visibility in national parks and wilderness areas. This section of the CAA establishes ''as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' [1]

EPA promulgated a rule to address regional haze on July 1, 1999.[2] The Regional Haze Rule revised the existing

[1] 42 U.S.C. 7491(a). Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this section, we mean a ''mandatory Class I Federal area.''

[2] 64 FR 35714 (July 1, 1999) (amending 40 CFR part 51, subpart P).

visibility regulations [3] to integrate provisions addressing regional haze and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–51.309. EPA most recently revised the Regional Haze Rule on January 10, 2017.[4]

The CAA requires each state to develop a SIP to meet various air quality requirements, including protection of visibility.[5] Regional haze SIPs must assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. A state must submit its SIP and SIP revisions to EPA for approval. Once approved, a SIP is enforceable by EPA and citizens under the CAA; that is, the SIP is federally enforceable. If a state fails to make a required SIP submittal, or if we find that a state's required submittal is incomplete or not approvable, then we must promulgate a FIP to fill this regulatory gap, unless the state corrects the deficiency.[6]

B. Best Available Retrofit Technology

Section 169A of the CAA directs EPA to require states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires state implementation plans to contain such measures as may be necessary to make reasonable progress toward the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' (BART) as determined by the states. Under the Regional Haze Rule, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area.[7]

Rather than requiring source-specific BART controls, states also have the flexibility to adopt alternative measures, as long as the alternative provides greater reasonable progress towards natural visibility conditions than BART (*i.e.,* the alternative must be ''better than BART'').[8]

C. Long-Term Strategy and Reasonable Progress Requirements

In addition to the BART requirements, the CAA's visibility protection provisions also require that states' regional haze SIPs contain a ''long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal. . ..'' [9] The long-term strategy must address regional haze visibility impairment for each mandatory Class I area within the state and for each mandatory Class I area located outside the state that may be affected by emissions from the state. It must include the enforceable emission limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals.[10] The reasonable progress goals, in turn, are calculated for each Class I area based on the control measures states have selected by analyzing the four statutory ''reasonable progress'' factors, which are ''the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirement.'' [11] Thus, the four reasonable progress factors are considered by a state in setting the reasonable progress goal by virtue of the state having first considered them, and certain other factors listed in § 51.308(d)(3) of the Regional Haze Rule, when deciding what controls are to be included in the long-term strategy. Then, the numerical levels of the reasonable progress goals are the predicted visibility outcome of implementing the long-term strategy in addition to ongoing pollution control programs stemming from other CAA requirements.

Unlike BART determinations, which are required only for the first regional haze planning period SIPs,[12] states are required to submit updates to their long-term strategies, including updated reasonable progress analyses and reasonable progress goals, in the form of SIP revisions on July 31, 2021, and at specific intervals thereafter.[13] In addition, each state must periodically submit a report to EPA at five-year intervals beginning five years after the submission of the initial regional haze SIP, evaluating the state's progress towards meeting the reasonable progress goals for each Class I area within the state.[14]

D. Monitoring, Recordkeeping, and Reporting

CAA section 110(a)(2) requires that SIPs, including regional haze SIPs, contain monitoring, record keeping, and reporting provisions sufficient to ensure emission limits are practically enforceable.[15] Accordingly, 40 CFR part 51, subpart K, Source Surveillance, requires the SIP to provide for monitoring the status of compliance with the regulations in it, including ''[p]eriodic testing and inspection of stationary sources,'' [16] and ''legally enforceable procedures'' for recordkeeping and reporting.[17] Furthermore, 40 CFR part 51, appendix V, Criteria for Determining the Completeness of Plan Submissions, states in section 2.2 that complete SIPs contain: ''(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels''; and ''(h) Compliance/enforcement strategies, including how compliance will be determined in practice.''

E. Consultation With Federal Land Managers

The Regional Haze Rule requires that a state consult with Federal Land Managers (FLMs) before adopting and submitting a required SIP or SIP revision. Under 40 CFR 51.308(i)(2), a

[3] EPA had previously promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* reasonably attributable visibility impairment (RAVI). 45 FR 80084, 80084 (December 2, 1980).

[4] 82 FR 3078 (January 10, 2017). Under the revised Regional Haze Rule, the requirements 40 CFR 51.308(d) and (e) apply to first implementation period SIP submissions and 51.308(f) applies to submissions for the second and subsequent implementation periods. 82 FR 3087; see also 81 FR 26942, 26952 (May 4, 2016).

[5] 42 U.S.C. 7410(a), 7491, and 7492(a).

[6] 42 U.S.C. 7410(c)(1).

[7] 40 CFR 51.308(e). BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301.

EPA designed the Guidelines for BART Determinations Under the Regional Haze Rule (Guidelines) ''to help States and others (1) identify those sources that must comply with the BART requirement, and (2) determine the level of control technology that represents BART for each source.'' 40 CFR part 51, appendix Y, section I.A. Section II of the Guidelines describes the four steps to identify BART sources, and section III explains how to identify BART sources (*i.e.,* sources that are ''subject to BART'').

[8] 40 CFR 51.308(e)(2) and (3).

[9] 42 U.S.C. 7491(b)(2)(B).

[10] 40 CFR 51.308(d)(3).

[11] 42 U.S.C. 7491(g)(1); 40 CFR 51.308(d)(1)(i).

[12] Under the Regional Haze Rule, SIPs are due for each regional haze planning period, or implementation period. The terms ''planning period'' and ''implementation period'' are used interchangeably in this document.

[13] 40 CFR 51.308(f). The deadline for the 2018 SIP revision was moved to 2021. 82 FR 3078 (January 10, 2017); see also 40 CFR 51.308(f). Following the 2021 SIP revision deadline, the next SIP revision is due in 2028. 40 CFR 51.308(f).

[14] Id. § 51.308(g); § 51.309(d)(10).

[15] 42 U.S.C. 7410(a)(2)(A), (C), and (F).

[16] 40 CFR 51.212(a).

[17] Id. § 51.211.

state must provide an opportunity for consultation no less than 60 days prior to holding any public hearing or other public comment opportunity on a SIP or SIP revision for regional haze. Further, when considering a SIP or SIP revision, a state must include in its proposal a description of how it addressed any comments provided by the FLMs.[18]

F. Clean Air Act Section 110(l)

Under CAA section 110(*l*), EPA cannot approve a plan revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.'' [19] CAA section 110(*l*) applies to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable or maintenance for one or more of the six criteria pollutants. EPA interprets section 110(*l*) as applying to all National Ambient Air Quality Standards (NAAQS) that are in effect, including those for which SIP submissions have not been made.[20] However, the level of rigor needed for any CAA section 110(*l*) demonstration will vary depending on the nature and circumstances of the revision.

G. Regulatory and Legal History of the North Dakota Regional Haze State Implementation Plan

The Governor of North Dakota originally submitted a Regional Haze SIP to EPA on March 3, 2010, followed by SIP Supplement No. 1 submitted on July 27, 2010, and SIP Amendment No. 1 submitted on July 28, 2011 (collectively, the ''2010 Regional Haze SIP''). The State's 2010 Regional Haze SIP was submitted to meet the requirements of the regional haze program for the first regional haze planning period. Among other things, the 2010 Regional Haze SIP included North Dakota's determination under the reasonable progress requirements found at 40 CFR 51.308(d)(1) that no additional nitrogen oxide (NO_X) emissions controls were warranted at Antelope Valley Station Units 1 and 2.

On April 6, 2012, EPA promulgated a final rule titled, ''Approval and Promulgation of Implementation Plans; North Dakota; Regional Haze State Implementation Plan; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Regional Haze; Final Rule,'' (2012 Final Rule).[21] The 2012 Final Rule approved in part and disapproved in part the 2010 Regional Haze SIP. As relevant here, EPA disapproved North Dakota's reasonable progress determination that no additional NO_X emissions controls were warranted at Antelope Valley Station.

Concurrent with disapproving North Dakota's NO_X reasonable progress determination for Antelope Valley Station, EPA promulgated a FIP in the 2012 Final Rule that imposed a NO_X reasonable progress emission limit of 0.17 lb/MMBtu (30-day rolling average) each for Units 1 and 2 based on the emission reductions achievable through the installation and operation of new low-NO_X burners and changes to the overfire air system. The FIP required Basin Electric Power Cooperative, the owner of Antelope Valley Station, to comply with the emission limit and related monitoring, record keeping, and reporting requirements as expeditiously as practicable, but no later than July 31, 2018.[22]

Subsequently, several petitioners challenged various aspects of the 2012 Final Rule in the United States Court of Appeals for the Eighth Circuit. Pertinent to this proposal, the State of North Dakota challenged EPA's disapproval of the State's reasonable progress determination that no additional NO_X emissions controls were warranted at Antelope Valley Station Units 1 and 2. The State also challenged EPA's determination in its FIP that an emission limit of 0.17 lb/MMBtu (30-day rolling average) was necessary to satisfy the reasonable progress requirements.

On September 23, 2013, the Eighth Circuit concluded that EPA properly disapproved portions of the 2010 Regional Haze SIP, including the reasonable progress determination for Antelope Valley Station Units 1 and 2. The court also upheld EPA's FIP promulgating an emission limit of 0.17 lb/MMbtu (30-day rolling average) for Antelope Valley Station Units 1 and 2. However, the court vacated and remanded EPA's FIP promulgating an emission limit of 0.13 lb/MMbtu (30-day rolling average) for Coal Creek Station, which is another coal-fired power plant located in North Dakota and was addressed in the 2010 Regional Haze SIP and the 2012 Final Rule.[23]

On August 3, 2020, North Dakota submitted Amendment No. 2 to the Regional Haze SIP, which incorporates the 2012 FIP requirements for Antelope Valley Station.[24] Amendment No. 2 is the subject of this proposed action.

Sections 110(a)(2) and 110(*l*) of the CAA, 40 CFR 51.102, and appendix V to part 51 require that a state provide reasonable notice and a public hearing before adopting a SIP revision and submitting it to EPA. North Dakota provided notice, held a public hearing on February 7, 2020, and accepted comments on Amendment No. 2 from December 17, 2019 through February 17, 2020.

II. EPA's Evaluation of Amendment No. 2 to the North Dakota Regional Haze State Implementation Plan

A. Reasonable Progress Requirements for the Antelope Valley Station

Antelope Valley Station Units 1 and 2 are tangentially-fired boilers, each having a generating capacity of 435 megawatts (MW). These boilers are not BART-eligible because they commenced operation in the 1980s, after the 15-year period specified in the CAA and the Regional Haze Rule. The boilers burn North Dakota lignite. In the 2010 Regional Haze SIP, North Dakota identified Antelope Valley Station Units 1 and 2 as sources that potentially affect visibility in Class I areas that should be evaluated for reasonable progress controls.[25]

The requirements of the 2012 FIP for Antelope Valley Station Units 1 and 2, including the emission limit of 0.17 lb/MMBtu (30-day rolling average), and associated monitoring, recordkeeping, and reporting, are the same requirements incorporated into the State's Permit to Construct number PTC

[18] 40 CFR 51.308(i).

[19] 42 U.S.C. 7410(*l*). Note that ''reasonable further progress'' as used in CAA section 110(*l*) is a reference to that term as defined in section 301(a) (*i.e.,* 42 U.S.C. 7501(a)), and as such means reductions required to attain the National Ambient Air Quality Standards (NAAQS) set for criteria pollutants under CAA section 109. This term as used in section 110(*l*) (and defined in section 301(a)) is *not* synonymous with ''reasonable progress'' as that term is used in the regional haze program. Instead, section 110(*l*) provides that EPA cannot approve plan revisions that interfere with regional haze requirements (including reasonable progress requirements) insofar as they are ''other applicable requirement[s]'' of the CAA.

[20] In general, a section 110(*l*) demonstration should address all pollutants whose emissions and/or ambient concentrations would change as a result of a plan revision.

[21] 77 FR 20894 (April 6, 2012).

[22] Basin Electric began operating the new NO_X controls at Antelope Valley Station Units 1 and 2 in May of 2014 and June of 2016, respectively, as reported to EPA Air Markets Program Data, available at *http://ampd.epa.gov/ampd/.*

[23] *North Dakota* v. *EPA,* 730 F.3d 750 (8th Cir. 2013), *cert. denied,* 134 S. Ct. 2662 (2014).

[24] Letter dated July 28, 2020, from Doug Burgum, Governor, North Dakota, to Gregory Sopkin, Regional Administrator, EPA Region 8, Subject: Revisions to North Dakota Regional Haze SIP for control of air pollution; North Dakota, Final Revisions to Implementation Plan for Control of Air Pollution, Amendment No. 2 to North Dakota State Implementation Plan First Planning Period for Regional Haze (July 2020) (Amendment No. 2).

[25] 76 FR 58570, 58624 (September 21, 2011).

20031, which is part of Amendment No. 2.[26] Thus, for the same reasons we concluded in our 2012 Final Rule that this emission limit and the corresponding monitoring, recordkeeping, and reporting requirements are appropriate and reasonable under 40 CFR 51.308(d), we continue to find that they satisfy reasonable progress requirements for NO_X for the first planning period at Antelope Valley Station.[27] Accordingly, we propose to approve Amendment No. 2.

B. Consultation With Federal Land Managers

As described in section I.E of this proposed rule, the Regional Haze Rule grants the FLMs a special role in the review of regional haze SIPs. Under 40 CFR 51.308(i)(2), North Dakota was required to provide the FLMs with an opportunity for consultation in development of the State's proposed SIP revision. By email correspondence on December 4, 2019, North Dakota provided the FLMs the opportunity to comment on Amendment No. 2.[28] The National Park Service responded by email on January 6, 2020, indicating its intent to comment on the State's review of control measures for Antelope Valley Station as part of the second regional haze planning period. No other FLMs commented. EPA proposes to find that North Dakota fulfilled its requirement to consult with the FLMs on the SIP revision.

III. EPA's Proposed Action

A. Amendment No. 2 to the North Dakota Regional Haze State Implementation Plan

We are proposing to approve the following elements of Amendment No. 2 to the North Dakota Regional Haze SIP:

- A NO_X emission limit of 0.17 lb/MMBtu (30-day rolling average) each for Antelope Valley Station Units 1 and 2 with the emission limit to apply at all times including during periods of startup, shutdown, emergency, and malfunction.
- The associated monitoring, recordkeeping, and reporting requirements for Antelope Valley Station Units 1 and 2.
- Compliance with the emission limit and monitoring, recordkeeping, and reporting requirements in the SIP revision no later than when EPA finalizes this proposed action.
- Related nonregulatory provisions as reflected in additions and changes to the 2010 Regional Haze SIP in section 9.5.1 (Antelope Valley Station), Appendix J.1.6 (FLM Comments on Amendment No. 2 and Department's Response), and Appendix J.3.4 (U.S. Environmental Protection Agency Comments on Amendment No. 2 and Department's Response).

We are also proposing to restore certain other nonregulatory text amendments under 40 CFR 52.1820(e). The proposed amendments include incorporation of those previously approved in our 2012 Final Rule. EPA partially approved these provisions as meeting the requirements of the CAA and applicable regulations in previous actions;[29] however, we inadvertently deleted all approved provisions relevant to regional haze in 40 CFR 52.1820(e) when updating the paragraph in 2015.[30] We are proposing to remedy that error here; however, in this proposed action, we are not otherwise addressing or reopening for comment any of the previously approved provisions. We will deem any comments on these provisions beyond the scope of this action.

B. Federal Implementation Plan Withdrawal

Because we are proposing to find that Amendment No. 2 satisfies the reasonable progress requirements for NO_X at Antelope Valley Station Units 1 and 2 for the first regional haze planning period, we are also proposing to withdraw the corresponding portions of the North Dakota Regional Haze FIP at 40 CFR 52.1825.

In addition, EPA plans to remove from the Code of Federal Regulations the FIP requirements for Coal Creek Station that the Eighth Circuit vacated in the *North Dakota* decision.[31] Because this is a purely ministerial action to ensure that the Code of Federal Regulations reflects current case law, we are not inviting public comment on our removal of the vacated language. Note that North Dakota's BART obligation for Coal Creek Station remains outstanding.

We are not proposing any other changes to our 2012 Final Rule because no other changes were addressed in Amendment No. 2 or required by the *North Dakota* decision. Accordingly, all other parts of our 2012 FIP, including our determinations regarding North Dakota's reasonable progress goals, long-term strategy, and interstate transport obligations under CAA section 110(a)(2)(D)(i)(II) concerning visibility protection,[32] remain in place.[33] We are not reopening or taking comment on these aspects of our 2012 Final Rule. We will deem any comments on these issues beyond the scope of this action.

C. Clean Air Section 110(l)

Under CAA section 110(*l*), EPA cannot approve a plan revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.'' [34] The previous sections of this document and our 2011 proposed rule and 2012 Final Rule explain how the proposed SIP revision will comply with applicable regional haze requirements and general implementation plan requirements, such as enforceability.[35] Additionally, there are no NAAQS nonattainment or maintenance areas in North Dakota.[36] Approval of Amendment No. 2 would merely transfer the emission limit and associated monitoring, recordkeeping, and reporting requirements for Antelope Valley Station Units 1 and 2 currently found in EPA's 2012 FIP [37] into North Dakota's Regional Haze SIP. Thus, there will be no change in air quality requirements or to actual emissions from the Antelope Valley Station. As such, the SIP revision will not interfere with attainment of the NAAQS, reasonable further progress, or other CAA requirements. Accordingly, we propose to find that an approval of Amendment No. 2 and concurrent withdrawal of the corresponding FIP, are not anticipated to interfere with applicable requirements of the CAA and therefore CAA section 110(*l*) does not prohibit approval of this SIP revision.

IV. Incorporation by Reference

In this rule, EPA is proposing to include, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the amendments described in sections II

[26] Amendment No. 2, Appendix D.6.

[27] 76 FR 58630–32, 77 FR 20898–99.

[28] Amendment No. 2, Appendix J.1.6. Note that North Dakota provided the opportunity for FLM consultation although it did not believe consultation was needed because the requirements of the SIP revision are the same as the FIP.

[29] 77 FR 20894.

[30] 80 FR 76211 (December 8, 2015).

[31] *North Dakota,* 730 F.3d at 764.

[32] 42 U.S.C. 7410(a)(2)(D)(i)(II).

[33] 77 FR 20896, 20899–900; see also 85 FR 20165, 20177 (April 10, 2020) (regarding the status of North Dakota's obligations under CAA section 110(a)(2)(D)(i)(II) concerning visibility protection).

[34] 42 U.S.C. 7410(*l*).

[35] 76 FR 58630–32, 77 FR 20898–99.

[36] See Current Nonattainment Counties for All Criteria Pollutants, *https://www3.epa.gov/airquality/greenbook/ancl.html* (last visited Jan. 11, 2021).

[37] 40 CFR 52.1825.

and III. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 [38] and was therefore not submitted to the Office of Management and Budget (OMB) for review. This proposed rule applies to only a single facility in North Dakota: Antelope Valley Station. It is therefore not a rule of general applicability.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

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

C. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA).[39] A ''collection of information'' under the PRA means ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.'' [40] Because this proposed rule revises regional haze requirements reporting requirements for a single facility, the PRA does not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations 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 proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This proposed rule does not impose any requirements or create impacts on small entities as no small entities are subject to the requirements of this proposed rule.

E. Unfunded Mandates Reform Act (UMRA)

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. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory actions with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million [41] by state, local, or tribal governments or the private sector in any one year. The proposed approval of Amendment No. 2, and simultaneous withdraw of corresponding portions of our FIP, would not result in private sector expenditures. Additionally, we do not foresee significant costs (if any) for state and local governments. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

Executive Order 13132, *Federalism,*[42] revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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.'' [43] ''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.'' [44] Under Executive Order 13132, EPA may not issue a regulation ''that has federalism implications, that imposes substantial direct compliance costs, . . . and that is not required by statute, unless [the Federal Government provides the] funds necessary to pay the direct [compliance] costs incurred by the State and local governments,'' or EPA consults with state and local officials early in the

[38] 58 FR 51735, 51738 (October 4, 1993).

[39] 44 U.S.C. 3501 *et seq.*

[40] 5 CFR 1320.3(c) (emphasis added).

[41] Adjusted to 2019 dollars, the UMRA threshold becomes $164 million.

[42] 64 FR 43255, 43255–43257 (August 10, 1999).

[43] 64 FR 43255, 43257.

[44] *Id.*

process of developing the final regulation.[45] EPA also may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the final regulation.

This action does not have federalism implications. The proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments,'' 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.'' [46] This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

H. 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). EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. 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 it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. Section 12(d) of NTTAA, Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to consider and 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

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

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

Executive Order 12898, establishes federal executive policy on environmental justice.[47] 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.

In 2012, we determined that our final action would ''not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increased the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.'' [48] Because this proposed rule does not alter requirements for Antelope Valley Station, and only transfers them from the FIP to the SIP, our determination is unchanged from that in 2012. EPA, however, will consider any input received during the public comment period regarding environmental justice considerations.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

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

Dated: February 25, 2021.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

40 CFR part 52 is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart JJ—North Dakota

■ 2. In § 52.1820:

■ a. The table in paragraph (d) is amended by adding the center heading ''Antelope Valley Station Units 1 and 2.'' and the entry ''PTC20031'' at the end of the table;

■ b. The table in paragraph (e) is amended by adding the center heading ''North Dakota State Implementation Plan for Regional Haze.'' and the entry ''North Dakota State Implementation Plan for Regional Haze'' at the end of the table.

The additions read as follows:

§ 52.1820 Identification of plan.

* * * * *

(d) * * *

[45] *Id.*

[46] 65 FR 67249, 67250 (November 9, 2000).

[47] 59 FR 7629 (February 16, 1994).

[48] 77 FR 20941 (April 6, 2012).

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
*	*	*	*	*	*
Antelope Valley Station Units 1 and 2					
PTC20031	Air pollution control permit to construct for Federal Implementation Plan Replacement.	[Date of publication of the final rule in the **Federal Register**].	[Date 30 days after date of publication of the final rule in the **Federal Register**].	[**Federal Register** citation of the final rule], [Date of publication of the final rule in the **Federal Register**].	Only: NO_X BART emission limit for Units 1 and 2 and corresponding monitoring, recordkeeping, and reporting requirements.

(e) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
*	*	*	*	*	*
North Dakota State Implementation Plan for Regional Haze					
North Dakota State Implementation Plan for Regional Haze.	North Dakota State Implementation Plan for Regional Haze.	7/8/20	[Date 30 days after date of publication of the final rule in the **Federal Register**].	[**Federal Register** citation of the final rule], [Date of publication of the final rule in the **Federal Register**].	Excluding provisions disapproved on April 6, 2012, 77 FR 20894.

§ 52.1825 [Removed and Reserved]

■ 3. Remove and reserve § 52.1825.

[FR Doc. 2021–04402 Filed 3–11–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0468; FRL–10021–22–Region 5]

Air Plan Approval; Ohio; Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Ohio State Implementation Plan (SIP). Ohio removed its Ohio Administrative Code (OAC) rules that apply to a secondary lead smelter, which has permanently shut down. EPA is proposing approval of revisions that will remove those OAC rules from the Ohio SIP. The revisions will also remove air quality sampling requirements that are duplicative of another OAC provision in the Ohio SIP.

DATES: Comments must be received on or before April 12, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0468 at *http://www.regulations.gov,* or via email to *blakley.pamela@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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

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

I. Background

Ohio identified the Master Metals, Incorporated Facility (Master Metals), a former secondary lead smelter in Cleveland, Ohio, as the primary cause of high monitored lead concentrations in Cuyahoga County. On October 14, 1992, Ohio issued an order to Master Metals requiring the facility to shut down unless specific improvements were made to the facility's pollution controls. On August 5, 1993, Ohio ordered an immediate shut down of the Master Metals facility and prohibited any activities to be conducted at the facility until required improvements were made. The facility did not reopen.

Effective August 26, 2011, Ohio rescinded OAC rules 3745–71–05 and 3745–71–06, as part of a 5-year review of its rules. OAC 3745–71–06, ''Source specific emission limits,'' contained the lead and particulate matter emission limits plus operational limits only applicable to Master Metals. OAC 3745–71–05, ''Emissions test methods and procedures and reporting requirements for new and existing sources,'' provided the test methods and other elements supporting OAC 3745–71–06. Ohio determined that these rules should be rescinded because they were facility-specific to Master Metals, which no

longer exists, and has requested removal of these rules from the SIP.

Ohio also rescinded OAC rule 3745–71–01, ''Definitions,'' effective on August 26, 2011. Ohio requests the removal of OAC 3745–71–01 from the SIP because its definitions and referenced documents are unnecessary given the other rules removed from OAC chapter 71.

Finally, Ohio requests the removal of OAC rule 3745–71–03, ''Methods of ambient air measurement,'' effective on August 26, 2011. The air quality sampling requirements in OAC 3745–71–03 have been consolidated into OAC rule 3745–25–02, which was approved into the SIP on October 26, 2010 (75 FR 65572). Thus, the lead monitoring requirements in OAC rule 3745–71–03 are duplicative since the air quality sampling requirements are also in the Ohio SIP at OAC rule 3745–25–02.

In the request to remove OAC rules 3745–71–01, 3745–71–03, 3745–71–05, and 3745–71–06 from Ohio SIP, Ohio provided an analysis pursuant to Clean Air Act (CAA) section 110(l). CAA section 110(l) prohibits EPA from approving a SIP revision if that revision would interfere with any applicable requirement concerning attainment, reasonable further progress, or any other CAA requirement.

Ohio states that removing the rules from its SIP will not result in increased emissions or risk National Ambient Air Quality Standard violations because the facility has been permanently shut down and thus has no emissions. Therefore, OAC rules 3745–71–05 and 3745–71–06 can be removed without an effect on emissions. The monitoring requirements in OAC rule 3745–71–03 are also approved into its SIP as OAC rule 3745–25–02, which will keep the requirements within the SIP. Ohio found that the definitions and references of OAC rule 3745–71–01 can be removed from its SIP because they are not necessary due to the removal of the other rules from the SIP.

II. What is EPA's analysis of the revisions?

The Master Metals facility has permanently shut down and the site has been remediated. Thus, the source of the lead and particulate matter emissions controlled by the OAC Chapter 3745–71 rules is gone and there are no longer any emissions from it.

EPA concurs with Ohio on the removal of OAC rule 3745–71–06 from the SIP. The facility is shut down and the site has been put into new use. EPA also concurs with Ohio on the removal of OAC rules 3745–71–01 and 3745–71–05 from the SIP. OAC rule 3745–71–01 contains definitions and references to Federal rules. Those definitions are not needed with the removal of OAC rule 3745–71–06. OAC rule 3745–71–05 provides the lead emissions test procedures and reporting requirements. The shutdown of Master Metals and the removal of OAC rule 3745–71–06 results in no lead emissions to monitor or report.

EPA approved OAC rule 3745–25–02, which includes lead air quality sampling requirements, into the SIP on October 26, 2010 (75 FR 65572). The requirements of OAC rule 3745–71–03 are duplicated in OAC rule 3745–25–02 intro and (F)(2). The lead air quality sampling requirements are in the SIP with OAC rule 3745–25–02, which means OAC rule 3745–71–03 can be removed while those requirements will remain in the SIP. Thus, EPA agrees with Ohio that OAC rule 3745–71–03 can be removed from the SIP.

For the reasons set forth above EPA is proposing to approve Ohio's request.

III. What action is EPA taking?

EPA is proposing to approve the removal of OAC rules 3745–71–01, 3745–71–03, 3745–71–05, and 3745–71–06 from the Ohio SIP.

IV. Incorporation by Reference

In this document, EPA is proposing to amend regulatory text that includes incorporation by reference. As described in the proposed amendments to 40 CFR part 52 set forth below, EPA is proposing to remove provisions of the EPA-Approved Ohio Regulations from the Ohio State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, the SIP generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

Dated: March 8, 2021.

Cheryl Newton,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart KK—Ohio

■ 2. In § 52.1870, the table in paragraph (c) is amended by removing the undesignated heading ''Chapter 3745–71 Lead Emissions'' and the entries for ''3745–71–01'', ''3745–71–03'', ''3745–71–05'', and ''3745–71–06''.

[FR Doc. 2021–05159 Filed 3–11–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2017–0300; FRL–10021–00–OW]

RIN 2040–AF15

National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective and Compliance Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; delay of effective and compliance dates.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to delay until December 16, 2021, the effective date of the National Primary Drinking Water Regulations: Lead and Copper Rule Revisions (LCRR), which was published in the **Federal Register** on January 15, 2021. EPA is also proposing to delay the January 16, 2024, compliance date established in the LCRR to September 16, 2024. The proposed delay in the effective date is consistent with presidential directives issued on January 20, 2021, to heads of Federal agencies to review certain regulations, including the LCRR. The delay will allow sufficient time for EPA to complete its review of the rule in accordance with those directives and conduct important consultations with affected parties. The proposed delay in the compliance date of the LCRR ensures that any delay in the effective date will not reduce the time provided for drinking water systems and primacy states to take actions needed to assure compliance with the LCRR.

DATES: Comments must be received on or before April 12, 2021.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2017–0300, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Kempic, Office of Ground Water and Drinking Water, Standards and Risk Management Division, at (202) 564–3632 or email *kempic.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Purpose of the Regulatory Action

On January 20, 2021, President Biden issued ''Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' (86 FR 7037, January 25, 2021) (''Executive Order 13990''). Section 2 of Executive Order 13990 directs the heads of all agencies to immediately review regulations that may be inconsistent with, or present obstacles to, the policy set forth in Section 1 of Executive Order 13990. In the January 20, 2021 White House ''Fact Sheet: List of Agency Actions for Review,'' the ''National Primary Drinking Water Regulations: Lead and Copper Rule Revisions'' (LCRR) is specifically identified as an agency action that will be reviewed in conformance with Executive Order 13990 (*https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/*). Also on January 20, 2021, Ronald A. Klain, the Assistant to the President and Chief of Staff, issued a Memorandum for the Heads of Executive Departments and Agencies entitled, ''Regulatory Freeze Pending Review'' (White House memorandum) (86 FR 7424, January 28, 2021); the memorandum directs agencies to consider postponing the effective date of regulations that have been published in the **Federal Register**, but have not taken effect, for the purpose of reviewing any questions of fact, law, and policy the rules may raise. In addition, the LCRR has been challenged in court by the Natural Resources Defense Council, Newburgh Clean Water Project, NAACP, Sierra Club, United Parents Against Lead and the Attorneys General of New York, California, Illinois, Maryland, Minnesota, New Jersey, Oregon, Pennsylvania, Wisconsin, and the District of Columbia. Those cases have been consolidated in *Newburgh Clean Water Project, et al.* v *EPA*, No. 21–1019 (D.C. Cir.). EPA also received a letter on March 4, 2021 from 36 organizations and five individuals requesting that EPA suspend the March 16, 2021 effective date of the LCRR to review the rule and initiate a new rulemaking. EPA also received a letter on February 4, 2021 from the American Water Works Association requesting that EPA not delay the rule.

Consistent with Executive order 13990 and the White House memorandum, EPA has decided to review the LCRR, which was published in the **Federal Register** on January 15, 2021. The Agency is simultaneously publishing, in the ''Final Rules'' section of this issue of the **Federal Register**, a final rule providing for a short delay of the LCRR's effective date to June 17, 2021, while EPA seeks comment on this proposal to extend the effective date further to December 16, 2021. The purpose of an extension of the effective date to December 16, 2021, is to allow EPA to conduct a review of the LCRR and consult with stakeholders, including those who have been historically underserved by, or subject to discrimination in, Federal policies and programs prior to the LCRR going

into effect. The LCRR made extensive and significant changes to the existing regulatory requirements, involving complex factual, legal, and policy issues. This proposed extension of the effective date would allow EPA adequate time to conduct a thorough review of this complex set of requirements to assess whether the LCRR is inconsistent with, or presents obstacles to, the policy set forth in Section 1 of the Executive Order 13990, and to consult with stakeholders in that review prior to the rule going into effect.

The LCRR's effective date (when the rule is codified into the *Code of Federal Regulations*) is different from the compliance date. Section 1412(b)(10) of the Safe Drinking Water Act specifies that drinking water regulations shall generally take effect (*i.e.,* require compliance) three years after the date the regulation is promulgated. This 3-year period is used by states to adopt laws and regulations in order to obtain primary enforcement responsibility for the rule and by water systems to take any necessary actions to meet the compliance deadlines in the rule. EPA is also proposing to extend the January 16, 2024, compliance dates in the LCRR by nine months to September 16, 2024, to correspond to the proposed delay in the effective date (nine months from the original effective date of March 16, 2021). This proposed extension would have the effect of maintaining the same time period between the effective date and the compliance date in the LCRR that was published on January 15, 2021. EPA expects that the duration of the compliance date extension would provide drinking water systems with adequate time to take actions needed to assure compliance with the LCRR after it takes effect. It should also provide states with primary enforcement responsibility adequate time to revise their primacy program in light of EPA's final LCRR.

Importance of EPA's Review of the LCCR for Protection of Public Health

The impact of lead exposure, including through drinking water, is a public health issue of paramount importance and its adverse effects on children and the general population are serious and well known. For example, exposure to lead is known to present serious health risks to the brain and nervous system of children. Lead exposure causes damage to the brain and kidneys and can interfere with the production of red blood cells that carry oxygen to all parts of the body. Lead has acute and chronic impacts on the body. The most robustly studied and most susceptible subpopulations are the developing fetus, infants, and young children. Even low level lead exposure is of particular concern to children because their growing bodies absorb more lead than adults do, and their brains and nervous systems are more sensitive to the damaging effects of lead. EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead. Infants who consume mostly formula mixed with tap water can, depending on the level of lead in the system and other sources of lead in the home, receive 40 percent to 60 percent of their exposure to lead from drinking water used in the formula. Scientists have linked lead's effects on the brain with lowered intelligence quotient (IQ) and attention disorders in children. Young children and infants are particularly vulnerable to lead because the physical and behavioral effects of lead occur at lower exposure levels in children than in adults. During pregnancy, lead exposure may affect prenatal brain development. Lead is stored in the bones and it can be released later in life. Even at low levels of lead in blood, there is an increased risk of health effects in children (*e.g.,* less than 5 micrograms per deciliter) and adults (*e.g.,* less than 10 micrograms per deciliter).

The 2013 Integrated Science Assessment for Lead and the HHS National Toxicology Program Monograph on Health Effects of Low-Level Lead have both documented the association between lead and adverse cardiovascular effects, renal effects, reproductive effects, immunological effects, neurological effects, and cancer. EPA's Integrated Risk Information System (IRIS) Chemical Assessment Summary provides additional health effects information on lead.

Because of disparities in the quality of housing, community economic status, and access to medical care, lead in drinking water (and other media) disproportionately affects lower-income people. Minority and low-income children are more likely to live in proximity to lead-emitting industries and to live in urban areas, which are more likely to have contaminated soils, contributing to their overall exposure. Additionally, non-Hispanic black individuals are more than twice as likely as non-Hispanic whites to live in moderately or severely substandard housing which is more likely to present risks from deteriorating lead based paint. The disparate impacts for low-income and minority populations may be exacerbated because of their more limited resources for remediating the sources of lead such as lead service lines.

For example, stakeholders have raised concerns that to the extent water systems rely on homeowners to pay for replacement of privately owned portions of lines, lower-income homeowners will be unable to replace lines, resulting in disparate levels of protection. Moreover, the crisis in Flint, Michigan, has brought increased attention to the challenge of lead in drinking water systems across the country.

Given the paramount significance to the public's health for ensuring that lead in drinking water is adequately addressed under the Safe Drinking Water Act, and the concerns raised by litigants and other stakeholders about the LCRR, it is critically important that EPA's review of the LCRR be deliberate and have the benefit of meaningful engagement with the affected public, including underserved communities disproportionately affected by exposure to lead.

In conducting its review, EPA will carefully consider the concerns raised by stakeholders, including disadvantaged communities that have been disproportionately impacted, states that administer national primary drinking water regulations, consumer and environmental organizations, water systems and other organizations. There is a wide range of stakeholder views regarding the LCRR; some argue that it does not sufficiently protect the public health while others raise concerns that the rule imposes burdens that states and water systems do not have the resources to address. For example, a primary source of lead exposure in drinking water is lead service lines. Stakeholders have raised concerns that despite the significance of this source of lead, the LCRR fails to require, or create adequate incentives, for public water systems to replace all of their service lines. In addition, stakeholders have raised concerns that portions of many lead service lines are privately owned and disadvantaged homeowners may not be able to afford the cost of replacing their portion of the lead service line and may not have this significant source of lead exposure removed if their water system does not provide financial assistance. Other stakeholders have raised concerns regarding the significant costs public water systems and communities would face to replace all lead service lines. Based upon information from the Economic Analysis for the Final Lead and Copper Rule, EPA estimates that there are between 6.3 and 9.3 million lead service lines nationally and the cost of replacing all of these lines is between $25 and $56 billion.

Another key element of the LCRR relates to requiring public water systems to conduct an inventory of lead service lines so that systems know the scope of the problem, can identify potential sampling locations and can communicate with households that are or may be served by lead service lines to inform them of the actions they may take to reduce their risks. Some stakeholders have raised concerns that the rule's inventory requirements are not sufficiently rigorous to ensure that consumers have access to useful information about the locations of lead service lines in their community. Other stakeholders have raised concerns that water systems do not have accurate records about the composition of privately owned portions of service lines and that have concerns about public water systems publicly releasing information regarding privately owned property.

A core component of the LCRR is maintaining an ''action level'' of 15 parts per billion (ppb), which serves as a trigger for certain actions by public water systems such as lead service line replacement and public education. The LCRR did not modify the existing lead action level but established a 10 ppb ''trigger level'' to require public water systems to initiate actions to decrease their lead levels and take proactive steps to remove lead from the distribution system. Some stakeholders support this new trigger level while others argue that EPA has unnecessarily complicated the regulation. Some stakeholders suggest that the Agency should eliminate the new trigger level and instead lower the 15 ppb action level.

Some stakeholders have indicated that the Agency has provided too much flexibility for small water systems and that it is feasible for many of the systems serving 10,000 or fewer customers to take more actions to reduce drinking water lead levels than required under the LCRR. Other stakeholders have highlighted the limited technical, managerial, and financial capacity of small water systems and support the flexibilities provided by the LCRR to all of these small systems.

Stakeholders have divergent views of the school and childcare sampling provisions of the LCRR; some believe that the sampling should be more extensive, while others do not believe that community water systems should be responsible for it and that such a program would be more effectively carried out by the school and childcare facilities.

Finally, some stakeholders have expressed concerns that the Agency did not provide adequate opportunities for a public hearing and did not provide a complete or reliable evaluation of the costs and benefits of the proposed LCRR.

The significant issues identified by stakeholders warrant careful and considerate review of the rule, as well as relief from the compliance deadlines as EPA considers the issues raised by stakeholders and litigants. After publication of a final national primary drinking water rule, states and water systems commence activities to achieve compliance with the rule by the deadline established in the LCRR based on the requirements of Section 1412(b)(10) of SDWA. States will undertake actions to obtain primacy to implement the regulations and water systems will begin the actions to prepare lead service line inventories, and as appropriate to prepare lead service line replacement plans. The postponement of compliance dates through this action is intended as a stopgap measure to prevent the unnecessary expenditure of resources by water systems and states on those efforts until EPA completes its review of the LCRR and can provide some certainty that the LCRR requirements will not be changed. Without a delay in the effective date of the rule, regulated entities may make decisions and spend scarce resources on compliance obligations that could change at the end of EPA's review period.

Section 1412(b)(9) of the Safe Drinking Water Act authorizes EPA to review and revise national primary drinking water rules ''as appropriate'' and directs that any revision ''shall maintain, or provide for greater, protection of the health of persons.'' 42 U.S.C. 300g–1(b)(9). This proposed delay is consistent with EPA's exercise of this discretionary authority to revise its drinking water rules. As noted above, some stakeholders have raised questions about the lead service line replacement requirements and the small system flexibility requirements, including whether they are consistent with the ''anti-backsliding'' standard in section 1412(b)(9). EPA would evaluate those concerns during its review of the rule.

EPA is requesting public comment on this additional 6-month extension of the June 17, 2021, effective date to December 16, 2021, and the 9-month extension of the current compliance date of January 16, 2024, to September 16, 2024, respectively. EPA will engage with stakeholders during the 9 month review period to evaluate the rule and determine whether to initiate a process to revise components of the rule. If EPA decides it is appropriate to propose revisions to the rule, it will consider whether to further extend compliance dates for those specific obligations.

Specifically, EPA is seeking comment on the duration of the effective date and compliance date extensions and whether the compliance date extension should apply to the entire LCRR or certain components of the final rule. EPA intends to issue a final decision on this proposal prior to the June 17, 2021, effective date promulgated in the ''Final Rules'' section of this issue of the **Federal Register**.

II. Public Participation

Submit your written comments, identified by Docket ID No. HQ–OW–2017–0300 at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.* EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area

health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

III. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action if finalized would not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This proposed action would not impose any requirements on anyone, including small entities.

D. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538. The proposed action would impose no enforceable duty on any State, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It 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.

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

This proposed action does not have tribal implications as specified in Executive Order 13175. This proposed action is not subject to Executive Order 13175 because it would not have a substantial direct effect on tribes or on the relationship between the national government and tribes.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are economically significant, per the definition of ''covered regulatory action'' in Section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because the proposed delays of the effective date and the compliance date are not economically significant.

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

This proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This proposed rulemaking does not involve technical standards.

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

This proposed action is not subject to Executive Order 12898 (59 Fed 7629, Feb. 16, 1994) because it does not establish an environmental health or safety standard.

Jane Nishida,

Acting Administrator.

[FR Doc. 2021–05270 Filed 3–11–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2020–0463; FRL–10021–05–OLEM]

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Reconsideration of Beneficial Use Criteria and Piles; Notification of Data Availability; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of data availability; request for comment; reopening of comment period.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is reopening the comment period on the notice of data availability for its reconsideration of the beneficial use criteria and provisions for piles of coal combustion residuals (CCR). The original notice of data availability was published on December 22, 2020 with a 60-day public comment period closing February 22, 2021. With this notice, EPA is reopening the public comment period for an additional 60 days, from March 12, 2021 to May 11, 2021.

DATES: Comments must be received on or before May 11, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2020–0463. Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of December 22, 2020 (85 FR 83478). Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Rita Chow, Office of Resource Conservation and Recovery, Resource Conservation and Sustainability Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5306P, Washington, DC 20460; telephone number: (703) 308–6158; email address: *chow.rita@epa.gov.* For more information on this action please visit *https://www.epa.gov/coalash.*

SUPPLEMENTARY INFORMATION: In the April 17, 2015 Disposal of Coal Combustion Residuals from Electric Utilities final rule, EPA established national criteria for CCR landfills and surface impoundments. The final rule also established a beneficial use definition to distinguish legitimate beneficial use from disposal and

provided requirements for the management of piles of CCR. These specific provisions of the 2015 rule were remanded back to EPA on August 21, 2018, by the U.S. Court of Appeals for the District of Columbia Circuit. To help reconsider these remanded provisions most recently, on December 22, 2020, EPA published a Notice of Data Availability (NODA). See 85 FR 83478. In the NODA, EPA provided public notice of the new information and data the Agency obtained since these provisions were remanded. The new information and data were included in the NODA's docket at EPA–HQ–OLEM–2020–0463. In the NODA, EPA sought public comment on whether these new information and data should inform the Agency's reconsideration of the remanded provisions. Furthermore, EPA solicited additional information and data from the public that may further help inform the Agency's reconsideration of the remanded provisions.

The comment period ended on February 22, 2021. On February 15, 2021, Earthjustice formally requested an additional 60 days to review the NODA and the information in the docket for the NODA; consider the Agency's request for information; and, develop and submit comments. Earthjustice's request has been included in the NODA's docket. In its request, Earthjustice stated that the large volume of documents in the docket requiring review, the scope of additional information being requested by EPA, and the timeline conflict with the development of submissions for the Legacy Impoundment advance notice of proposed rulemaking (85 FR 65015 October 14, 2020), which closed on February 12, 2021, impeded development of comprehensive responses to the NODA request. Earthjustice stated that additional time will result in the Agency receiving more robust data and information submissions from Earthjustice and other environmental organizations. Following this request from Earthjustice, EPA has decided to reopen the comment period for 60 days, from March 12, 2021 to May 11, 2021.

List of Subjects in 40 CFR Part 257

Environmental protection, Coal combustion products, Coal combustion residuals, Coal combustion waste, Beneficial use, Disposal, Hazardous waste, Landfill, Surface impoundment.

Dated: March 9, 2021.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2021–05246 Filed 3–11–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA–2020–0038]

RIN 1660–AA99

Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program; Public Meetings; Extension of Comment Period

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of public meetings; extension of comment period.

SUMMARY: The Federal Emergency Management Agency (FEMA) is further extending the public comment period for its proposed rule published December 14, 2020, and will hold two additional public meetings remotely via web conference to solicit feedback on the proposed rule. The rule proposed to substantively revise the ''estimated cost of the assistance'' disaster declaration factor that FEMA uses to review a Governor's request for a major disaster under the Public Assistance Program.

DATES: Written comments on the proposed rule published at 85 FR 80719 (December 14, 2020) may be submitted until 11:59 p.m. Eastern Time (ET) on Monday, April 12, 2021.

FEMA will hold meetings on Monday, March 22, 2021, from 4 to 6 p.m. ET, and Tuesday, March 23, 2021, from 2 to 4 p.m. ET. The public meeting on March 23 will be focused on issues specific to Indian Tribal governments. Depending on the number of speakers, the meetings may end before the time indicated, following the last call for comments.

ADDRESSES: The public meetings will be held via web conference. Members of the public may register to attend the meetings online at the following links:

For the March 22 meeting: *https://attendee.gotowebinar.com/register/7166868991421456908.*

For the March 23 Tribal meeting: *https://attendee.gotowebinar.com/register/8123382957134999916.*

If you would like to speak at a meeting, please indicate that on the registration form. For the March 23 meeting, FEMA will be prioritizing comments from representatives and members of Indian Tribal governments. If there is time remaining in a meeting after all registered speakers have finished, FEMA will invite comments from others in attendance.

Reasonable accommodations are available for people with disabilities. To request a reasonable accommodation, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below as soon as possible. Last minute requests will be accepted but may not be possible to fulfill.

Written comments on the proposed rule must be submitted via the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for FEMA–2020–0038–0001 and follow the instructions for submitting comments.

All written comments received, including any personal information provided, may be posted without alteration at *https://www.regulations.gov.* All comments on the proposed rule made during the meetings will be posted to the rulemaking docket on *https://www.regulations.gov.*

For access to the docket and to read comments received by FEMA, go to *https://www.regulations.gov* and search for Docket ID FEMA–2020–0038.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Deputy Division Director, Recovery Directorate, Public Assistance, via email at *FEMA-PA-Policy-Questions@fema.dhs.gov* or via phone at (202) 646–2500.

SUPPLEMENTARY INFORMATION: On December 14, 2020, FEMA published a proposed rule titled Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program.[1] Pursuant to 44 CFR 206.48(a), FEMA considers several factors when determining whether to recommend that the President declare a major disaster authorizing the Public Assistance program. In the Disaster Recovery Reform Act of 2018 (DRRA),[2] Congress directed FEMA to generally review those factors, specifically the estimated cost of the assistance factor, and to update them through rulemaking, as appropriate.[3] Congress also directed FEMA to give greater consideration to the recent multiple disasters and

[1] 85 FR 80719 (Dec. 14, 2020).

[2] Public Law 115–254, 132 Stat. 3438 (Oct. 5, 2018).

[3] DRRA sec. 1239.

localized impacts factors[4] when evaluating a request for a major disaster.[5]

As published on December 14, 2020, FEMA proposes to amend the estimated cost of the assistance factor in 44 CFR 206.48(a)(1) to raise the per capita indicator and the minimum threshold. As is detailed in the proposed rule, the current per capita indicator and minimum threshold do not provide an accurate measure of States' capabilities to respond to disasters.[6] FEMA does not propose to substantively revise the localized impacts factor because it is already sufficiently flexible to address the requirements of section 1232 of the DRRA. FEMA also does not propose any revisions to the recent multiple disasters factor, but requests comment on whether the 12-month time limit currently in place is sufficient to address this factor as required by the DRRA.

DRRA further provided that FEMA shall engage in meaningful consultation with relevant representatives of State, regional, local, and Indian Tribal government stakeholders.[7] In fulfillment of this requirement, FEMA held a public meeting on February 24, 2021, to solicit feedback on the proposed rule from its stakeholders and extended the comment period for the rule from February 12 to March 12, 2021.[8]

Due to technical difficulties at the February 24 meeting, FEMA is further extending the comment period until April 12, 2021, and will hold two additional public meetings on March 22 and 23, 2021, to ensure all interested parties have the fullest opportunity to provide comments on the proposed rule. The meeting on March 23 will focus on the potential impact of the proposed rule on Indian Tribal governments and is intended to give Tribal members and representatives a separate opportunity to provide their feedback on the proposed rule. FEMA welcomes input, both at the meetings and in written comments submitted separately, on considerations of local economic factors such as the local assessable tax base; the local sales tax; the median income and poverty rate of the local affected area as it compares to that of the State and the economic health of the State, including such factors as the State unemployment rate compared to the national rate; and how such factors can be used to evaluate whether the affected State and local governments have been overwhelmed.[9]

FEMA will carefully consider all relevant comments received during the meetings and during the rest of the comment period when determining whether to issue a final rule.

MaryAnn Tierney,

Acting Deputy Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–05169 Filed 3–11–21; 8:45 am]

BILLING CODE 9111–23–P

[4] 44 CFR 206.48(a)(2), (5).

[5] DRRA sec. 1232.

[6] *See* 85 FR 80719.

[7] DRRA sec. 1239.

[8] 86 FR 8334 (Feb. 5, 2021).

[9] *See* Explanatory Statement for H.R.133, Consolidated Appropriations Act, 2021, 166 Cong. Rec. H8479 (daily ed. Dec. 21, 2020).

Notices

Federal Register
Vol. 86, No. 47
Friday, March 12, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 9, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 12, 2021 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.

Rural Utilities Service

Title: Technical Assistance and Training and Training for Innovative Regional Wastewater Treatment Solutions (TAT/RWTS) Pilot Grant Program.

OMB Control Number: 0572–0157.

Summary of Collection: Rural Utilities Services (RUS), a Rural Development agency of the United States Department of Agriculture (USDA), announces the availability of up to $5 million in competitive grants to eligible entities to fund a new pilot program. This pilot program, called the Technical Assistance and Training for Innovative Regional Wastewater Treatment Solutions (TAT/RWTS) Grant Pilot Program, was authorized by the Further Consolidated Appropriations Act, 2020, for the study and design of innovative treatment solutions of regional wastewater systems for historically impoverished communities that have had difficulty installing traditional wastewater treatment systems due to soil conditions.

Need and Use Of the Information: Qualified regional consortiums will receive TAT/RWTS grant funds to identify and evaluate economically feasible, innovative regional solutions to wastewater treatment concerns for historically impoverished communities in areas which have had difficulty installing traditional wastewater treatment systems due to soil conditions. Grants are for wastewater-related technical assistance, including such services as feasibility studies, preliminary design assistance and supervision, oversight, or training for the development of an application for financial assistance.

Grantees will be expected to provide the Agency with a detailed report to include the area to be served, the issues with the present method of wastewater discharge, the alternatives and innovative solutions to the wastewater issue, the long-term cost and effect of the solution, the affordability including possible funding sources, potential treatment, staff training needs, and lifecycle cost analysis.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 9.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 647.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–05167 Filed 3–11–21; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 9, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 12, 2021 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.

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displays a currently valid OMB control number.

Risk Management Agency

Title: Standard Reinsurance Agreement.

OMB Control Number: 0563–0069.

Summary of Collection: The Federal Crop Insurance Act, Title 7 U.S.C. Chapter 36 Sec. 1508(k), authorizes the Federal Crop Insurance Corporation (FCIC) to provide reinsurance to approved insurance providers who insure producers of any agricultural commodity under one or more plans acceptable to FCIC. The Standard Reinsurance Agreement (SRA) is a financial agreement between FCIC and the company to provide subsidy and reinsurance on eligible crop insurance. The SRA includes Regulatory Duties and Responsibilities, Plan of Operations, Policy Acceptance and Storage System and Quality Assurance and Program Integrity.

Need and Use of the Information: The Plan of Operations provides the information the insurer is required to file for the initial and each subsequent reinsurance year. FCIC uses the information as a basis for the approval of the insurer's financial and operational capability of delivering the crop insurance program and for evaluating the insurer's performance regarding implementation of procedures for training and quality control. If the information were not collected, FCIC would not be able to reinsure the crop business.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 22,014.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 189,000.

Levi S. Harrell,

Departmental Information Clearance Officer.

[FR Doc. 2021–05158 Filed 3–11–21; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 9, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 12, 2021 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.

Rural Housing Service

Title: RD 1951–65, ''Customer Initiated Payments'', RD 1951–66, ''FedWire Worksheet'', and 3550–28, ''Authorization Agreement for Preauthorization Payments.''

OMB Control Number: 0575–0184.

Summary of Collection: Rural Development (RD) uses electronic methods for receiving and processing loan payments and collections. These electronic collection methods are approved by Treasury and include Preauthorized Debits (PAD), Customer Initiated Payments (CIP), and FedWire. These electronic collection methods provide the borrower the ability to submit their loan payments the day prior to, or the day of their installment due date. To administer these electronic payment methods, RD will use approved agency forms for collecting financial institution routing information. Form RD 3550–28, Authorization Agreement for Preauthorized Payments, is prepared by the borrower to authorized RD to electronically collect regular loan payments from a borrower's account at a financial institution (FI) as preauthorized debits. Form RD 1951–65, is prepared by the borrower to enroll in CIP. CIP is an electronic collection method that enables borrowers to input payment data to a contract bank via telephone (touch tone and voice) or computer terminal. Form RD 1951–66, FedWire Worksheet, is completed by the borrower to establish an electronic FedWire format with their FI.

Need and use of the Information: RD will request that borrowers make payments electronically via PAD, CIP, or FedWire. The information is collected only once unless the FI routing information changes. If the information were not collected, RD would be unable to collect loan payments electronically.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 9,598.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,399.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–05168 Filed 3–11–21; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–42–2021]

Foreign-Trade Zone 84—Houston, Texas; Application for Subzone; Pepperl+Fuchs, Inc., Katy, Texas

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Port of Houston Authority, grantee of FTZ 84, requesting subzone status for the facility of Pepperl+Fuchs, Inc., located in Katy, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on March 8, 2021.

The proposed subzone (12.67 acres) is located at 502 Cane Island Parkway, Katy, Texas. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 84.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be

addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is April 21, 2021. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 6, 2021.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: March 8, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–05193 Filed 3–11–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–221–2020]

Approval of Subzone Status; CMC Steel Fabricators, Inc., d/b/a CMC Steel Arizona, Mesa, Arizona

On December 10, 2020, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of Mesa, grantee of FTZ 221, requesting subzone status subject to the existing activation limit of FTZ 221, on behalf of CMC Steel Fabricators, Inc., d/b/a CMC Steel Arizona, in Mesa, Arizona.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (85 FR 81449, December 16, 2020). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 221B was approved on March 5, 2021, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 221's 2,000-acre activation limit.

Dated: March 5, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–05191 Filed 3–11–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–897, A–557–821]

Utility Scale Wind Towers From India and Malaysia: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable March 12, 2021.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova at (202) 482–1280 (India) and Jerry Huang at (202) 482–4047 (Malaysia), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2020, the Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of utility scale wind towers from India and Malaysia.[1] Currently, the preliminary determinations are due no later than March 29, 2021.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 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 February 26, 2021, the Wind Tower Trade Coalition (the petitioner) submitted a timely request that Commerce postpone the preliminary determinations in these LTFV investigations.[2] The petitioner stated that it requested postponement to allow Commerce to fully analyze comments recently filed by the petitioner and to continue to collect and analyze necessary information so that the preliminary determinations will reflect the most accurate results possible.[3]

For the reasons stated above and because there are no compelling reasons to deny the requests, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations for India and Malaysia by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determinations no later than May 18, 2021. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: March 5, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–05187 Filed 3–11–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–125]

Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and/or exporters of certain vertical shaft engines between

[1] *See Utility Scale Wind Towers from India, Malaysia, and Spain: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 73023 (November 16, 2020).

[2] *See* Petitioner's Letter, ''Utility Scale Wind Towers from India: Request for Postponement of Preliminary Determination,'' dated February 26, 2021; *see also* Petitioner's Letter, ''Utility Scale Wind Towers from Malaysia: Request for Postponement of Preliminary Determination,'' dated February 26, 2021.

[3] *Id.*

99cc and up to 225cc, and parts thereof (small vertical engines) from the People's Republic of China (China). The period of investigation is January 1, 2019, through December 31, 2019.

DATES: Applicable March 12, 2021.

FOR FURTHER INFORMATION CONTACT: Ajay Menon or Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1993 or (202) 482–6172, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2020, Commerce published the *Preliminary Determination*.[1] The petitioner in this investigation is Briggs & Stratton, Corporation. In addition to the Government of China (GOC), the mandatory respondents in this investigation are Chongqing Kohler Engines Ltd. (Chongqing Kohler) and Chongqing Zongshen General Power Machine Co. (Chongqing Zongshen).

A summary of the events that occurred since Commerce published the *Preliminary Determination* and a full discussion of the issues raised by parties for this final determination are provided in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is small vertical engines from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice* and we addressed these comments in the *Preliminary Determination,* preliminarily modifying the scope of this and the companion antidumping duty (AD) investigation to exclude commercial engines.[5] We established a period of time for parties to address scope issues in scope case and rebuttal briefs,[6] and we received such comments, which we addressed in the Final Scope Decision Memorandum.[7]

On November 6, 2020, we issued a memorandum providing parties an opportunity to comment on the overlap in the scopes of this and the concurrent AD investigation on small vertical engines and that of the AD and countervailing duty (CVD) investigations on certain walk-behind lawn mowers and parts thereof (lawn mowers).[8] After analyzing interested parties' comments, we modified the scope of the lawn mowers investigations to address the overlap.[9] We have not made any changes to the scope of this and the concurrent AD investigation from that published in the *Preliminary Determination. See* Appendix I to this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised is attached to this notice as Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[10] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[11]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we made certain changes to the subsidy rate calculations for Chongqing Kohler and Chongqing Zongshen. As a result of these changes, Commerce also revised the all-others rate. For a discussion of these changes, *see* the Issues and Decision Memorandum.

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[1] *See Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 52086 (August 24, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 85 FR 20667 (April 14, 2020) (*Initiation Notice*).

[5] *See Preliminary Determination,* 85 FR at 52087; *see also* Memorandum, ''Antidumping and Countervailing Duty Investigations of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated August 17, 2020 (Preliminary Scope Decision Memorandum).

[6] *See* Preliminary Scope Decision Memorandum.

[7] *See* Memorandum, ''Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Final Determination,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Decision Memorandum).

[8] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations of Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China; Antidumping and Countervailing Duty Investigations of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China; and Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers from the Socialist Republic of Vietnam,'' dated November 6, 2020.

[9] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations of Lawn Mowers from the People's Republic of China and the Socialist Republic of Vietnam: Preliminary Scope Decision Memorandum,'' dated December 22, 2020.

[10] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[11] *See* Chongqing Kohler's Letter, ''Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from the People's Republic of China: Response of Chongqing Kohler Engines Ltd. and Kohler (China) Investment Co. Ltd. to in Lieu of Verification Questionnaire,'' dated November 25, 2020; and Chongqing Zongshen's Letter, ''Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Zongshen Verification Questionnaire Response,'' dated November 25, 2020.

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated individual estimated subsidy rates for Chongqing Kohler and Chongqing Zongshen. Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, Commerce will determine an all-others rate equal to the weighted-average countervailable subsidy rates established for exporters and/or producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. Therefore, Commerce calculated the all-others rate using a simple average of the individual estimated subsidy rates calculated for the examined respondents.[12]

Commerce determines the total estimated net countervailable subsidy rates to be the following:

Producer/exporter	Subsidy rate (percent)
Chongqing Kohler Engines Ltd	2.84
Chongqing Zongshen General Power Machine Co	18.13
All Others	10.46

Disclosure

Commerce intends to disclose the calculations performed in connection with this final determination within five days of the date of public announcement or, if there is no public announcement, within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in the scope of the investigation section, entered, or withdrawn from warehouse, for consumption on or after August 24, 2020, the date of publication of the *Preliminary Determination* in the **Federal Register**.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we intend to issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of small vertical engines from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Order (APO)

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: March 5, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, whether mounted or unmounted, primarily for walk-behind lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment, including but not limited to, pressure washers. The subject engines are spark ignition, single-cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 99 cubic centimeters (cc) and a maximum displacement of up to, but not including, 225cc. Typically, engines with displacements of this size generate gross power of between 1.95 kilowatts (kw) to 4.75 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of these proceedings. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of these proceedings.

Certain small vertical shaft engines, whether or not mounted on non-hand-held outdoor power equipment, including but not limited to walk-behind lawn mowers and pressure washers, are included in the scope. However, if a subject engine is imported mounted on such equipment, only the engine is covered by the scope. Subject merchandise includes certain small vertical shaft engines produced in the subject country whether mounted on outdoor power equipment in the subject country or in a third country. Subject engines are covered whether or not they are accompanied by other parts.

For purposes of this investigation, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as a sump, carburetor spacer, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this investigation. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (*e.g.,* ignition coils) for synchronizing with the engine to supply tension current does not remove the product from the scope. The inclusion of any other components not

[12] As complete publicly ranged sales data was unavailable, we calculated the all-others rate using the simple average of Chongqing Kohler and Chongqing Zongshen's subsidy rates. *See e.g., Certain Corrosion Inhibitors from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 86 FR 7537 (January 29, 2021) (relying on a simple average because complete publicly ranged sales data was unavailable).

identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

Specifically excluded from the scope of this investigation are ''Commercial'' or ''Heavy Commercial'' engines under 40 CFR 1054.107 and 40 CFR 1054.135 that have (1) a displacement of 160cc or greater, (2) a cast iron cylinder liner, (3) an automatic compression release, and (4) and a muffler with at least three chambers and volume greater than 400cc.

The engines subject to this investigation are predominantly classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 8407.90.1010. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. The mounted engines that are subject to this investigation enter under HTSUS 8433.11.0050, 8433.11.0060, and 8424.30.9000. Engines subject to this investigation may also enter under HTSUS 8407.90.1020, 8407.90.9040, and 8407.90.9060. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Final Affirmative Determination of Critical Circumstances
IV. Subsidies Valuation Information
V. Use of Facts Otherwise Available and Adverse Inferences
VI. Analysis of Programs
VII. Analysis of Comments
- Comment 1: Income Tax Deduction for Research and Development (R&D) Expenses Under the Enterprise Income Tax Law
- Comment 2: Export Buyer's Credit Program
- Comment 3: Whether the Electricity for Less-Than-Adequate-Remuneration (LTAR) Program is Specific
- Comment 4: Whether Commerce Should Revise Its Critical Circumstances Analysis
- Comment 5: Whether Commerce Should Find Critical Circumstances for Chongqing Kohler and Companies Covered by the All-Others Rate
- Comment 6: Whether Commerce Should Countervail Certain of Chongqing Kohler's Bank Acceptance Notes
- Comment 7: Whether Chongqing Zongshen's Input Suppliers are Government Authorities
- Comment 8: Whether Commerce Should Rely on Consolidated Sales Data in Attributing Subsidies Received by Zongshen Group or Zongshen Power
- Comment 9: Whether Commerce Should Adjust Chongqing Zongshen's Policy Loans Calculations
- Comment 10: Whether Commerce Should Adjust Chongqing Zongshen's Land-Use Rights for LTAR Calculation
- Comment 11: Whether Commerce Should Reverse Its Uncreditworthiness Determination for Chongqing Zongshen

VIII. Recommendation

[FR Doc. 2021–05185 Filed 3–11–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–813]

Certain Hot-Rolled Steel Flat Products From the Netherlands: Rescission of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on certain hot-rolled steel flat products (HR Steel) from the Netherlands covering the period of review (POR) October 1, 2019, through September 30, 2020, based on the timely withdrawal of the request for review.

DATES: Applicable March 12, 2021.

FOR FURTHER INFORMATION CONTACT: Allison Hollander, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2805.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2020, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on HR Steel from the Netherlands for the period October 1, 2019, through September 30, 2020.[1] On November 2, 2020, AK Steel Corporation, Steel Dynamics Inc., SSAB Enterprises, LLC, Nucor Corporation, and United States Steel Corporation (the petitioners) timely requested an administrative review of the antidumping duty order with respect to Tata Steel Ijmuiden BV.[2] Commerce received no other requests for an administrative review of the antidumping duty order.

On December 8, 2020, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on HR Steel from the Netherlands with respect to Tata Steel Ijmuiden BV.[3] On February 19, 2021, the petitioners timely withdrew their administrative review request for Tata Steel Ijmuiden BV.[4]

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The petitioners withdrew their request for review within 90 days of the publication date of the *Initiation Notice.* No other parties requested an administrative review of the antidumping duty order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the administrative review of the antidumping order on HR Steel from the Netherlands for the period October 1, 2019, through September 30, 2020, in its entirety.

Assessment

Commerce will instruct CBP to assess antidumping duties on all appropriate entries of HR Steel from the Netherlands during the POR at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 61926 (October 1, 2020).

[2] *See* Petitioners' Letter, ''Hot-Rolled Steel Flat Products from The Netherlands/Request For Administrative Review,'' dated November 2, 2020.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 78990 (December 8, 2020) (*Initiation Notice*).

[4] *See* Petitioners' Letter, ''Hot-Rolled Steel Flat Products from The Netherlands/Withdrawal Of Request For Administrative Review,'' dated February 19, 2021.

responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: March 8, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021–05189 Filed 3–11–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–880]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Rescission of Antidumping Duty Administrative Review; 2019–2020, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 30, 2020, the Department of Commerce (Commerce) initiated an administrative review on heavy walled rectangular welded carbon steel pipes and tubes from the Republic of Korea (Korea) for the period September 1, 2019, through August 31, 2020, for 29 companies. Because interested parties timely withdrew their requests for administrative review for certain companies, we are rescinding this administrative review with respect to those companies. For a list of the companies for which we are rescinding this review, *see* Appendix I to this notice. For a list of the companies for which the review is continuing, *see* Appendix II to this notice.

DATES: Applicable March 12, 2021.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado or Jacob Garten, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4682 or (202) 482–3342, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on heavy walled rectangular welded carbon steel pipes and tubes from Korea for the period September 1, 2019, through August 31, 2020.[1] In September 2020, Commerce received timely requests, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), to conduct an administrative review of this antidumping duty order from Nucor Tubular Products Inc. (the petitioner), Dong-A Steel Co., Ltd., and HiSteel Co., Ltd. Based upon these requests, on October 30, 2020, in accordance with section 751(a) of the Act, Commerce published in the **Federal Register** a notice of initiation listing 29 companies for which Commerce received timely requests for review.[2]

In January 2021, the petitioner timely withdrew their request for an administrative review of certain companies.[3] These companies are listed in Appendix I.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. As noted above, the petitioner withdrew their requests for review of certain companies by the 90-day deadline, and no other party requested an administrative review of this order with respect to these companies. Accordingly, we are rescinding this administrative review with respect to the companies listed in Appendix I.[4]

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with section 751(a)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: March 9, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Companies for Which This Review Is Rescinded

Ahshin Pipe & Tube Company
Aju Besteel Co., Ltd.
B N International Co., Ltd.
Bookook Steel Co., Ltd.
Dongbu Steel Co., Ltd.
G.S. ACE Industry Co., Ltd.
Ganungol Industries Co. Ltd.
HAEM Co., Ltd.
HBL INC.
Hanjin Steel Pipe
Husteel Co., Ltd.
Hyosung Corporation
Hyundai Steel Co.
Hyundai Steel Pipe Company
K Steel Co. Ltd.
Korea Hinge Tech
Kukje Steel Co., Ltd.

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 54349 (September 1, 2020).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 68840 (October 30, 2020) (*Initiation Notice*).

[3] *See* Petitioner's Letter, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Partial Withdrawal of Request for Administrative Review,'' dated February 10, 2020.

[4] We note that although we are rescinding this review with respect to the companies listed in Appendix I, these companies may still be subject to this administrative review if we find them to be an affiliate of any of the mandatory respondents in this review listed in Appendix II.

Main Steel Co.
Miju Steel Manufacturing Co., Ltd.
NEXTEEL Co., Ltd.
POSCO DAEWOO
Sam Kang Industrial Co., Ltd.
Samson Controls Ltd., Co.
SeAH Steel Corporation
Shin Steel Co., Ltd.
Tianjin Songda International Trade Co., Ltd.
Yujin Steel Industry Co. Ltd.

Appendix II

Companies for Which the Review Is Continuing

Dong-A Steel Co., Ltd.
HiSteel Co., Ltd.

[FR Doc. 2021–05190 Filed 3–11–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804; A–533–813; A–560–802; A–570–851]

Certain Preserved Mushrooms From Chile, India, Indonesia, and the People's Republic of China: Continuation of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) in their five year (sunset) reviews that revocation of the antidumping duty (AD) orders on certain preserved mushrooms (mushrooms) from Chile, India, Indonesia, and 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 orders on mushrooms from Chile, India, Indonesia, and China.

DATES: Applicable March 12, 2021.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Katherine Johnson, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 3 and 4, 2020, respectively, the ITC instituted [1] and Commerce initiated [2] five-year (sunset) reviews of the AD orders on mushrooms from Chile, India, Indonesia, and China, pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the AD orders on mushrooms from Chile, India, Indonesia, and China would likely lead to a continuation or recurrence of dumping. Therefore, Commerce notified the ITC of the magnitude of the margins of dumping likely to prevail were the orders to be revoked.[3]

On March 5, 2021, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the AD orders on mushrooms from Chile, India, Indonesia, and China would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Orders

The merchandise subject to the orders is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under these orders are the species *Agaricus bisporus and Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of these orders are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of these orders are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms;'' (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[5]

The merchandise subject to the orders is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Continuation of the AD Orders

As a result of the determinations by Commerce and the ITC that revocation of the AD orders on mushrooms from Chile, India, Indonesia, and China would likely lead to a continuation or recurrence of dumping, and material injury to an industry in the United States, pursuant to sections 751(c) and 751(d)(2) of the Act, Commerce hereby orders the continuation of the AD orders on mushrooms from Chile, India, Indonesia, and 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 the orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year reviews of these orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3).

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[1] *See Certain Preserved Mushrooms from Chile, China, India, and Indonesia; Institution of Five-Year Reviews,* 85 FR 46725 (August 3, 2020).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 47185 (August 4, 2020).

[3] *See Certain Preserved Mushrooms from Chile, India, Indonesia and the People's Republic of China: Final Results of Expedited Sunset Reviews of Antidumping Duty Orders,* 85 FR 78306 (December 4, 2020).

[4] *See Preserved Mushrooms from Chile, China, India, and Indonesia; Determinations,* 86 FR 12969 (March 5, 2021).

[5] On June 19, 2000, Commerce confirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the AD order on mushrooms from China. *See* ''Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat* v. *United States,* 396 F.3d 1378 (Fed. Cir. 2005).

Failure to comply is a violation of the APO which may be subject to sanctions.

These five-year (sunset) reviews and notice are in accordance with sections 751(c) and (d)(2), and 777(i) the Act, and 19 CFR 351.218(f)(4).

Dated: March 5, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–05188 Filed 3–11–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–124]

Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines), from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2019, through December 31, 2019. The final dumping margins of sales at LTFV are listed below in the ''Final Determination'' section of this notice.

DATES: Applicable March 12, 2021.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Luberda, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2185.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 2020, Commerce published the *Preliminary Determination* of sales at LTFV of small vertical engines from China.[1] On November 9, 2020, Commerce published in the **Federal Register**, pursuant to 19 CFR 351.210(g), notice of postponement of the final determination to March 5, 2021.[2] The petitioner in this investigation is Briggs & Stratton, LLC. The mandatory respondents in this investigation are Chongqing Kohler Engines Ltd. (Chongqing Kohler) and Chongqing Zongshen General Power Machine Co., Ltd.[3]

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by the parties for this final determination are discussed in the Issues and Decision Memorandum.[4] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are small vertical engines from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[6] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice* and we addressed these comments in the *Preliminary Determination,* preliminarily modifying the scope of this and the companion countervailing duty (CVD) investigation to exclude commercial engines.[7] We established a period of time for parties to address scope issues in scope case and rebuttal briefs,[8] and we received such comments, which we addressed in the Final Scope Decision Memorandum.[9]

On November 6, 2020, we issued a memorandum providing parties an opportunity to comment on the overlap in the scopes of this and the concurrent CVD investigation on small vertical engines and that of the antidumping duty (AD) and CVD investigations on certain walk-behind lawn mowers and parts thereof (lawn mowers).[10] After analyzing interested parties' comments, we modified the scope of the lawn mowers investigations to address the overlap.[11] We have not made any changes to the scope of this and the concurrent CVD investigation from that published in the *Preliminary Determination. See* Appendix I to this notice.

[1] *See Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances, in Part,* 85 FR 66932 (October 21, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Postponement of the Final Determination of Sales at Less Than Fair Value Investigation,* 85 FR 71319 (November 9, 2020).

[3] Consistent with our *Preliminary Determination,* we are treating Chongqing Zongshen General Power Machine Co., Ltd., and its affiliates Chongqing Dajiang Power Equipment Co., Ltd., and Chongqing Zongshen Power Machinery Co., Ltd., as a single entity (collectively, the Zongshen Companies).

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[6] *See Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 85 FR 20670 (April 14, 2020) (*Initiation Notice*).

[7] *See Preliminary Determination,* 85 FR at 52087; *see also* Memorandum, ''Antidumping and Countervailing Duty Investigations of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated August 17, 2020 (Preliminary Scope Decision Memorandum).

[8] *See* Preliminary Scope Decision Memorandum.

[9] *See* Memorandum, ''Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Final Determination,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Decision Memorandum).

[10] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations of Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China; Antidumping and Countervailing Duty Investigations of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China; and Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers from the Socialist Republic of Vietnam,'' dated November 6, 2020.

[11] *See* Memorandum, ''Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Preliminary Scope Decision Memorandum in the Antidumping and Countervailing Duty Investigations of Certain Walk-Behind Lawn Mowers, and Parts Thereof, from the People's Republic of China and the Socialist Republic of Vietnam,'' dated January 7, 2021 (containing Memorandum, ''Antidumping and Countervailing Duty Investigations of Lawn Mowers from the People's Republic of China and the Socialist Republic of Vietnam: Preliminary Scope Decision Memorandum,'' dated December 22, 2020).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix II.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[12]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we made no changes to the AD margin calculations for Chongqing Kohler or the Zongshen Companies.

Final Affirmative Determination of Critical Circumstances

We continue to find that critical circumstances exist for imports of small vertical engines from China for the Zongshen Companies and the China-wide entity pursuant to sections 735(a)(3)(A) and (B) of the Act and 19 CFR 351.206.[13]

China-Wide Entity and the Use of Adverse Facts Available

For the reasons explained in the *Preliminary Determination,* we continue to find that the use of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act, is warranted in determining the rate for the China-wide entity.[14] In selecting the AFA rate for the China-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[15] As AFA, we assigned the China-wide entity a dumping margin of 541.75 percent, which is the highest rate contained in the Petition of this investigation.[16] Because this constitutes secondary information, the statutory corroboration requirement in section 776(c) of the Act applies. We corroborated this rate by comparing it to the highest transaction-specific dumping margins of the respondents and found that the Zongshen Companies' highest calculated, non-outlier, transaction-specific dumping margin exceeds the highest petition rate.[17]

Separate Rates

For the final determination, we continue to find that Chongqing Kohler, the Zongshen Companies, and certain non-individually examined respondents are eligible for separate rates. In addition, we have determined that Loncin Motor Co., Ltd. is eligible for a separate rate.[18] Generally, Commerce looks to section 735(c)(5)(A) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate rate respondents that we did not individually examine. Section 735(c)(5)(A) of the Act states that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding zero or *de minimis* margins, and any margins determined entirely under section 776 of Act.[19] In this proceeding, Commerce calculated above *de minimis* rates that are not based entirely on facts available for Chongqing Kohler and the Zongshen Companies, the two mandatory respondents under individual examination. Thus, looking to section 735(c)(5)(A) of the Act for guidance, and consistent with our practice,[20] based on publicly ranged sales data, we assigned the weighted-average of these mandatory respondents' rates as the rate for non-individually examined companies that have qualified for a separate rate.

Combination Rates

In the *Initiation Notice,*[21] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. For a list of the respondents that established eligibility for their own separate rates and the exporter/producer combination rates applicable to these respondents, *see* Appendix III.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Chongqing Kohler Engines Ltd	Chongqing Kohler Engines Ltd	374.31	374.31
Chongqing Zongshen General Power Machine Co., Ltd./Chongqing Dajiang Power Equipment Co., Ltd./ Chongqing Zongshen Power Machinery Co., Ltd.	Chongqing Zongshen General Power Machine Co., Ltd./Chongqing Dajiang Power Equipment Co., Ltd./ Chongqing Zongshen Power Machinery Co., Ltd.	316.88	304.35

[12] *See* Commerce's Letter, ''Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: The Zongshen Companies Verification Questionnaire,'' dated December 29, 2020, with attached questionnaire in lieu of on-site verification; and Zongshen Companies' Letter, ''Certain Vertical Shaft Engines Between 99 cc {sic} and Up To 225cc, and Parts Thereof, from China; AD Investigation; Zongshen Resubmission of Verification Questionnaire Response,'' dated January 15, 2021.

[13] *See* Issues and Decision Memorandum at 10–12 and Comment 1.

[14] The China-wide entity includes those companies who did not submit a separate rate application.

[15] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethyl Cellulose from Finland,* 69 FR 77216 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethyl Cellulose from Finland,* 70 FR 28279 (May 17, 2005).

[16] *See Initiation Notice,* 85 FR at 20673.

[17] *See Preliminary Determination* PDM at 19–20.

[18] *See* Issues and Decision Memorandum at 8 and Comment 10.

[19] *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

[20] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

[21] *See Initiation Notice,* 85 FR at 20674.

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Producers Supplying the Non-Individually-Examined Exporters Receiving Separate Rates (*see* Appendix III).	Non-Individually-Examined Exporters Receiving Separate Rates (*see* Appendix III).	342.88	336.61
China-Wide Entity		541.75	535.48

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination, in accordance with 19 CFR 351.224(b). However, because Commerce made no changes to its *Preliminary Determination* margin calculations for the mandatory respondents in this investigation, there are no calculations to disclose.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of small vertical engines from Chongqing Kohler and the Zongshen Companies, the separate rates companies, and the China-wide entity.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for domestic subsidy pass-through or export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). In this case, we have made a negative determination for domestic subsidy pass-through for all respondents, but we have found export subsidies for all respondents. However, suspension of liquidation for provisional measures in the companion CVD case has been discontinued; therefore, we are not instructing CBP to collect cash deposits based upon the adjusted estimated weighted-average dumping margin for those export subsidies at this time.

Pursuant to section 735(c)(1)(B)(ii) of the Act, upon the publication of this notice, Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which NV exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combination listed in the table above or in Appendix III will be the rate identified for that combination in that table or Appendix III; (2) for all combinations of exporters/producers of merchandise under consideration that have not received their own separate rate, the cash deposit rate will be the cash deposit rate established for the China-wide entity; and (3) for all non-Chinese exporters of the merchandise under consideration which have not received their own separate rate, the cash deposit rate will be the cash deposit rate applicable to the Chinese exporter/producer combination that supplied that non-Chinese exporter. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of our determination. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of small vertical engines from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an AD order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: March 5, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, whether mounted or unmounted, primarily for walk-behind lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment, including but not limited to, pressure washers. The subject engines are spark ignition, single-cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 99 cubic centimeters (cc) and a maximum displacement of up to, but not including, 225cc. Typically, engines with displacements of this size generate gross power of between 1.95 kilowatts (kw) to 4.75 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of this proceeding. Engines that may be certified under both 40 CFR part 1054

as well as other parts of subchapter U remain subject to the scope of this proceeding.

Certain small vertical shaft engines, whether or not mounted on non-hand-held outdoor power equipment, including but not limited to walk-behind lawn mowers and pressure washers, are included in the scope. However, if a subject engine is imported mounted on such equipment, only the engine is covered by the scope. Subject merchandise includes certain small vertical shaft engines produced in the subject country whether mounted on outdoor power equipment in the subject country or in a third country. Subject engines are covered whether or not they are accompanied by other parts.

For purposes of this investigation, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: Crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as a sump, carburetor spacer, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this investigation. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (*e.g.,* ignition coils) for synchronizing with the engine to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

Specifically excluded from the scope of this investigation are ''Commercial'' or ''Heavy Commercial'' engines under 40 CFR 1054.107 and 1054.135 that have (1) a displacement of 160 cc or greater, (2) a cast iron cylinder liner, (3) an automatic compression release, and (4) a muffler with at least three chambers and volume greater than 400 cc.

The engines subject to this investigation are predominantly classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 8407.90.1010. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. The mounted engines that are subject to this investigation enter under HTSUS 8433.11.0050, 8433.11.0060, and 8424.30.9000. Engines subject to this investigation may also enter under HTSUS 8407.90.1020, 8407.90.9040, and 8407.90.9060. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Use of Adverse Facts Available
V. Changes Since the Preliminary Determination
VI. Adjustment Under Section 777A(f) of the Act
VII. Adjustments to Cash Deposit Rates for Export Subsidies
VIII. Affirmative Determination of Critical Circumstances
IX. Discussion of the Issues
Comment 1: Critical Circumstances
Comment 2: Whether to Eliminate the Gap Period in the Event of an Affirmative Finding of Material Injury by the U.S. International Trade Commission
Comment 3: Surrogate Value for Flywheels
Comment 4: Use of Turkish HTS 8409.91.00.00.19
Comment 5: Surrogate Value for Governor Gear and Other Inputs
Comment 6: Calculation of the Surrogate Manufacturing Overhead Financial Ratio
Comment 7: How to Value Non-Subject Components of the Zongshen Companies' Mounted Engines
Comment 8: Whether to Grant the Zongshen Companies a By-Product Offset
Comment 9: Whether to Grant the Zongshen Companies a Double Remedies Offset for Certain Domestic Subsidies
Comment 10: Whether to Grant Loncin Motor Co., Ltd. a Separate Rate
X. Recommendation

Appendix III

SEPARATE RATE COMPANIES

Exporter	Producer
Non-Individually-examined exporters receiving separate rates	Producers supplying the non-individually-examined exporters receiving separate rates
Changzhou Kawasaki and Kwang Yang Engine Co., Ltd	Changzhou Kawasaki and Kwang Yang Engine Co., Ltd.
Chongqing Chen Hui Electric Machinery Co., Ltd	CHONGQING AM PRIDE POWER & MACHINERY CO., LTD.
Chongqing Chen Hui Electric Machinery Co., Ltd	Chongqing Kohler Motors Co., Ltd.
Chongqing HWASDAN Power Technology Co., Ltd	Chongqing HWASDAN Power Technology Co., Ltd.
Chongqing Rato Technology Co., Ltd	Chongqing Rato Technology Co., Ltd.
CHONGQING SENCI IMPORT&EXPORT TRADE CO., LTD	CHONGQING AM PRIDE POWER & MACHINERY CO., LTD.
CHONGQING SENCI IMPORT&EXPORT TRADE CO., LTD	Chongqing Zongshen General Power Machines Co., Ltd.
Jialing-Honda Motors Co., Ltd	Jialing-Honda Motors Co., Ltd.
Loncin Motor Co., Ltd	Loncin Motor Co., Ltd.
Wenling Qianjiang Imp. & Exp. Co., Ltd	Chongqing Rato Technology Co., Ltd.
Wenling Qianjiang Imp. & Exp. Co., Ltd	QIANJIANG GROUP WENLING JENNFENG INDUSTRY INC.
Zhejiang Amerisun Technology Co., Ltd	CHONGQING DINKING POWER MACHINERY CO., LTD.
Zhejiang Amerisun Technology Co., Ltd	Chongqing Rato Technology Co., Ltd.
Zhejiang Amerisun Technology Co., Ltd	LONCIN MOTOR CO., LTD.
Zhejiang Amerisun Technology Co., Ltd	Zhejiang Dobest Power Tools Co., Ltd.

[FR Doc. 2021–05186 Filed 3–11–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Program; Public Meeting; Request for Comments

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting and solicit written comments on the performance evaluation of the Massachusetts Coastal Management Program.

DATES: NOAA will consider all written comments received by Friday, May 7, 2021. The virtual public meeting will be

held on Wednesday, April 28, 2021, at 3:00 p.m. EDT.

ADDRESSES: You may submit written comments on the Massachusetts Coastal Management Program for the performance evaluation by emailing Ralph Cantral, Senior Advisor, NOAA Office for Coastal Management, at *Ralph.Cantral@noaa.gov.*

Comments received by the Office for Coastal Management are considered part of the public record and may be publicly accessible. Any personally identifiable information (*e.g.,* name, address) submitted voluntarily by the sender may also be publicly accessible. NOAA will accept anonymous comments.

To participate in the virtual public meeting on Wednesday, April 28, 2021, at 3:00 p.m. EDT, registration is required by Tuesday, April 27, 2021, at 5:00 p.m. EDT.

Registration: To register, visit *https://docs.google.com/forms/d/e/1FAIpQLSfmKQEtu4lbyLQ0D4rVSamlXrNxGHpXddUKqo03-9_HkprSLQ/viewform?usp=sf_link.* If you have difficulty registering, contact Ralph Cantral by phone at (301) 233–2998 or email at *Ralph.Cantral@noaa.gov.* You may participate online or by phone. If you would like to provide comment during the public meeting, please select ''yes'' during the online registration. The line-up of speakers will be based on your date and time of registration. Once you register, you will receive a confirmation of your registration. One hour prior to the start of the meeting on April 28, 2021, you will be emailed a link to the public meeting and information about participating.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Senior Advisor, NOAA Office for Coastal Management by phone at (301) 233–2998 or email at *Ralph.Cantral@noaa.gov.* Copies of the previous Massachusetts Coastal Management Program evaluation findings and 2016–2020 Assessment and Strategy may be viewed and downloaded on the internet at *https://coast.noaa.gov/czm/evaluations/.* A copy of the evaluation notification letter and most recent progress reports may be obtained upon request by contacting Ralph Cantral.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act requires NOAA to conduct periodic evaluations of federally approved state coastal programs and national estuarine research reserves. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. For the evaluation of the Massachusetts Coastal Management Program, NOAA will consider the extent to which the state has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the Coastal Zone Management Act. When the evaluation is complete, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–04275 Filed 3–11–21; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Weather Modification Activities Reports

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 22, 2020 (85 FR 83523) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Weather Modification Activities Reports.

OMB Control Number: 0648–0025.

Form Number(s): NOAA Forms 17–4 and 17–4A.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 30.

Average Hours per Response: 60 minutes per initial report; 30 minutes per interim or final report.

Total Annual Burden Hours: 50 hours.

Needs and Uses: The National Oceanic & Atmospheric Administration's Office of Atmospheric Research (OAR)/Weather Program Office is conducting this information collection pursuant to Section 6(b) of Public Law 92–205. This law requires that all non-federal weather modification activities (*e.g.,* cloud seeding) in the United States (U.S.) and its territories be reported to the Secretary of Commerce through NOAA. This reporting is critical for gauging the scope of these activities, for determining the possibility of duplicative operations or of interference with another project, for providing a database for checking atmospheric changes against the reported activities, and for providing a single source of information on the safety and environmental factors used in weather modification activities in the U.S. Two forms are collected under this OMB Control Number: One prior to and one after the activity. The requirements are detailed in 15 CFR part 908. This data is used for scientific research, historical statistics, international reports and other purposes.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion (Beginning and end of projects).

Respondent's Obligation: Mandatory.

Legal Authority: Public Law 92–205, Weather Modification Reporting Act of 1972.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0025.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–05177 Filed 3–11–21; 8:45 am]

BILLING CODE 3510–KD–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes service(s) previously furnished by such agencies.

DATES: *Comments must be received on or before:* April 11, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product(s)

NSN(s)—Product Name(s):
MR 10795—Party Topper, Includes Shipper 20795
MR 10796—Dish Rack, Compact, Includes Shipper 20796
MR 11136—Tablecloth, 3 Pack
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency

Deletions

The following service(s) are proposed for deletion from the Procurement List:

Service(s)

Service Type: Grounds Maintenance
Mandatory for: Defense Commissary Agency, China Lake Naval Air Weapons Station Commissary, China Lake, CA
Contracting Activity: DEFENSE COMMISSARY AGENCY (DECA), DEFENSE COMMISSARY AGENCY
Service Type: Grounds Maintenance
Mandatory for: US Department of Energy, Western Area Power Administration, Bismarck, ND ND
Mandatory Source of Supply: Pride, Inc., Bismarck, ND
Contracting Activity: ENERGY, DEPARTMENT OF, WESTERN–UPPER GREAT PLAINS REGION

Michael R. Jurkowski,
Deputy Director, Business & PL Operations.

[FR Doc. 2021–05209 Filed 3–11–21; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* April 11, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/5/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service(s) to the Government.
2. The action will result in authorizing small entities to furnish the service(s) to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Custodial Service
Mandatory for: US Air Force, USAF Space Command (AFSPC), Peterson Air Force Base and Cheyenne Mountain Air Force Station, Colorado Springs, CO
Designated Source of Supply Professional Contract Services, Inc., Austin, TX
Contracting Activity: FA2517 21 CONS, PETERSON AFB, CO

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See U.S.C. 553(d)(3). This addition to the Committee's Procurement List is effectuated because of the expiration of the U.S. Air Force Custodial Service, Peterson Air Force Base and Cheyenne Mountain Air Force Station, CO. The federal customer contacted, and has worked diligently with the AbilityOne Program to fulfill this Service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the U.S. Air Force will refer its business elsewhere, this addition must be effective on March 28, 2021, to ensure lead times that are required by the U.S. Air Force for start-up to make a smooth transition for continuity of services while still allowing 17 days for comment. Pursuant to its own regulation, 41 C.F.R § 51–2.4, the Committee determined that no adverse impact exists on the current contractor. The Committee also published a notice of proposed

Procurement List addition in the **Federal Register** on June 5, 2020, and did not receive any comments from any interested persons, including from the incumbent contractor. The addition will not create a public hardship and has limited effect on the public at large, but rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne Program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

Deletions

On 2/5/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
8415–01–538–6057—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Small/Regular
8415–01–538–6067—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Medium/Regular
8415–01–538–6074—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Large/Regular
8415–01–538–6080—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, X-Large/Regular
8415–01–546–8657—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, X-Small/Short
8415–01–546–8667—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, X-Small/Regular
8415–01–546–8745—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Small/Short
8415–01–546–8758—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Small/Long
8415–01–546–8809—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Medium/Long
8415–01–546–8820—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, X-Large/X-Long
8415–01–546–8828—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, XX-Large/Regular
8415–01–546–8829—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, XX-Large/Long
8415–01–546–8834—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, XX-Large/X-Long
Mandatory Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
8415–01–538–6082—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Large/Long
8415–01–538–6089—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, X-Large/Long
8415–01–580–0702—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, X-Small-Short
8415–01–580–0706—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, X-Small-Regular
8415–01–580–0713—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Small-Short
8415–01–580–0724—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Small-Regular
8415–01–580–0728—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Small-Long
8415–01–580–0730—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Medium-Regular
8415–01–580–0733—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Medium-Long
8415–01–580–0744—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Large-Regular
8415–01–580–0751—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Large-Long
8415–01–580–0754—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, X-Large-Regular
8415–01–580–0759—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, X-Large-Long
8415–01–580–0760—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, X-Large-X-Long
8415–01–580–0925—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, XX-Large-Regular
8415–01–580–0936—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, XX-Large-Long
8415–01–580–0941—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, XX-Large-X-Long
Mandatory Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
MR 1104—Pop Up Mesh Hamper
MR 11063—Grocery Shopping Tote Bag, Collapsible
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):
MR 1069—Mop, Ratchet, Twist Action, Microfiber
MR 1079—Refill, Mop, Ratchet, Twist Action, Microfiber
Designated Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):
7520–01–622–7154—Portable Desktop Clipboard, 10″ W x 2–3/5″ D x 16″ H, Army Green
7520–01–622–7155—Portable Desktop Clipboard with Calculator, 10″ W x 2–3/5″ D x 16″ H, Blue
7520–01–622–7157—Portable Desktop Clipboard with Calculator, 10″ W x 2–3/5″ D x 16″ H, Black
Designated Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
7510–01–600–5977—Toner Cartridge, Laser, Double Yield, Compatible w/ LexmarkT640/T642/T644 Series Printers
Designated Source of Supply: TRI Industries NFP, Vernon Hills, IL
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
5340–00–137–7767—Strap Assembly, 1″ x 67″
Designated Source of Supply: Cambria County Association for the Blind and Handicapped, Johnstown, PA
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
MR 3226—Fashion Claw Clip Rectangular
MR 3230—So Gelous Paddle Brush
MR 3239—Curl Contour Clips
Designated Source of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Contracting Activity: Military Resale-Defense

Commissary Agency
NSN(s)—Product Name(s):
3990–00–NSH–0075—Pallet, Demolition Testing, 24″ x 48″
Contracting Activity: W4MM USA JOINT MUNITIONS CMD, ROCK ISLAND, IL

Service(s)

Service Type: Administrative/General Support Services
Mandatory for: GSA, Southwest Supply Center: 819 Taylor Street, Fort Worth, TX
Designated Source of Supply: Beacon Lighthouse, Inc., Wichita Falls, TX
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Reproduction Service
Mandatory for: Fort Ord, Fort Ord, CA
Designated Source of Supply: Beacon Lighthouse, Inc., Wichita Falls, TX
Contracting Activity: DEPT OF THE ARMY, W40M RHCO–ATLANTIC USAHCA

Service Type: Data Entry
Mandatory for: U.S. Department of Housing and Urban Development: 40 Marietta Street NW, 14th Floor, Atlanta, GA
Designated Source of Supply: Vision Rehabilitation Services of Georgia, Inc., Smyrna, GA
Contracting Activity: HOUSING AND URBAN DEVELOPMENT, DEPARTMENT OF, DEPT OF HOUSING AND URBAN DEVELOPMENT

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2021–05210 Filed 3–11–21; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Tribal Consultation Meeting

AGENCY: Corporation for National and Community Service.

ACTION: Notice of meeting.

SUMMARY: The Corporation for National and Community Service (operating as AmeriCorps) gives notice of a closed Tribal Consultation Meeting.

DATES: Friday, April 9, 2021 from 3:00–4:00 p.m. (EDT)

ADDRESSES: The meeting will be held virtually, via Zoom. Tribal leaders may register to participate through *https://americorps.zoomgov.com/webinar/register/WN_fMs_ZQS9Qay-a32vHXtYig* and receive the Zoom link. Tribal communities can also submit written comments to *yshaheenmcconnell@cns.gov* with the subject line: ''Comments for April 9, 2021 AmeriCorps Tribal Consultation Meeting.'' Comments must be sent by April 7, 2021.

FOR FURTHER INFORMATION CONTACT: Yasmeen Shaheen-McConnell, Strategic Advisor for Native American Affairs, phone: 202–967–5646, or by email to *yshaheenmcconnell@cns.gov.*

Reasonable Accommodation: AmeriCorps provides reasonable accommodation where appropriate. Anyone who needs an interpreter or other accommodation should email Yasmeen Shaheen-McConnell, Strategic Advisor for Native American Affairs, at *yshaheenmcconnell@cns.gov,* or by phone at 202–967–5646 by 5:00 p.m. (EDT) on March 31, 2021.

SUPPLEMENTARY INFORMATION: In alignment with the January 26, 2021 Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships and Executive Order 13175, AmeriCorps invites Tribal leaders to discuss their needs and concerns related to AmeriCorps resources and AmeriCorps' Tribal Consultation policy in this meeting. AmeriCorps plans to consider this input for incorporation into our Tribal Consultation policy and support we provide to Tribal communities across the U.S. The meeting agenda will be:

1. Input on AmeriCorps' Tribal Consultation policy.

2. Barriers for tribal communities to access AmeriCorps resources.

a. Ways AmeriCorps can support COVID response and recovery.

b. Ways AmeriCorps can support veterans and military families.

3. Barriers for tribal community members to serve with AmeriCorps.

a. Ways AmeriCorps can support members of tribal communities to serve or continue to serve in our programs

4. Barriers for tribal grantees to achieve compliance with grant requirements

a. Ways to reduce administrative burden and further support tribal grantees to successfully comply with financial and programmatic requirements, including National Service Criminal History Checks.

Dated: March 8, 2021.

Lisa Guccione,

Deputy Chief of Staff.

[FR Doc. 2021–05140 Filed 3–11–21; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Science and Technology Reinvention Laboratory Personnel Demonstration Project in the Naval Facilities Engineering Command, Engineering and Expeditionary Warfare Center (NAVFAC EXWC)

AGENCY: Under Secretary of Defense for Research and Engineering (USD(R&E)), Department of Defense (DoD).

ACTION: Personnel demonstration project notice.

SUMMARY: This **Federal Register** Notice (FRN) serves as notice of the adoption of an existing STRL Personnel Management Demonstration Project by the Naval Facilities Engineering Command, Engineering and Expeditionary Warfare Center (NAVFAC EXWC). NAVFAC EXWC adopts, with some modifications, the STRL Personnel Demonstration Project implemented at the: Naval Air Systems Command (NAVAIR) Naval Warfare Center, Aircraft Division, Naval Air Warfare Center, Weapons Division; Naval Information Warfare Centers Atlantic and Pacific (NIWC Atlantic and Pacific) (previously designated as the Space and Naval Warfare Systems Command, Space and Naval Warfare Systems Centers Atlantic and Pacific), Naval Sea Systems Command Warfare Centers (NAVSEA), and the Combat Capabilities Development Command (CCDC) Army Research Laboratory (ARL) (previously designated as ARL).

DATES: Implementation of this demonstration project will begin no earlier than March 12, 2021.

FOR FURTHER INFORMATION CONTACT:
NAVFAC EXWC: Ms. Carol Frash, 1000 23rd Avenue, Port Hueneme, CA 93043 (805) 982–2422, or *reinventnavfacexwc@navy.mil.*
DoD: Dr. Jagadeesh Pamulapati, Director, Laboratories and Personnel Office, 4800 Mark Center Drive, Alexandria, VA 22350, (571) 372–6372, *jagadeesh.pamulapati.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law (Pub. L.) 103–337; as amended, authorizes the Secretary of Defense (SECDEF), through the USD(R&E), to conduct personnel demonstration projects at DoD laboratories designated as STRLs. All STRLs authorized by section 1105(a) of the NDAA for FY 2010, Public Law 111–84, as well as any newly designated STRLs authorized by SECDEF, or future

legislation, may use the provisions described in this FRN.

1. Background

Many studies have been conducted since 1966 on the quality of the laboratories and personnel. Most of the studies recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects were approved. The demonstration projects are ''generally similar in nature'' to the Department of Navy's China Lake Personnel Demonstration Project. The terminology, ''generally similar in nature,'' does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

2. Overview

DoD published notice on November 22, 2019 in 84 FR 64495 that NAVFAC EXWC will implement an STRL Personnel Demonstration Project. NAVFAC EXWC will adopt, with some modifications, flexibilities from the following approved STRL personnel demonstration projects:

(1) Department of the Navy, NAVAIR—76 FR 8530, February 14, 2011;

(2) Department of the Navy, NIWC Atlantic and Pacific—76 FR 1924, January 11, 2011;

(3) Department of the Navy, NAVSEA—62 FR 64050, December 3, 1997; and

(4) Department of the Army, CCDC ARL—63 FR 10679, March 4, 1998.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this FRN will be available for use by the STRLs enumerated in section 1105(a) of the NDAA for FY 2010, Public Law 111–84 as amended, if they wish to adopt them in accordance with DoD Instruction 1400.37, ''Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Projects'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/140037p.pdf*) (including revised or superseded instructions) and after the fulfillment of any collective bargaining obligations.

4. Summary of Comments

Eight commenters provided comments electronically via the Federal eRulemaking Portal regarding the Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Project in the Naval Facilities Engineering Command, Engineering and Expeditionary Warfare Center (NAVFAC EXWC), 84 FR 64495, dated November 22, 2019.

(A) Editorial and General Comments

Comment: A commenter noted inconsistencies throughout the document in the use of the term Technical Director (*i.e.,* Technical Director, Laboratory Director, NAVFAC EXWC Director, Director, and NAVFAC EXWC Technical Director).

Response: Concur with commenter. The terms ''Laboratory Director'' and ''NAVFAC EXWC Director'' have been changed to ''NAVFAC EXWC Technical Director'' or ''Technical Director''.

Comment: A commenter noted inconsistencies throughout the document referring to NAVFAC EXWC as the ''Center'' and the ''Technical Center''.

Response: Concur with commenter. The terms ''Center'' and ''Technical Center'' have been changed to NAVFAC EXWC.

Comment: A commenter noted inconsistencies throughout the document referring to ''salary points'' and ''control points''.

Response: Concur with commenter. The term ''salary points'' has been changed to ''control points.''

(B) Introduction

1. Purpose

Comment: One commenter requested clarification as to who can be the NAVFAC EXWC Technical Director's designee and must they be within EXWC.

Response: To clarify the sentence under Purpose (section II.A) the following sentence has been added: ''Unless specifically stated otherwise, the NAVFAC EXWC Technical Director may delegate authority within NAVFAC EXWC to effectively implement the provisions of this notice.''

Comment: Three commenters requested clarification on the authorities granted to the NAVFAC EXWC Technical Director and one commenter recommended rewording the entire section of II.A paragraph two to clarify.

Response: Concur with commenters and have amended section II.A to adopt the following revision: ''The NAVFAC EXWC Technical Director (hereinafter referred to as the ''Technical Director'') has overall oversight and management of these authorities and any other authorities granted to an STRL, which includes but is not limited to, managing the workforce strength, structure, positions, and compensation (including pay pools) without regard to any limitation on appointment, positions, or funding with respect to STRL, and will be carried out in a manner consistent within the STRL budget. Also, NAVFAC EXWC's Technical Director has those authorities equivalent to a Technical Director Senior Executive Service (SES) position within a STRL. Unless specifically stated otherwise, the Technical Director of NAVFAC EXWC may delegate authority within NAVFAC EXWC to effectively implement the provisions of this notice.'' NAVFAC EXWC Internal Operating Procedures (IOPs) will document any delegation, including details of implementation.'' In addition, section III.C.8 has been revised to state that ''The Technical Director is specifically authorized to use recruitment, retention, and relocation incentives which are further described in NAVFAC EXWC IOPs. The authority in 5 CFR part 575, is further expanded to allow NAVFAC EXWC to offer retention counteroffers to high performing employees with critical scientific or technical skills who present evidence of an alternate employment opportunity with higher compensation. Such employees may be provided increased base pay (up to ceiling of the pay band) and/or a one-time cash payment that does not exceed 50 percent of one year of base pay. Retention counteroffers, either in the form of a base pay increase and/or a bonus, count toward the aggregate limitation on pay consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B, except as waived in section IX of this plan.''

(C) Personnel System Changes

1. Qualifications

Comment: Three comments were received asking if there are any further qualification standards and/or applicable waivers other than those stated in the FRN?

Response: The verbiage for Qualifications under section III.A.1 'Personnel System Changes' identifies the minimum qualification standards. No additional applicable waivers are necessary.

2. Science and Engineering Direct Hiring Authorities

Comment: One commenter requested clarification in regard to the use of STRL Direct Hiring Authorities for current federal employees and employees already employed at NAVFAC EXWC.

Response: NAVFAC EXWC may utilize all available direct hiring

authorities to consider and appoint qualified candidates, which may include current federal employees. Section III.A.2.a has been revised as follows: ''NAVFAC EXWC may utilize all available direct hiring authorities to consider and appoint qualified candidates, which may include current federal employees. This applies to all STRL direct hire authorities, including but not limited to, those listed under Section III. 2.a (including sections 1106 and 1121 of the NDAA FY2017) and any other applicable direct hire authorities enacted under the Office of Personnel Management (OPM), DoD, or Department of Navy (DoN) or amended after the effective date of this demonstration project, except as waived in Section IX of this plan.''

3. Delegation of Classification Authority

Comment: Two commenters requested clarification on delegated classification authority and recommended rewording the entire section of III.B.1 to clarify.

Response: Concur with commenters and have amended section III.B.1 as follows: ''The Technical Director has overall oversight, management, and delegated classification and position management authority for all STRL positions covered under the NAVFAC EXWC Personnel Demonstration Project. Classification authority will be delegated as follows: The NAVFAC EXWC Technical Director may delegate classification authority to the NAVFAC EXWC Human Resources Office (HRO) Director. The NAVFAC EXWC HRO Director may further delegate classification authority to the NAVFAC EXWC Human Resource professionals. If so delegated, the NAVFAC EXWC HRO Director will exercise oversight to ensure consistency throughout NAVFAC EXWC. Managers will provide input to classification requests as a means of increasing managerial effectiveness and expediting the classification function. Administration and management of Delegated Classification Authority will be outlined in the NAVFAC EXWC IOPs.''

4. Classification

Comment: One commenter asked if a modified version of the Position Designation Record (PDR) and a modified version of the Defense Acquisition Workforce Improvement Act (DAWIA) Coding Sheet could be utilized to streamline the classification process and allow for automated classification systems.

Response: We will not be using a modified version of the Position Designation Record or the Defense Acquisition Workforce Improvement Act (DAWIA) coding sheet.

5. Pay Band Structure

Comments: Two comments expressed concern that categories 1 and 2 contained in the NT–III and NT–IV pay bands are confusing, especially as to the proper placement of employees within the pay band, and recommended using control points to manage positions within these pay bands that do not support movement to the top of the pay band.

Response: To avoid confusion and difficulty differentiating between the proper placement of employees within a pay band, categories 1 and 2 have been eliminated from the NT–III and NT–IV pay bands. The NT–II pay band has been expanded to encompass the GS–05 to GS–11 grade equivalent and the NT–III pay band has been modified to include the GS–12 to GS–13 grade equivalent. The following language was inserted to explain the new configuration: ''A key feature is the overlap in Science and Engineering (ND) career path between bands III and IV. ND–III begins at GS–12, step 1, and ends at GS–14, step 10. ND–IV begins at GS–14, step 1, and ends at GS–15, step 10. Control points will be applied as outlined in the NAVFAC EXWC IOPs.'' Additionally, Figure 1, ''Career Paths and Pay Band Structure'' was updated.

6. Senior Scientific Technical Managers (SSTM)

Comment: One commenter questioned whether SSTM positions would be evaluated by a performance management system versus a contribution management system as stated in the FRN.

Response: Section III.B.7 has been revised to read: ''All SSTM positions within NAVFAC EXWC will report to and be evaluated by the NAVFAC EXWC Technical Director (non-delegable). SSTMs will be evaluated by the STRL Performance Management System as outlined in NAVFAC EXWC's IOPs.''

7. Professional Licensure Designations for Architectural and Engineering Positions

Comment: One commenter expressed concern regarding the professional engineering license policy and requested that the process further explained.

Response: The description of the professional engineering license policy was reviewed and determined to be appropriate.

8. Pay Setting for Appointment

Comment: One commenter expressed concern about the absence of specified pay setting provisions and recommended waiving pay rounding rules in accordance with 5 CFR part 531 subpart F.

Response: Pay setting is appropriately addressed in the FRN. Additional procedures will be provided in supporting IOPs. As stated in section III.C.1, initial pay setting is based on base pay, not total adjusted salary. To allow for more streamlined pay setting calculations, we have added a waiver of the rounding rules found in 5 CFR 531.604(b)(4).

Comment: One commenter asked if 5 CFR part 531 subpart F was waived in its entirety.

Response: No. A waiver of 5 CFR part 531, subpart F is made to allow for the provisions of the demonstration project as described in this FRN. This waiver has been updated to also waive the section of 5 CFR part 531 subpart F [5 CFR 531.604(b)(4)] that pertains to the rounding rules.

9. Promotion

Comment: One commenter raised a concern that 6% or the minimum base pay of the new pay band was insufficient for promotions.

Response: Upon review, we removed the 6% or the minimum base pay of the new pay band and replaced it with language stating that ''a promotion may be accompanied by a pay increase.'' Specific guidelines regarding promotions will be documented in NAVFAC EXWC IOPs.

Comment: One commenter asked to clarify the definition of ''mission success'' for the rating of record under the promotion section.

Response: To clarify this section, ''mission success'' was removed and the sentence was revised as follows: ''To be promoted competitively or non-competitively, from one pay band to the next, an employee must meet the minimum qualifications for the job and have a current rating of record of 2 or above (acceptable performance rating) or an equivalent under a different appraisal system. Other specific guidelines regarding promotions will be documented in NAVFAC EXWC IOPs.

An additional clarification was also added under III.E.4, which now states: ''Employees with an acceptable rating of record, two or above, for each mission aligned objective will receive the equivalent of the authorized GS general pay increase (GPI).''

10. Staffing Supplements

Comment: One commenter suggested that a special salary rate under the Staffing Supplements section was inconsistent with the provisions outlined under the Conversion section and questioned whether NAVFAC EXWC would be using special salary rates, staffing supplements, or both. Additionally, the commenter asked whether additional waivers of Chapter 53, section 5305 and 5 CFR part 530, subpart C were needed.

Response: Upon review, we found no inconsistencies concerning special salary rates and staffing supplements. Under the demonstration project, special salary rates do not apply. Upon conversion into the demonstration project, employees who are receiving a special salary rate will be provided a staffing supplement. Retained pay provisions apply. Upon further review, the FRN was updated to waive 5 U.S.C. 5305 in its entirety because special pay provisions no longer apply. 5 CFR part 530, subpart C was already waived in its entirety.

11. Pay Differential for Supervisory Positions

Comment: One commenter expressed concern that supervisory pay differentials could not be applied to official limited and team lead positions.

Response: The commenter's concern was considered and NAVFAC EXWC expanded eligibility for supervisory pay differentials by adding at III.C.10: ''NAVFAC EXWC will establish a pay differential to be provided at the discretion of the Technical Director (or designee) to incentivize and reward personnel in a Supervisory, Supervisor Civil Service Reform Act (CSRA) position, [(position that meets the definition of Supervisor in 5 U.S.C. section 7301(a)(10)], but does not constitute a major duty occupying at least 25% of the position's time) and Team Leader positions (position is titled with the prefix ''Lead'' and meets the minimum requirements for application of the General Schedule Team Leader Grade-Evaluation Guide).''

12. Expanded Development Opportunities Program

Comment: One commenter suggested that the Technical Director have the ability to delegate final selection/approval for participation in the Expanded Development Opportunities Program.

Response: The Technical Director can delegate this responsibility based on the provision as noted in II.A.2.

13. Performance Management

Comments: Two commentors expressed concern regarding the need for a 90-day minimum rating period and requested clarification concerning the following: Why is 90-days the minimum rating period? Why is there a presumptive rating for employees who do not meet the 90-day minimum requirement? What is a presumptive rating and why is it needed? What is a normal rating?

Response: NAVFAC EXWC has previously used and is currently using a 90-day minimum rating period, which has been determined to be an appropriate period of time to evaluate an employee's performance. A normal rating is a rating of record based on an employee's actual performance over at least a 90 calendar day period, within the current annual appraisal period. After further review, and in recognition of the demonstration project's foundation for providing performance ratings based on an evaluation of an employee's accomplishments and performance, presumptive ratings will not be provided to employees who do not meet the 90 day minimum requirement. However, specially situated employees (as described below), who do not meet the 90-day minimum requirement, may receive the same performance rating as the employee's last performance rating of record or a modal performance rating, whichever is most advantageous to the employee, as documented in NAVFAC EXWC's IOPs. However, when the most recent rating of record is unacceptable, only that rating of record will be considered for purposes of a performance rating. Section III.E.1 has been updated to state the following: ''The minimum rating period is 90-days. Employees who do not meet the 90-day minimum requirement will not be eligible for a STRL performance rating of record. However, specially situated employees, who do not meet the 90-day minimum requirement, may receive the same performance rating as the employee's last performance rating of record or a modal performance rating, whichever is most advantageous to the employee, as documented in NAVFAC EXWC's IOPs. However, when the most recent rating of record is unacceptable, only that rating of record will be considered for purposes of a performance rating. A modal performance rating is the most frequently received rating of record assigned to employees within a particular pay pool for a particular rating cycle. Specially situated employees include those employees who are absent from a STRL position for military service, employees on a prolonged absence resulting from a work-related injury approved for workers compensation pursuant to an Office of Worker's Compensation Program, and those employees in a STRL position, who have less than 90 calendar days under a STRL performance plan due to being temporarily assigned to a non-STRL position. Those employees who do not meet the 90-day minimum requirement, except for specifically situated employees, may receive only the general pay increase and they may also receive Title 5 cash awards, if appropriate.''

Comment: One commenter expressed concern about the ability to assign 10 individual mission objectives and recommended modifying it to 5–7 objectives.

Response: Upon review, 3–10 mission objectives, as stated, provides maximum flexibility for supervisors.

14. Rating Benchmarks

Comment: One commenter requested that Appendix B remove example benchmarks and include actual NAVFAC EXWC established benchmarks.

Response: The comment has been considered; however, an actual NAVFAC EXWC benchmark has not been included to allow for the ability to revise benchmarks in the future; Appendix B has been updated to include an example of a notional NAVFAC EXWC benchmark.

15. Performance Feedback and Formal Ratings

Comment: One commenter requested clarification as to who appoints pay pool managers and pay pool panel members.

Response: The comment has been considered and to provide clarification, Section III.E.5 has been revised as follows: ''The Technical Director (or designee) of NAVFAC EXWC will establish pay pools, and appoint pay pool panels and Pay Pool Managers.''

16. Transition Equity

Comment: One commenter expressed concern about the transition allowance of 12 months to adjust pay upon conversion, which would negatively impact employees on career ladder positions.

Response: The concern about the transition equity of current employees under career ladder positions has been resolved by adding section IV.A.3: ''An employee on a career ladder position at the time of conversion may maintain the same salary trajectory and full

performance level as covered under the general schedule pay system. Additionally, they may be considered for accelerated compensation identified under the Accelerated Compensation for Developmental Positions (ACDP) of this FRN. Once an employee reaches the full performance pay band, control points will apply as outlined in NAVFAC EXWC IOPs.'' Clarifying language was added in section III.D.3: ''The Technical Director may authorize an increase to basic pay for employees participating in training programs, internships, or other development capacities. This may include positions that cross bands within a career path (formally known as career ladder positions), or developmental positions within a band. ACDP will be used to recognize development of job related competencies as evidenced by successful performance within NAVFAC EXWC. Additional guidance will be published in an IOP''.

17. Initial Probationary Period

Comment: One commenter recommended removing ''DoD'' from ''Employees who are still serving an initial probationary period upon conversion to the demonstration plan will receive credit for probationary service to date; however, they must serve any remaining probationary time to complete the full two-year DoD probationary period'' in order to maintain the two-year probationary period independent of DoD policy.

Response: Concur with Commenter. Section IV.A.6 has been revised to the following: ''Employees who have completed an initial probationary period prior to conversion to the NAVFAC EXWC personnel demonstration project plan will not be required to serve another probationary period. NAVFAC EXWC will have a two-year probationary period. Employees who are still serving an initial probationary period upon conversion from GS to the demonstration project will receive credit for probationary service to date; however, they must serve any remaining probationary time to complete a full two-year probationary period.''

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Appendix B: Rating Benchmark Examples

I. Executive Summary

NAVFAC EXWC is a Warfare Center and distinguished DoD Laboratory established in 2012. NAVFAC EXWC's dedicated workforce provides specialized facilities engineering, technology solutions, and life-cycle management of expeditionary equipment to the Navy, Marine Corps, Federal agencies, and other DoD customers. A majority of NAVFAC EXWC's civilian employees were hired in the General Schedule (GS) classification and pay system. The GS classification and pay system does not offer the same flexibilities and tools to attract, retain, motivate and fully compensate staff as the NAVFAC EXWC personnel demonstration project.

Through this project, NAVFAC EXWC competes with the private sector for the best talent by making timely job offers with attractive compensation packages that land high-quality employees. Once these employees are hired, NAVFAC EXWC incentivizes performance and rewards innovation and motivation through compensation directly linked to individual performance. Linking compensation to performance increases job satisfaction and retention of high performing employees and encourages continued performance because reduced performance will draw less reward.

NAVFAC EXWC's personnel demonstration project takes advantage of flexibilities to simplify and speed classification and staffing actions for employees, such as direct hire authorities, expanded details, temporary promotions, and modified/flexible term appointments.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD laboratories can be enhanced by greater managerial control over personnel functions and to expand the opportunities available to employees through a more responsive and flexible personnel system.

The NAVFAC EXWC personnel demonstration project will incorporate legal authorities and adopt practices from other STRLs to meet the specific needs of this Command. These tools will enable NAVFAC EXWC to dynamically shape the mix of technical skills and expertise in the laboratory workforce. As the Navy's leader in specialized facilities engineering, technology solutions, and life-cycle management of expeditionary equipment, NAVFAC EXWC must have the flexibility needed to quickly respond to changes in mission, organizational constraints, workload, and market conditions.

The NAVFAC EXWC Technical Director (hereinafter referred to as the (''Technical Director'') has overall oversight and management of these authorities and any other authorities granted to a STRL, which includes but is not limited to, managing the workforce strength, structure, positions, and compensation (including pay pools) without regard to any limitation on appointment, positions, or funding with respect to STRL, and will be carried out in a manner consistent within the STRL budget. Also, NAVFAC EXWC's Technical Director has those authorities equivalent to a Technical Director SES position within a STRL. Unless specifically stated otherwise, the NAVFAC EXWC Technical Director may delegate authority within NAVFAC EXWC to effectively implement the provisions of this notice. NAVFAC EXWC IOPs will document any delegation, including details of implementation.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results analyzed r, and conclusions reached on how the system is working. The provisions of Department of Defense Instruction (''DoDI'') 1400.37, ''Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Projects'' (including subsequently issued or superseding instructions) will be followed to modify, supplement

through adoption, or otherwise change this demonstration project plan.

B. Problems With the Present System

The current Federal personnel system is incompatible with NAVFAC EXWC's need for a highly specialized, quality workforce to support the DoD and the Department of the Navy's overall strategic objectives. The characteristics of the current GS system have remained unchanged since its inception many years ago. Under the current GS system, work is classified into 15 grades with 10 interim steps within each grade. The GS system is rigidly defined by occupational series and grades with precise qualifications for each position. The GS system does not enable management to respond quickly to new ways of designing work or changes in the work itself. It does not offer flexibilities to accurately capture employee performance or to quickly adjust management expectations for critical scientific, engineering, acquisition support and other professional positions, including skilled technicians. The current GS hiring system's inability to provide job offers in a timely manner also hampers the NAVFAC EXWC's ability to attract high quality candidates.

C. Expected Benefits

To remain the Department of the Navy's leader in supporting combatant capabilities and sustainable facilities, NAVFAC EXWC must compete with the private sector for the most talented, technically proficient candidates. NAVFAC EXWC must have a human resource system that fosters employee development, enhances performance and experience, and provides a strong retention incentive. This personnel demonstration project is expected to enable and enhance:

(1) Recruitment of highly qualified scientific, technical, business, and support employees in today's competitive environment;

(2) Selection of candidates and extension of job offers in a timely and efficient manner, with compensation sufficient to attract high quality, in-demand employees;

(3) Employee satisfaction with pay setting and adjustment, recognition, and career advancement opportunities;

(4) A quality workforce that rapidly adjusts to evolving requirements for the future;

(5) Retention of high-level performers; and

(6) Simple and cost-effective HR management processes.

To effectively meet the above expectations, this notice identifies and establishes those features and flexibilities this demonstration project will use to achieve these objectives. The demonstration project primarily emphasizes streamlined hiring, a more flexible performance-based compensation system, talent acquisition and retention, and professional human capital planning and execution. Those features and flexibilities alone, however, will not ensure success. Delivering that vision requires a human resources service model that is highly proactive, expertly skilled in analytical tools, and fully engaged as a strategic partner and a trusted agent of this modern multi-faceted defense laboratory.

D. Participating Organizations, Employees and Union Representation

NAVFAC EXWC has major facilities in three geographic locations: Port Hueneme, California, Gulfport, Mississippi, and Washington, DC. Additionally, the organization employs personnel at more than ten sites worldwide. These sites are diverse in employment profiles and size and have bargaining unit populations. The organization operates throughout the full spectrum of research, development, test and evaluation, engineering and fleet support delivered by five business lines and six support lines. Wage Grade positions will not be included in this personnel demonstration project; however, NAVFAC EXWC will continue to evaluate possible future inclusion. Prior to including bargaining unit employees in the personnel demonstration project, NAVFAC EXWC will fulfill its obligation to consult and/or negotiate with the labor organizations in accordance with 5 U.S.C. 4703(f) and 7117, as appropriate.

NAVFAC EXWC is predominantly a Navy Working Capital Fund (NWCF) activity. Over 60 percent of the employees to be initially included in the personnel demonstration project are funded by NWCF. Under NWCF, the cost of business and operations is built into the Stabilized Billing Rate (SBR) paid by customers for work performed; by maximizing management flexibility, NAVFAC EXWC can remain cost competitive.

E. Project Design

There are four fundamental elements of this personnel demonstration project:

(1) Hiring and staffing flexibilities;

(2) Simplified classification;

(3) Pay Banding; and

(4) Performance-based compensation and assessment.

The hiring and staffing flexibilities will help to better recruit, hire, and retain the most capable, qualified, and competent workforce in the job market today. Simplified classification will streamline the job classification process, reduce the effect of administrative processes on personnel, and allow for more flexibility in making job reassignments. The pay banding structure will create four career paths with multiple pay bands within each career path representing the phases of career progression that are typical for the respective career paths. This banding structure will enable managers to more appropriately reward and retain a diverse workforce using principles of pay equity and career progression. The performance-based compensation system is characterized by an assessment of an employee's performance and an appropriate pay allocation predicated on the assessed level of performance.

F. Executive STRL Policy Board

The Executive STRL Policy Board (ESPB) will oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishment of internal controls and accountability. Members of the ESPB will be appointed by the Technical Director. Ad hoc members may serve in an advisory capacity to the ESPB. The ESPB duties will include the following:

(1) Establish policies and issue guidance on composition of pay pools in accordance with the guidelines of this proposal and internal procedures;

(2) Review pay pool operation and resolve pay pool disputes;

(3) Establish policies and issue guidance concerning the civilian pay budget, pay administration, awards and performance-based pay increases;

(4) Establish policies and issue guidance to ensure in-house budget discipline and implement workforce staffing and budget plans; and

(5) Develop policies and procedures for administering Developmental Opportunity Programs; ensure all employees are treated in a fair, equitable manner.

G. Funding Level

The Under Secretary of Defense (Personnel & Readiness) may, at his/her discretion, adjust the minimum funding levels to take into account factors such as the Department's fiscal condition, guidance from the Office of Management and Budget and equity in circumstances when funding is reduced or eliminated for GS pay raises or awards.

III. Personnel System Changes

A. Hiring, Appointment, and Related Authorities

1. Qualifications

OPM ''Qualification Standards for General Schedule Positions,'' with minor modifications to address application of OPM qualifications in a pay banding environment, are used to determine qualifications for personnel demonstration project positions. ''Band'' is substituted for ''Grade'' where appropriate and time in grade requirements are eliminated.

Since the pay bands are anchored to the GS grade levels, the minimum qualification requirements for a position will be the requirements corresponding to the lowest GS grade incorporated into that pay band. For example, for a position in the Science and Engineering (S&E) career path Pay Band II, individuals must meet the basic requirements for a GS–5 as specified in the OPM ''Qualification Standard for Professional and Scientific Positions.''

Selective factors may be established for a position in accordance with the OPM's ''Operating Manual: Qualifications Standards for General Schedule Positions,'' when determined to be critical to successful job performance. These factors may become part of the minimum requirements for the position, and applicants must meet them in order to be eligible. If used, selective factors will be stated as part of the qualification requirements in vacancy announcements and recruiting bulletins.

2. Science and Engineering Direct Hire Authorities

A. NAVFAC EXWC, will use the direct hire authorities authorized in section 1108 of the NDAA for FY 2009, as amended by section 1103 of the NDAA FY 2012 and the direct hire authorities authorized in 10 U.S.C. 2358a and published in 79 FR 43722 and 82 FR 29280, as modified, to appoint the following:

Candidates with advanced degrees to scientific and engineering positions;

(1) Candidates with bachelor's degrees to scientific and engineering positions; Veteran candidates to Scientific, Technical, Engineering, and Mathematics positions (STEM), including technician positions;

Student candidates enrolled in a program of instruction leading to a bachelors or advanced degree in a STEM discipline; and

(2) STEM Student Employment Program (SSEP).

B. NAVFAC EXWC will use this direct hire authority for students in a STEM course of study at an accredited institution of higher education. The purpose of this direct hire authority is to provide a streamlined and accelerated hiring process that allows NAVFAC EXWC to compete successfully with private industry for high quality scientific, technical, engineering, or mathematics students for filling scientific and engineering positions. Students appointed under the SSEP are afforded an opportunity for non-competitive conversion to a permanent scientific or engineering position upon graduation from an accredited institution of higher education. Use of this authority will be consistent with the merit system principles. The SSEP student employment standards will be similar to the Pathways qualification standards, which will allow students appointed under this authority to be aligned to a pay band commensurate with the highest level of education completed and/or prior experience. SSEP students will remain on a term appointment until the completion of their educational program.

C. NAVFAC EXWC may utilize all available direct hiring authorities to consider and appoint qualified candidates, which may include current federal employees. This applies to all STRL direct hire authorities including but not limited to those listed under Section III.2.a (including 82 FR 29280 and sections 1106 and 1121 of the NDAA FY2017) and any other applicable direct hire authorities enacted under OPM, DoD, or DoN or amended after the effective date of this demonstration project, except as waived in Section IX of this plan.

3. Distinguished Scholastic Achievement Appointments (DSAA)

NAVFAC EXWC will use the Distinguished Scholastic Achievement Appointment Authority (DSAA) for pay banded positions. The DSAA uses an alternative examining process which provides the authority to appoint candidates possessing a bachelor's degree or higher to positions up to the equivalent of GS–12 for positions in the Science and Engineering (S&E) pay bands. This enables NAVFAC EXWC to respond quickly to hiring needs for eminently qualified candidates possessing distinguished scholastic achievements.

The alternative examining process specifies that candidates may be appointed provided they meet the minimum standards for the position as published in OPM's operating manual, ''Qualification Standards for General Schedule Positions,'' plus any selective placement factors stated in the vacancy announcement; the occupation has a positive education requirement; and the candidate has a cumulative grade point average (GPA) of 3.5 (on a 4.0 scale) or better in their field of study (or other equivalent score) or are within the top 10 percent in their field of study in a graduate program.

4. Reemployment of Annuitants

NAVFAC EXWC will use the authorities provided by 5 U.S.C. 9902(g) and 82 FR 43339 to appoint reemployed annuitants, as appropriate. The Technical Director may approve the appointment of reemployed annuitants and determine the salary, to include whether the annuitant's salary will be reduced by any portion of the annuity received, up to the amount of the full annuity as a condition of employment. Use of this authority will be consistent with merit system principles.

5. Volunteer Emeritus Program (VEP)

The Technical Director will have the authority to offer former Federal employees who have retired or separated from the Federal service, voluntary assignments in NAVFAC EXWC. Volunteer Emeritus Program assignments are not considered ''employment'' by the Federal government. Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. The Volunteer Emeritus Program will ensure continued quality research while reducing the overall salary line by allowing higher paid individuals to accept retirement incentives with the opportunity to retain a presence in the scientific community. The program will be of most benefit during manpower reductions as senior employees could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees. Volunteer service will not be used to replace any employee, or interfere with career opportunities of employees. The Volunteer Emeritus Program may not be used to replace or substitute for work performed by civilian employees occupying regular positions required to perform the NAVFAC EXWC mission.

To be accepted into the Volunteer Emeritus Program, a candidate must be recommended by a NAVFAC EXWC manager to the Technical Director. Everyone who applies is not entitled to participate in the program. The Technical Director will document the decision process for each candidate and retain selection and non-selection documentation for the duration of the

assignment or two years, whichever is longer.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a volunteer capacity. Retired or separated federal employees may accept an emeritus position without a break or mandatory waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer and the Technical Director. The agreement will be reviewed by the servicing legal office. The agreement must be finalized before the assumption of duties and will include:

(A) A statement that the service provided is gratuitous, that the volunteer assignment does not constitute an appointment in the civil service and is without compensation or other benefits except as provided for in the agreement itself, and that, except as provided in the agreement regarding work-related injury compensation, any and all claims against the Government (stemming from or in connection with the volunteer assignment) are waived by the volunteer.

(B) A statement that the volunteer will be considered a federal employee for the purpose of:

(1) 18 U.S.C. 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913;

(2) 31 U.S.C. 1343, 1344, and 1349(b);

(3) 5 U.S.C. chapters 73 and 81;

(4) The Ethics in Government Act of 1978;

(5) 41 U.S.C. chapter 21;

(6) 28 U.S.C. chapter 171 (tort claims procedure), and any other Federal tort liability statute;

(7) 5 U.S.C. 552a (records maintained on individuals);

(8) The volunteer's work schedule; and

(9) The length of agreement (defined by length of project or time defined by weeks, months, or years).

(C) The support to be provided by the NAVFAC EXWC (travel, administrative, office space, supplies).

(1) The volunteer's duties.

(D) A provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a participant in the Volunteer Emeritus Program.

(1) A provision allowing either party to void the agreement with 10 working days written notice;

(2) The level of security access required (any security clearance required by the assignment will be managed by the NAVFAC EXWC while the volunteer is a participant in the Volunteer Emeritus Program);

(3) A provision that any written products prepared for publication that are related to Volunteer Emeritus Program participation will be submitted to the Technical Director for review and must be approved prior to publication;

(4) A statement that the volunteer accepts accountability for loss or damage to Government property occasioned by the volunteer's negligence or willful action;

(5) A statement that the volunteer's activities on the premises will conform to the NAVFAC EXWC regulations and requirements;

(6) A statement that the volunteer will not improperly use or disclose any non-public information, to include any pre-decisional or draft deliberative information related to DoD programming, budgeting, resourcing, acquisition, procurement or other matter, for the benefit or advantage of the Volunteer Emeritus Program participant or any non-Federal entities. Volunteer Emeritus Program participants will handle all non-public information in a manner that reduces the possibility of improper disclosure.

(7) A statement that the volunteer agrees to disclose any inventions made in the course of work performed at NAVFAC EXWC. The Technical Director will have the option to obtain title to any such invention on behalf of the U.S. Government. Should the Technical Director elect not to take title, NAVFAC EXWC will retain a non-exclusive, irrevocable, paid up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government.

(8) A statement that the Volunteer Emeritus Program participant must complete either a Confidential or Public Financial Disclosure Report, whichever applies, and ethics training in accordance with office of Government Ethics regulations prior to implementation of the agreement.

(9) A statement that the Volunteer Emeritus Program participant must receive post-government employment advice from a DoD ethics counselor at the conclusion of program participation. Volunteer Emeritus Program participants are deemed Federal employees for purposes of post-government employment restrictions.

6. Expanded Detail Authority and Temporary Promotions

NAVFAC EXWC will have an Expanded Detail and Temporary Promotion Authority providing the ability to:

(1) Effect details for up to one year to specified positions at the same or similar level (positions in a pay band with the same maximum salary) without the current 120-day renewal requirement specified at 5 U.S.C. 3341.

(2) Effect details or temporary promotions to a higher-level position up to 1 year within a 24-month period without competition. Details to higher-level positions beyond one year in a 24-month period require approval of the Technical Director and are subject to competitive procedures. The specifics of these authorities will be stipulated by NAVFAC EXWC IOPs.

7. Flexible Length and Renewable Term Technical Appointments

NAVFAC EXWC may use the Flexible Length and Renewable Term Technical Appointments workforce shaping tool temporarily authorized by section 1109(b) of the NDAA for FY 2016, as amended by section 1112(b) of the NDAA for FY 2019. Further details on the implementation of this authority are contained in 82 FR 43339. Until this authority expires or is rescinded, it may be used to appoint qualified candidates who are not currently DoD civilian employees, or DoD employees on term appointments into any STEM positions, including technicians, for a period of more than one year but not more than six years. The appointment of any individual under this authority may be extended without limit in up to six-year increments at any time during any term of service under conditions set forth by the Technical Director. The Technical Director, or designee, will establish implementing guidance and procedures on the use of this authority.

B. Classification, Career Paths and Pay Banding

1. Delegation of Classification Authority

The Technical Director has overall oversight, management, and delegated classification and position management authority for all STRL positions covered under the NAVFAC EXWC Personnel Demonstration Project. Classification authority will be delegated as follows: The NAVFAC EXWC Technical Director may delegate classification authority to the NAVFAC EXWC Human Resources Office (HRO) Director. The NAVFAC EXWC HRO Director may further delegate classification authority to the NAVFAC EXWC Human Resource

professionals. If so delegated, the NAVFAC EXWC HRO Director will exercise oversight to ensure consistency throughout NAVFAC EXWC. Managers will provide input to classification requests as a means of increasing managerial effectiveness and expediting the classification function. Administration and management of Delegated Classification Authority will be outlined in the NAVFAC EXWC IOPs.

2. Classification

The present system of OPM classification standards will be used for the identification of the proper occupational series of positions and certain occupational titles within the NAVFAC EXWC demonstration project. Current OPM position classification standards will not be used to grade positions in this project. However, the grading criteria in those standards will be used as a framework to develop new and simplified standards for the purpose of pay band determinations. The classification standard for each pay band will serve as an important component in the creation of Standard Level Descriptors (SLDs) that record the essential criteria for each pay band within each career path by stating the characteristics of the work, the responsibilities of the position, and the competencies required. SLDs will replace current position descriptions. SLDs combined with the Position Requirements Document will include position specific information such as Fair Labor Standards Act (FLSA) coverage; selective placement factors or specialized knowledge, skills and abilities; degree requirements or other professional certification requirements; staffing requirements; and other data element information pertinent to the position.

3. Simplified Assignment Process

Today's environment of rapid technology development and workforce transition mandates that the organization have maximum flexibility to assign individuals. Pay banding may be used to address these needs. As a result of the assignment to a particular pay band descriptor, the organization will have maximum flexibility to assign an employee within pay band descriptors consistent with the needs of the organization, the individual's qualifications and rank, and pay band. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same area of expertise and qualifications would not constitute an assignment outside the scope or coverage of the employee's pay band descriptor.

4. Career Paths

A fundamental element of the NAVFAC EXWC personnel demonstration project is a simplified classification and pay component. Like other STRL demonstration projects, the proposed pay banding approach is tied to the 15 GS grade levels and the above GS–15 grade level. Career paths at NAVFAC EXWC are grouped by four career paths based on similarities in the type of work and customary requirements for formal education, training and credentials. Common patterns of advancement within the occupations as practiced at NAVFAC EXWC were considered. Current occupations and grades were examined and their characteristics and distribution were used to develop the career paths described below:

(1) *Science and Engineering (ND Pay Plan):* This career path includes technical professional positions, such as engineers, physicists, chemists, mathematicians, operations analysts, and computer scientists. Specific course work or educational degrees are required for these occupations.

(2) *Science and Engineering Technician (NR Pay Plan):* This career path includes technician positions such as engineering technicians, electronics technicians, and physical science technicians. These occupations require practical expertise in scientific or engineering support but specific course work or educational degrees are not required for these occupations.

(3) *Administrative/Professional (NT Pay Plan):* This career path includes positions such as attorneys, IT specialists, paralegals, program managers, accountants, budget analysts, administrative officers, human resources specialists, and management analysts. Employees in these positions may or may not require specific course work or educational degrees.

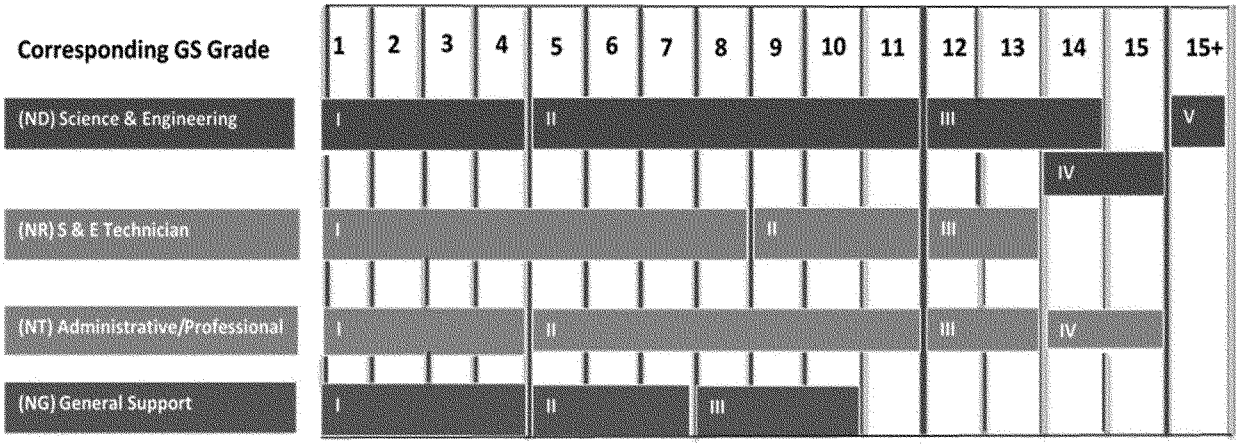
(4) *General Support (NG Pay Plan):* This career path includes the clerical and administrative support positions providing support in such fields as finance, supply, and human resources; positions applying typing, clerical or secretarial knowledge and skills; and student positions for training in these disciplines.

Each career path is composed of discrete pay bands (levels) corresponding to recognized advancement within these occupations. These pay bands replace grades and are not the same for all career paths. Each career path is divided into three to five pay bands; each pay band covering the same pay range formerly covered by one or more GS grades. The salary range of each band begins with step 1 of the lowest grade in that pay band and ends with step 10 of the highest grade in the pay band. The grouping of GS grades into a particular band was based on a careful examination of NAVFAC EXWC's occupations, grade levels, and career development practices. Career paths and the associated classification occupational series for each are provided in Appendix A. The distribution of the occupational series to career paths reflects only those occupational series that currently exist within NAVFAC EXWC. Additional occupational series may be added as a result of changes in mission requirements or OPM-recognized occupations. These additional occupational series will be placed in the appropriate career path consistent with the established career path definitions.

5. Pay Band Structure

The pay bands and their relation to the current GS framework are shown in Figure 1. This pay band structure allows significant flexibility to define and classify work assignments and to reward performance. A key feature is the overlap in (ND) career path between bands III and IV. ND–III begins at GS–12, step 1, and ends at GS–14, step 10. ND–IV begins at GS–14, step 1, and ends at GS–15, step 10. Control points will be applied as outlined in the NAVFAC EXWC IOPs.

Figure 1. Career Paths and Pay Band Structure



6. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and nonexempt determinations will be made consistent with criteria found in 5 CFR part 551. Generally, employees will be converted to the demonstration project with the same FLSA status they had previously. All employees are covered by the FLSA unless they meet the criteria for exemption. The duties and responsibilities outlined in the classification standards for each pay band will be compared to the FLSA criteria.

7. Senior Scientific Technical Managers (SSTM)

The SSTM program will be managed and administered by the Technical Director, consistent with the provisions 10 U.S.C. 2358a, 79 FR 43722, and NAVFAC EXWC IOPs. The primary function of these positions is to engage in research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the NAVFAC EXWC mission and to carry out technical supervisory responsibilities. The number of such positions may not exceed 2 percent of the number of scientists and engineers employed at NAVFAC EXWC, unless changed by future legislation, as of the close of the last fiscal year before the fiscal year in which any appointments subject to the numerical limitation are made. This authority is expected to provide an opportunity for career development and expansion of a pool of experienced, prominent technical candidates meeting the levels of proficiency and leadership essential to create and maintain a DoD state-of-the-art scientific, engineering and technological facility. The minimum basic pay for SSTM positions is 120 percent of the minimum rate of basic pay for GS–15. Maximum SSTM basic pay with locality pay is limited to Executive Level III (EX–III), and maximum salary without locality pay may not exceed EX–IV. All SSTM positions within NAVFAC EXWC will report to and be evaluated by the NAVFAC EXWC Technical Director (non-delegable). SSTMs will be evaluated by the STRL Performance Management System as outlined in NAVFAC EXWC's IOPs. Pay retention may be provided to SSTM, under criteria required by NAVFAC EXWC IOPs for those impacted by a reduction in force, work realignment or other planned management action that would necessitate moving the incumbent to a position in a lower pay band within the STRL for other than cause (performance or conduct).

8. Professional Licensure Designations for Architectural and Engineering Positions

The Technical Director and the NAVFAC EXWC Chief Engineer have non-delegable authority to designate those positions within NAVFAC EXWC requiring professional licensure. Engineering and Architectural positions requiring professional licensure will be monitored by the NAVFAC EXWC Chief Engineer. It is the policy of NAVFAC EXWC to recruit, hire, professionally develop, and maintain a professional workforce of the highest caliber. Professional licensing is required for any position, regardless of pay band, in responsible charge of engineering/architectural work, whether performed in-house or by contract. The specific guidelines will be documented in NAVFAC EXWC's IOPs. However, the Technical Director has final authority regarding professional licensure requirements.

9. Classification Appeals

Employees have the right to appeal the classification of their position at any time. A classification complaint is an employee's request for a review, at the activity level, of the pay plan, occupational series, position title and pay band of their position. The employee must formally make a complaint to their immediate supervisor to initiate the classification complaint review process. The HRO will review the complaint and issue a determination. If the employee is dissatisfied with the outcome of the classification complaint review, the employee may appeal the classification of the position to the Technical Director. If the employee is dissatisfied with the decision rendered by the Technical Director, the employee may initiate a formal classification appeal to the DoD appellate level. Appeal decisions rendered by DoD will be final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. Classification appeals are not accepted on positions that exceed the equivalent of a GS–15 level. An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the career path; the propriety of a pay schedule; command developed position titles; or matters covered by an administrative or negotiated grievance procedure or an alternative dispute resolution procedure. The evaluations of classification appeal are based upon the demonstration project classification criteria. Additional guidance will be documented in NAVFAC EXWC IOPs.

C. Pay and Compensation

Pay administration policies are established by the ESPB. The following definitions and policies will apply to the pay setting of new hires, movement of employees within the demonstration project from one career path or pay band to another, as well as any other pay action outside the performance-based assessment system.

1. Pay Setting for Appointment

For initial appointments to the Federal service, base pay may be set anywhere within the pay band consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, and/or experience. Unique position requirements may include scarcity of qualified candidates, labor market considerations, programmatic urgency, or any combination thereof that is pertinent to the position in which the employee is being placed. Initial pay setting is based on base pay, not total adjusted salary. Specific guidelines for application of pay setting for appointments will be contained in NAVFAC EXWC IOPs.

2. Promotion

A promotion is the movement of an employee to a higher pay band in the same career path or to a higher pay band in a different career path. It also includes movement of an employee currently covered by a non-demonstration project personnel system to a demonstration project position in a pay band with a higher level of work. Positions with a known promotion potential to a specific band will be identified when they are filled. Not all positions in a career path will have promotion potential to the same band. Promotion may be accompanied by a pay increase. Movement from one career path to another will depend upon individual competencies, and qualifications. Specific guidelines regarding promotions will be documented in NAVFAC EXWC IOPs.

Progression within a pay band is based upon performance-based pay increases and as such, these actions are not considered promotions and are not subject to provisions of this section. Promotions will follow Merit System Principles and basic Federal Merit Staffing policy that provides for competitive and non-competitive promotions. To be promoted competitively or non-competitively, from one pay band to the next, an employee must meet the minimum qualifications for the job and have a current rating of record of 2 or above (acceptable performance rating) or an equivalent under a different appraisal system. Other specific guidelines regarding promotions will be documented in NAVFAC EXWC IOPs.

3. Reassignment

A reassignment occurs when an employee moves, voluntarily or involuntarily, to a different position or set of duties within their pay band or to a position in a comparable pay band at a comparable level of work, or from a non-demonstration project position to a demonstration project position at a comparable level of work, on either a temporary or permanent basis. Under this system, employees may be eligible for an increase to base pay upon temporary or permanent reassignment. Such an increase is subject to the specific guidelines established by the ESPB and documented in NAVFAC EXWC IOPs.

4. Demotion or Change To Lower Pay Band

A demotion is the placement of an employee into a lower pay band or movement from a non-demonstration project position to a demonstration project position at a lower level of work. Demotions may be for cause (performance or conduct) or for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements, at the employee's request, or placement actions resulting from Reduction-in-Force (RIF) procedures). In cases where change to a lower pay band is involuntary and accompanied by a reduction in pay, procedures under 5 CFR part 752 and 432 remain unchanged.

5. Locality Pay

Employees will be entitled to the locality pay authorized for their official duty station in accordance with 5 CFR part 531 subpart F, except as waived in Section IX of this plan. The locality adjusted pay of any employee may not exceed the rate for Executive Level IV. Geographic movement within the demonstration project will result in the employee's locality pay being recomputed using the newly applicable locality pay percentage which may result in a higher or lower locality payment.

6. Staffing Supplements

Employees assigned to occupational categories and geographic areas where GS special rates apply may be entitled to a staffing supplement if the maximum adjusted base pay rate for the demonstration band to which the employee is assigned is exceeded by a GS special rate for the employee's occupational category and geographic area. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, retained pay provisions will be applied. If at any time after establishment of the demonstration project, special salary rates (SSRs) are deemed necessary by NAVFAC EXWC leadership, they will be implemented via a staffing supplement, and also documented in NAVFAC EXWC IOPs.

7. Grade and Pay Retention

The project will eliminate retained grade under 5 CFR part 536. Pay retention will follow current law and regulations at 5 U.S.C. 5362 and 5363 and 5 CFR part 536, except as modified in the Staffing Supplements section and waived in Section IX of this plan. If an employee is receiving retained pay under the personnel demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in their pay band level.

8. Recruitment, Retention, and Relocation Incentives

The project will continue to employ recruitment, retention, and relocation incentives as described in 5 CFR part 575, except as waived in section IX under this plan. The Technical Director is specifically authorized to use recruitment, retention, and relocation incentives, which are further described in NAVFAC EXWC IOPs. The authority in 5 CFR part 575, is further expanded to allow NAVFAC EXWC to offer retention counteroffers to high performing employees with critical scientific or technical skills who present evidence of an alternate employment opportunity with higher compensation. Such employees may be provided increased base pay (up to ceiling of the pay band) and/or a one-time cash payment that does not exceed 50 percent of one year of base pay. Retention counteroffers, either in the form of a base pay increase and/or a bonus, count toward the aggregate limitation on pay consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B, except as waived in section IX of this plan.

9. Extraordinary Achievement Allowance (EAA)

NAVFAC EXWC will employ an Extraordinary Achievement Allowance

(EAA) designed to optimize organizational effectiveness. An EAA is defined as a temporary monetary allowance up to 25 percent of base pay, provided that an employee's total compensation does not exceed the rate of basic pay for Executive Level IV in effect at the end of such calendar year. It is paid on either a bi-weekly basis concurrent with normal pay days, or as a lump sum following completion of a designated contribution period, or combination of these, at the discretion of the Technical Director (or designee). It is not base pay for any purpose, *e.g.,* retirement, life insurance, severance pay, promotion, or any other payment or benefit calculated as a percentage of base pay. The EAA will be available to certain employees whose present contributions are worthy of a higher career level and whose level of achievement is expected to continue at the higher career level for at least one year as specified by the ESPB and outlined in NAVFAC EXWC IOPs.

10. Pay Differential for Supervisory, Supervisor (CSRA), and Team Leader Positions

NAVFAC EXWC will establish a pay differential to be provided at the discretion of the Technical Director (or designee) to incentivize and reward personnel in Supervisory positions, Supervisor Civil Service Reform Act (CSRA) positions (position meets definition of Supervisor in 5 U.S.C. 7301(a)(10) but does not constitute a major duty occupying at least 25 percent of the position's time), and Team Leader positions (position is titled with the prefix ''Lead'' and meets the minimum requirements for application of the General Schedule Team Leader Grade-Evaluation Guide). A pay differential is a cash incentive that may range up to 10 percent of the employee's base rate of pay. It is paid on a pay period basis and is not included as part of the employee's base rate of pay. The pay differential must be terminated if the employee is removed from the supervisory or team leader position (and is not placed in another supervisory or team leader position), regardless of cause. All personnel actions involving a pay differential will require a statement signed by the employee acknowledging that the differential is not part of base pay for any purpose and may be terminated or reduced as dictated by fiscal limitations, changes in assignment or scope of work, or by the Technical Director. Positions, titles, duties and responsibilities that are eligible for supervisory differential, as well as standards for differential awards, will be defined in an NAVFAC EXWC IOP. Any adjustment or termination of a supervisory pay differential will be in accordance with NAVFAC EXWC's IOPs and all applicable laws and regulations. The termination or reduction of the differential is not an adverse action and is not subject to appeal or grievance.

11. Educational Base Pay Adjustment

NAVFAC EXWC will establish an educational base pay adjustment that is separate from other incentive pay and may not exceed the top of the employee's assigned pay band. The educational base pay adjustment may be used to adjust the base pay of individuals who have acquired a level of mission-related education that would otherwise make the employee qualified for an appointment at a higher level and would be used in lieu of a new appointment. For example, this authority may be used to adjust the base pay of employees who are participating in a graduate level Student Educational Employment Program, or employees who have obtained an advanced degree, such as a Ph.D., in a field related to the work of their position or the mission of their organization.

D. Employee Development and Awards

1. Expanded Development Opportunities Program

NAVFAC EXWC will establish an Expanded Development Opportunities Program that will cover all demonstration project employees. Expanded development opportunities include:

(1) Long term training;

(2) One-year work experiences in an industrial setting via the Relations With Industry Program;

(3) One-year work experiences in laboratories of allied nations via the Science and Engineer Exchange Program;

(4) Rotational job assignments within NAVFAC EXWC;

(5) Developmental assignments in higher headquarters within the DoN and DoD;

(6) Self-directed study via correspondence courses and at colleges and universities;

(7) Details within NAVFAC EXWC and to other Federal agencies;

(8) Intergovernmental Personnel Act Program Agreements; and

(9) Sabbaticals.

Each developmental opportunity period should benefit the organization and increase the employee's individual effectiveness as well. Various learning or developmental work experiences may be considered, such as advanced academic teaching or research and sabbaticals. An expanded developmental opportunity period will not result in loss of or reduction in base pay, loss of leave to which the employee is otherwise entitled, or any loss of credit for time or service.

Program openings will be announced as opportunities arise. Instructions for application and the selection criteria will be included in the announcement. Final selection/approval for participation in the program will be made by the Technical Director. The Technical Director can delegate this responsibility based on the provision as noted in II.A.2. The position of an employee participating in an expanded development opportunity may be backfilled by temporary assignment of other employee or temporary redistribution of work. However, that position or its equivalent must be made available to the employee upon return from the expanded developmental opportunity. An employee accepting an Expanded Developmental Opportunity must sign a continuing service agreement up to three times the length of the assignment, with the service obligation to NAVFAC EXWC. If the employee voluntarily leaves the organization before the service obligation is completed, the employee is liable for repayment unless the service agreement or the repayment is waived by the Technical Director. Conditions for waiver of service agreements or repayments will be established in the NAVFAC EXWC IOP.

2. Skills Training

Training is essential for an organization that requires continuous development of advanced and specialized knowledge. Degree studies are also critical tools for recruiting and retaining employees with skills essential to the NAVFAC EXWC mission. The Technical Director has the authority to approve training.

Individual training programs may be approved based upon a complete individual study program plan. Such training programs will ensure continuous development of advanced specialized knowledge essential to the organization and enhance the ability to recruit and retain personnel critical to the present and future requirements of the organization. Tuition payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. Guidelines will be developed to ensure competitive approval of training and those decisions will be fully documented. Employees

approved for training must sign a service obligation agreement to continue service at NAVFAC EXWC for a period three times the length of the training period commencing after the completion of the entire training program. If an employee voluntarily leaves NAVFAC EXWC before the service obligation is completed, he/she is liable for repayment of expenses incurred by NAVFAC EXWC that are related to the training. Expenses do not include salary costs. The Technical Director has the authority to waive this requirement. Criteria for such waivers will be addressed in NAVFAC EXWC IOPs.

3. Accelerated Compensation for Developmental Positions (ACDP)

The Technical Director may authorize an increase to basic pay for employees participating in training programs, internships, or other development capacities. This may include employees in positions that cross bands within a career path (formally known as career ladder positions) or developmental positions within a band. ACDP will be used to recognize development of job related competencies as evidenced by successful performance within NAVFAC EXWC. Additional guidance will be published in an IOP.

4. Awards

To provide additional flexibility to motivate and reward individuals and groups, some portion of the performance award budget will be reserved for special acts and other categories as they occur. Awards may include, but are not limited to, recognition for special or extraordinary achievements, patents, inventions, suggestions, and on-the-spot awards. The funds available for awards are separately funded within the constraints of the organization's overall award budget. While not directly linked to the mission aligned objectives and performance compensation system, this additional flexibility is important to encourage outstanding accomplishments and innovation in accomplishing NAVFAC EXWC's diverse missions. Additionally, group awards may be given to foster and encourage teamwork. The Technical Director will have the authority to grant special act or achievement awards to covered employees of up to $10,000.

E. Performance Management

1. Mission Aligned Objectives and Performance Compensation

The purpose of mission aligned objectives and performance compensation is to link the work of the employee to the mission of the organization and to provide a mechanism for recognizing the impact of the employee's accomplishments and performance to help achieve that mission. It provides an effective, efficient, and flexible method for assessing, compensating, and managing NAVFAC EXWC's workforce. This performance management system better aligns with developing a highly productive workforce and for providing the authority, control, and flexibility to achieve a quality organization and meet mission requirements. Mission aligned objectives and performance compensation encourages more employee involvement in the assessment process, strives to increase communication between supervisor and employee and promotes performance accountability. By linking mission directly to both annual evaluations and compensation outcomes, objectives facilitate employee career progression and provide an understandable and rational basis for pay changes. The normal rating period will be one year.

Objectives, developed jointly by employees and their supervisors, must be in place within 30 days from the beginning of each rating period. The minimum rating period is 90-days. Employees who do not meet the 90-day minimum requirement will not be eligible for a STRL performance rating of record. However, specially situated employees, who do not meet the 90-day minimum requirement, may receive the same performance rating as the employee's last performance rating of record or a modal performance rating, whichever is most advantageous to the employee, as documented in NAVFAC EXWC's IOPs. However, when the most recent rating of record is unacceptable, only that rating of record will be considered for purposes of a performance rating. A modal performance rating is the most frequently received rating of record assigned to employees within a particular pay pool for a particular rating cycle. Specially situated employees include those employees who are absent from a STRL position for military service, employees on a prolonged absence resulting from a work-related injury approved for workers compensation pursuant to an Office of Worker's Compensation Program, and those employees in a STRL position, who have less than 90 calendar days under a STRL performance plan due to being temporarily assigned to a non-STRL position. Those employees who do not meet the 90-day minimum requirement, except for specifically situated employees, may receive only the general pay increase and they may also receive Title 5 cash awards, if appropriate. First-time hires must have performance plans in place within 30 days of their demonstration project entry effective date. Current demonstration project employees who change positions during the performance year should have their plans updated with new objectives no later than 30 days after assignment to their new position.

Mission aligned objective and performance compensation can be in the form of increases to base pay and/or lump sum cash bonuses that are not added to base pay. The system can be modified, if necessary, as more experience is gained under the project. The flexibilities in this mission aligned objectives and performance compensation section are similar in nature to the authority granted to:

(1) The Naval Ocean Systems Center and the Naval Weapons Center, China Lake, 45 FR 26504;

(2) The CCDC ARL, 65 FR 3500; and

(3) NAVAIR Aircraft and Weapons Divisions, 76 FR 8529.

2. Individual Mission Objectives

Individual mission objectives are directly related to achieving the NAVFAC EXWC mission. Objectives identify expectations and typically consist of 3 to 10 results-oriented statements. Objectives are tangible and measurable so that achievements can be identified. These objectives incorporate important behavioral practices such as teamwork and cooperation where they are key to a successful outcome. One supervisory objective, including adherence to EEO principles, is mandatory for all managers/supervisors. The employee and their supervisor will jointly develop the employee's individual mission objectives at the beginning of the rating period. The supervisor has final approval authority of the objectives. Objectives will reflect the employee's duties/responsibilities, pay band and pay level in the pay band as well as support the NAVFAC EXWC mission, organizational goals and priorities. Objectives will be reviewed annually and revised to reflect increased responsibilities commensurate with pay increases. Generic one-size-fits-all objectives are to be avoided, so that individual mission objectives define an individual's specific responsibilities and expected accomplishments for the performance year. Supervisors and employees should focus on overall organizational objectives and develop supporting individual mission objectives.

Individual mission objectives may be jointly modified, changed, or deleted as appropriate during the rating cycle. As a general rule, objectives should only be changed when circumstances outside the employee's control prevent or hamper the accomplishment of the original objectives. It is also appropriate to change objectives when mission or workload shifts occur.

All objectives are critical. A critical mission objective is defined as an attribute of job performance that is of sufficient importance that achievement below the minimally acceptable level requires remedial action and may be the basis for removing an employee from his/her position. Each objective may be assigned a weight, which reflects its importance in accomplishing an individual's mission objectives. The minimum weight that can be assigned is 10 percent. The sum of the weights for all of the objectives must equal 100 percent. At the beginning of the rating period, higher-level managers will review the objectives and weights assigned to employees within the pay pool to verify consistency and appropriateness.

3. Rating Benchmarks

Rating benchmarks define characteristics that will be used to evaluate the employee's success in accomplishing their individual mission objectives. Scoring characteristics help to ensure comparable scores are assigned while accommodating diverse individual objectives. A single set of rating benchmarks for each band or career stage may be used for evaluating the annual performance of all NAVFAC EXWC personnel covered by this plan. An example of rating benchmarks is shown in Appendix B. The set of benchmarks used may evolve over time, based on experience gained during each rating cycle. Critical characteristics evolve as our workforce actively moves toward meeting their individual and organizational objectives. This is particularly true in an environment where technology and work processes are changing at an increasingly rapid pace. The ESPB will annually review the set of benchmarks and set them for the entire organization before the beginning of the rating period.

4. Performance Feedback and Formal Ratings

Employees and supervisors are expected to actively discuss expectations and identify potential obstacles to meeting goals. Employees should explain (to the extent possible) what is needed from their supervisor to support goal accomplishments. The timing of these discussions will vary based on the nature of work performed, but will occur at least 30 days from the beginning of each rating period, at the mid-point and at the end of the rating period. The supervisor and employee will discuss job performance and accomplishments in relation to the expectations in the mission aligned objectives. At least one review, normally the mid-point review, will be documented as a formal progress review. More frequent, task specific, discussions may be appropriate in some organizations. In cases where work is accomplished by a team, team discussions regarding goals and expectations will be appropriate. The employee may provide a statement of their accomplishments to the supervisor at both the mid-point and end of the rating period. However, this provision does not preclude an employee from providing a statement of their accomplishments to their supervisor that are outside the mid-year and year-end evaluations and rating period.

Following a review of the employee's accomplishments at the end of the rating period, the supervisor will rate each of the individual mission objectives. Benchmark performance standards, set before the beginning of each rating period, describe the level of performance associated with a score that will be used to determine ratings of record. The supervisor decides where each employee's achievements and performance most closely match the benchmarks and assigns an appropriate score. These scores are not discussed with the employee or considered final until all scores are reconciled and approved by the Pay Pool Manager. The scores will then be multiplied by the objective-weighting factor to determine the weighted score expressed to two decimal points. The weighted scores for each objective will then be totaled to determine the employee's overall appraisal score and rounded to a whole number as follows: If the first two digits to the right of the decimal are 0.51 or higher, it will be rounded to the next higher whole number; if the first two digits to the right of the decimal are 0.50 or lower, then the decimal value is truncated. The resulting score determines the rating.

NAVFAC EXWC will use a five-level rating methodology with associated payout point ranges in which level five signifies the highest level of performance. The supervisor will prepare and recommend the rating, number of payout points, and the distribution of the payout between base pay increase and bonus, as applicable, for each employee. These recommendations will then be reviewed by next level supervisors and then the pay pool panel to ensure equitable rating criteria and methodologies have been applied to all pay pool employees. The final determination of the rating, number of payout points, and payout distribution will be a function of the pay pool panel process and will be approved by the Pay Pool Manager. The criteria used to determine the number and distribution of payout points to assign an employee may include: Assessment of the employee's contribution towards achieving the mission, the employee's type and level of work, the employee's current compensation and the criticality of their contribution to mission success, consideration of specific achievements, or other job-related significant accomplishments or contributions.

The rating and payout point schema is:

Performance level description	Rating	Payout points
Exceptional	5	5, 6.
Exceeds Mission Expectations.	4	3, 4.
Full Mission Success	3	0, 1, 2.
Marginal Mission Success.	2	0.
Unacceptable	1	0.

Employees with an acceptable rating of record, two or above, for each mission aligned objective will receive the equivalent of the authorized GS general pay increase (GPI). An employee receiving an ''Unacceptable'' rating of one for any mission-aligned objective will not receive the GPI and will require administrative action to address the performance deficiency. A rating of ''1'' on a single objective will also result in a rating of ''Unacceptable.'' Supervisors of employees who are assessed to be at the ''Unacceptable'' level, will take appropriate action as soon as practicable. However, at the end of the performance year, employees who are assessed to be at the ''Unacceptable'' level will have their rating deferred until the end of a performance improvement period. If the employee's performance is found to be unacceptable following a performance improvement period a rating of record will be ''1'' and administrative action will be taken. If the employee's performance is found to be acceptable at the end of the improvement period, rating of record, and its associated payouts, to include GPI, will be applicable to the end of the appraisal period. If an employee's performance deteriorates again in any objective within two years from the beginning of the performance improvement period, actions may be

initiated to effect a performance based action with no additional opportunity to improve.

5. Pay Pools

The NAVFAC EXWC Technical Director (or designee) will establish pay pools, and appoint pay pool panels and the Pay Pool Managers. Typically, pay pools will have between 35 and 300 employees. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Large pay pools may use sub pay pools subordinate to the pay pool due to the size of the pay pool population, the complexity of the mission, or other similar criteria. The covered organizations' employees will be placed into pay pools. Neither the Pay Pool Manager, supervisors, or pay pool panel members within a pay pool will in any way recommend or participate in setting their own rating or individual payout except for the normal employee self-assessment process.

Each employee is initially scored by their supervisor. Next, the rating officials in an organizational unit (Directorates, Divisions, Branches, Teams, etc.), along with their next level of supervision, will review and compare recommended ratings to ensure consistency and equity of the ratings. In this step, each employee's individual mission objectives, accomplishments, preliminary scores, and pay are compared to benchmark performance standards. Through discussion and consensus building, consistent and equitable ratings are reached. Managers will not prescribe a distribution of ratings. The Pay Pool Manager will then chair a final review with the rating officials who report directly to him or her to validate these ratings and resolve any scoring issues. If consensus cannot be reached in this process, the Pay Pool Manager makes all final decisions. Ratings are finalized after this reconciliation process is complete. Decisions regarding the amount and distribution of the payouts are based on the employee's most recent rating of record for the performance year, the criteria listed above under performance feedback, the type and nature of the funding available to the pay pool, and the number of payout points assigned by the pay pool. In the case of NAVFAC EXWC attorneys, special consideration must be made relative to assigned score. To avoid conflict with state bar rules, the pay pool panel may not alter the mission aligned objective performance ratings or the overall score that NAVFAC HQ counsel assigns to an attorney; however, the pay pool panel may make independent judgments, such as pay adjustments after considering that score. A reconsideration from a NAVFAC EXWC attorney will be handled in accordance with the Office of General Counsel's grievance procedures after NAVFAC HQ counsel and the pay pool panel recommends a resolution.

Funds within a pay pool available for performance payouts are divided into two components, base pay and bonus. The funds within a pay pool used for base pay increases are those that would have been available for within-grade increases, quality step increases and promotions under the GS system (excluding the costs of promotions still provided under the pay banding system). The funds available to be used for bonus payouts are funded separately within the constraints of the organization's overall award budget. Both amounts will be defined based on historical data and will initially be set at no less than one percent of total base pay annually. As changes in the demographics of the workforce or other exigencies occur, adjustments may be made to these two factors. The sum of these two factors is referred to as the pay pool percentage factor. The ESPB will annually review the pay pool funding and recommend adjustments to the Technical Director (or designee) to ensure cost discipline over the life of the demonstration project. Additional guidance on pay pool design and composition will be included in NAVFAC EXWC IOPs.

6. Performance Payout Determination

The payout an employee will receive is based on the total performance rating from the mission aligned objectives and performance compensation assessment process. An employee will receive a payout as a percentage of base pay. This percentage is based on the number of payout points that equates to their final appraisal score. The value of a payout point cannot be determined until the rating and reconciliation process is completed and all scores are finalized. The payout point value is expressed as a percentage.

The formula that computes the value of each payout point uses base pay rates and is based on:

(1) The sum of the base pay of all the employees in the pay pool times the pay pool percentage factor;

(2) The employee's base pay;

(3) The number of payout points awarded to each employee in the pay pool; and

(4) The total number of payout points awarded in the pay pool.

This formula assures that each employee within the pool receives a payout point amount equal to all others in the same pool who are at the same rate of base pay and receiving the same score. The formula is shown in Figure 2.

Figure 2. Performance Payout Formula

$$\text{Payout Point Value} = \frac{(\text{Sum of base pay for employees in pool}) * (\text{Pay Pool percentage factor})}{\text{Sum of (Base Pay} * \text{Payout Points Earned)for each employee}}$$

An individual payout is calculated by first multiplying the payout points earned by the payout point value and multiplying that product by base pay. An adjustment is then made to account for locality pay or staffing supplement. A Pay Pool Manager is accountable for staying within pay pool limits and final decisions on base pay increases and/or bonuses to individuals based on rater recommendations, the final score, the pay pool funds available, and the employee's base pay.

7. Base Pay Increases and Bonuses

The amount of money available for the performance payouts is divided into two components: Base pay increases and bonuses. The base pay and bonus funds are based on the pay pool funding formula established annually. Once the individual performance amounts have been determined, the next step is to determine what portion of each payout will be in the form of a base pay increase as opposed to a bonus payment. The payouts made to employees from the pay pool may be a mix of base pay and bonus, such that all of the allocated funds are disbursed. To continue to provide performance incentives while also ensuring cost discipline, base pay increases may be

limited or capped. Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of base pay in an assigned pay band or when a control point applies. Also, for employees receiving retained rates above the applicable pay band maximum, the entire performance payout will be in the form of a bonus payment.

When capped, the total payout an employee receives will be in the form of a bonus versus the combination of base pay and bonus. Bonuses are cash payments and are not part of the base pay for any purpose (*e.g.,* lump sum payments of annual leave on separation, life insurance, and retirement). The maximum base pay rate under this demonstration project will be the unadjusted base pay rate of GS–15, Step 10, except for employees in ND Pay Band V.

8. Pay Band Progression

As a compensation management tool, NAVFAC EXWC will use control points to manage position and pay progression within each band. Control points may be set within each band and may be used in the pay pool process to manage performance salary increases. Taking an employee's salary across a control point will require review of both the position and performance of the employee. Advancement across a control point may not occur without approval of the NAVFAC EXWC Technical Director.

Employees who display continuous exemplary performance may be candidates for pay band movement to the next higher pay band. The request must be made by a Pay Pool Manager and must demonstrate that an employee's high-level of performance is commensurate with the complexities and responsibilities of a position in the next higher pay band and will continue into the future. Movement to a higher pay band level is not guaranteed. Approval of requests for movement to the next higher level pay band based on employee performance resides with the NAVFAC EXWC Technical Director. Criteria for crossing control points and movement to a higher pay band based on high-level performance will be contained in NAVFAC EXWC IOPs.

9. Requests for Reconsideration

An employee may request reconsideration of the rating-of-record received under the mission aligned objectives and performance compensation system. A rating of record or job objective rating may be reconsidered by request of an employee only through the reconsideration process specified in an NAVFAC EXWC IOP (except for NAVFAC EXWC's attorneys, see section III.E.5). This process will be the sole and exclusive agency administrative process for employees to request reconsideration of a rating of record and is not subject to the agency administrative grievance system, or any negotiated grievance procedures.

Consistent with this part, a Designated Management Official (DMO) will make the decision on reconsiderations of rating of record. The DMOs' decisions are final. The DMO is a senior NAVFAC EXWC manager who is appointed by the Technical Director to make this final determination. The DMO will not be the pay pool manager who made the decision on the subject rating. The payout point determination, payout distribution determination, or any other payout matter will not be subject to the reconsideration process, any other agency administrative grievance system or any negotiated grievance procedures.

In the event of a reconsideration that results in an adjusted rating of record, the revised rating will be referred to the Pay Pool Manager for recalculation of the employee's performance payout amount and distribution. Any adjustment to base pay will be retroactive to the effective date of the performance payout. Base pay adjustments will be based on the payout point range appropriate for the adjusted rating of record. Payout point values for the adjusted rating of record will reflect the payout point value paid to other members across the pay pool for that rating cycle. Decisions made through the reconsideration process will not result in recalculation of the payout made to other employees in the pay pool.

Appeals that contain allegations that a performance rating was based on prohibited actions that are subject to formal review and adjudication by a third party may not be processed through the reconsideration process, but instead may be processed by the employee through an applicable third party process. Such third parties include, but are not limited to: The Merit Systems Protection Board (MSPB), the Office of Special Counsel (OSC), the OPM, the Federal Labor Relations Authority (FLRA) and the Equal Employment Opportunity Commission (EEOC).

F. Workforce Shaping

1. Modified Voluntary Early Retirement (VERA) and Voluntary Separation Incentive Pay (VSIP)

NAVFAC EXWC will use the modified VERA and VSIP authorities authorized by sections 1109(b)(3) and (4) of the NDAA for FY 2016. The Technical Director may use VERA and VSIP whenever such incentives will help the STRL to achieve one or more of the objectives in section 1109(a). This authority may not be delegated further. DoD has published, at 82 FR 43339, specific direction and authorization for the use of VERA and VSIP authorities by STRLs for workforce shaping. If the laboratory workforce is being downsized, VERA and VSIP incentives may be used to minimize the need for involuntary separations. VERA and VSIP may also be used to restructure the laboratory workforce without reducing the number of assigned personnel. In this restructuring scenario, incentives may be offered for the purpose of creating vacancies that will be reshaped to align with mission objectives. Details on the specific use of this authority are contained in 82 FR 43339.

IV. Conversion

A. Initial Conversion or Movement Into the Demonstration Project

1. Placement Into Career Paths and Pay Bands

Employees will be converted automatically from their current GS series and grade to the appropriate career paths and pay band levels. It is essential to the success of the project that employees, upon entering the project, know that they are not losing a pay entitlement accrued under the GS system. Employees that were covered by local or national special salary rates will no longer be considered a special salary employee under the demonstration project and thus will gain eligibility for full locality pay. To control conversion costs and to avoid a salary increase windfall for these employees, the adjusted salaries will not change. Rather, the employees will receive a new basic pay rate computed by the locality pay factor for their area. A full locality adjustment will then be added to the new basic pay rate. Adverse action provisions will not apply to the conversion process, as there will be no change to total salary. New hires, including employees transferring from other Federal activities, will be converted into the demonstration project in the career path and at the level and pay consistent with the duties

and responsibilities of the position and individual qualifications.

2. Within-Grade Increase (WGI) Buy-In

On the date that employees are converted to the project pay plans, they will be given a prorated permanent increase in pay equal to the earned (time spent in step) portion of their next Within Grade Increase (WGI) based on the value of the WGI at the time of conversion. Employees at step 10 or receiving a retained rate will not be eligible for the increase.

3. Career Ladder Positions

An employee on a career ladder position at the time of conversion may maintain the same salary trajectory and full performance level as covered under the general schedule pay system. Additionally, they may be considered for accelerated compensation identified under the ACDP of this FRN. Once an employee reaches the full performance pay band, control points will apply as outlined in NAVFAC EXWC IOPs.

4. Transition Equity

During the first 12 months following conversion, employees may receive pay increases for non-competitive promotion equivalents when the grade level of the promotion is encompassed within the same pay band, the employee's performance warrants the promotion and promotions would have otherwise occurred during that period. Employees who receive an in-pay band level promotion at the time of conversion will not receive a prorated step increase equivalent. Employees will not be eligible for a basic pay increase if their current rating of record is unacceptable at the time of conversion. The decision to grant a pay equity adjustment is at the sole discretion of management and is not subject to employee appeal procedures.

5. Conversion From Other Personnel Systems

Employees who enter this demonstration project from other personnel systems (*e.g.,* Defense Civilian Intelligence Personnel System, DoD Civilian Acquisition Workforce Demonstration Project, or other STRLs) due to a reorganization, mandatory conversion, Base Closure and Realignment Commission decision, or other directed action will be converted into the NAVFAC EXWC personnel demonstration project via movement of their positions using the appropriate Nature of Action Code. If applicable, a WGI buy-in may also be applied. The employee's position will be classified based upon the position classification criteria under the NAVFAC EXWC IOP and their pay upon conversion, maintained under applicable pay setting rules.

6. Initial Probationary Period

Employees who have completed an initial probationary period prior to conversion to the NAVFAC EXWC personnel demonstration project plan will not be required to serve another probationary period. NAVFAC EXWC will have a two-year probationary period. Employees who are still serving an initial probationary period upon conversion from GS to the demonstration project will receive credit for probationary service to date; however, they must serve any remaining probationary time to complete a full two-year probationary period.

7. Supervisory Probationary Period

NAVFAC EXWC will implement an extended supervisory probationary period. The probationary period for new supervisors will be two years, rather than the normal one-year probationary period specified by 5 CFR part 315. Except for the increased length, supervisory probationary periods will be made consistent with 5 CFR part 315. Employees who have already successfully completed an initial one-year probationary period for supervisory positions will not be required to complete a two-year probationary period for initial appointment to a supervisory position. Employees who are serving an initial supervisory probationary period upon conversion into this demonstration project will serve the time remaining on their one-year supervisory probationary period. If the decision is made to return the employee to a non-supervisory position for reasons related to supervisory performance and/or conduct, the employee will be returned to a comparable position of no lower base pay that the position from which promoted or reassigned immediately prior to the supervisory assignment.

B. Movement Out of the Demonstration Project

1. Termination of Coverage Under the Demonstration Project Pay Plans

In the event employees' coverage under the NAVFAC EXWC STRL personnel demonstration project pay plans is terminated, employees move with their position to another system applicable to NAVFAC EXWC STRL employees. The grade of their demonstration project position in the new system will be based upon the position classification criteria of the gaining system. Employees may be eligible for pay retention under 5 CFR part 536 when converted to their positions classified under the new system, if applicable.

2. Determining GS Equivalent Grade and Pay When an Employee Exits the Demonstration Project

If a demonstration project employee is moving to a GS or other pay system position, the following procedures will be used to translate the employee's personnel demonstration project pay band to a GS-equivalent grade and the employee's project base pay to the GS-equivalent rate of pay for pay setting purposes. The equivalent GS grade and GS rate of pay must be determined before movement out of the personnel demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For lateral reassignments, the equivalent GS grade and rate will become the employee's converted GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.,* promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

3. Equivalent GS-Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is provided that grade as the GS equivalent grade. An employee in a pay band corresponding to two or more grades is determined to have a GS equivalent grade corresponding to one of those grades according to the following rules:

The employee's adjusted base pay under the demonstration project (including any locality payment or staffing supplement) is compared with step four rates in the highest applicable GS rate range. For this purpose, a GS rate range includes a rate in:

(1) The GS base schedule;

(2) The locality rate schedule for the locality pay area in which the position is located

(3) The appropriate special rate schedule for the employee's occupational series, as applicable.

If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11:

(1) If the employee's adjusted base pay under the demonstration project

equals or exceeds the applicable step four adjusted base pay rate of the highest GS grade in the band, the employee is converted to that grade;

(2) If the employee's adjusted base pay under the demonstration project is lower than the applicable step four adjusted base pay rate of the highest grade, the adjusted base pay under the demonstration project is compared with the step four adjusted base pay rate of the second highest grade in the employee's pay band. If the employee's adjusted base pay under the demonstration project equals or exceeds the step four adjusted base pay rate of the second highest grade, the employee is converted to that grade;

(3) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted base pay under the demonstration project rate equals or exceeds the applicable step four adjusted base pay rate of the grade. The employee is then converted at that grade. If the employee's adjusted base pay is below the step four adjusted base pay rate of the lowest grade in the band, the employee is converted to the lowest grade; and

(4) An exception whereby an employee will not be provided a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has either undergone a reduction in pay band or a reduction within the same pay band due to unacceptable performance. This provision does not apply to voluntary movement out of the demonstration project.

4. Equivalent GS-Rate-of-Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's personnel demonstration project rates of pay to GS rates of pay in accordance with the following rules:

(A) The pay conversion is done before any geographic movement or other pay related action that coincides with the employee's movement or conversion out of the demonstration project.

(B) An employee's adjusted base pay under the demonstration project (*i.e.,* including any locality payment or staffing supplement) is converted to a GS adjusted base pay rate on the highest applicable GS rate range for the converted GS grade. For this purpose, a GS rate range includes a rate range in:

(1) The GS base schedule.

(2) An applicable locality rate schedule.

(3) An applicable special rate schedule.

(C) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted base pay under the demonstration project is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay would be the GS base rate corresponding to the converted GS locality rate (*i.e.,* same step position).

(D) If the highest applicable GS rate range is a special rate range, the employee's adjusted base pay under the demonstration project is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay will be the GS rate corresponding to the converted special rate (*i.e.,* same step position).

C. Implementation Training

Training to promote understanding of the broad concepts and finer details is critical to successfully implement and execute this project. A new pay banding schema and performance management system both represent significant cultural change to the organization.

Training is tailored to address employee concerns and encourage comprehensive understanding of the demonstration project. Training is required prior to implementation and at various times during the life of the demonstration project. The training program includes modules tailored for employees, supervisors, senior managers, and administrative staff. Typical modules are:

(1) An overview of the demonstration project personnel system;

(2) How employees are converted into and out of the system;

(3) Pay banding;

(4) The mission aligned objectives and performance compensation system;

(5) Defining mission aligned performance objectives;

(6) How weights may be used with the mission aligned performance objectives;

(7) Assessing performance—giving feedback;

(8) New position descriptions; and

(9) Demonstration project administration and formal evaluation.

Various types of training including videos, on-line tutorials, and train-the-trainer concepts will be used.

V. Project Duration

Section 342 of the NDAA for FY 1995 (Pub. L. 103–337) does not require a mandatory expiration date for this demonstration project. The project evaluation plan addresses how each flexibility will be comprehensively evaluated for at least the first five years of the demonstration project. Changes and modifications to the interventions will be made using the provisions of DoDI 1400.37, or applicable superseding instructions.

VI. Evaluation Plan

A. Overview

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project and its impact on improving public management. A comprehensive evaluation plan for the entire demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research & Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (*i.e.,* organizational effectiveness, mission accomplishment, and customer satisfaction). That plan, while useful, is dated and does not fully afford the laboratories the ability to evaluate all aspects of the demonstration project in a way that fully facilitates assessment and effective modification based on actionable data. Therefore, the STRL Technical Director will conduct an internal evaluation of the STRL Personnel Demonstration Program and will ensure USD(R&E) evaluation requirements are met in addition to applying knowledge gained from other DoD laboratories and their evaluations to ensure a timely, useful evaluation of the demonstration project.

B. Data Collection To Support Evaluation

The ultimate outcomes sought are improved organizational effectiveness, mission accomplishment and customer satisfaction. However, the main focus of the evaluation will be on intermediate outcomes, *i.e.,* the results of the authorized personnel system changes, which are expected to contribute to the desired goals and benefits identified Sections II.A and II.C. Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from employees to assess the effectiveness and perception of the project. The multiple sources of data collection will

provide a more complete picture as to how the flexibilities are working. The information gathered from one source will serve to validate information obtained through another source. The confidence of overall findings will be strengthened as the different collection methods substantiate each other. Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected:

(1) Workforce data (advanced degrees, etc.);

(2) Personnel office data (hiring actions, time to hire, retention, etc.);

(3) Employee attitude surveys;

(4) Structured interviews and focus group data;

(5) Comparison of desired results from the flexibilities implemented with actual results achieved;

(6) Customer satisfaction surveys;

(7) Core measures of laboratory effectiveness; and

(8) Any additional data requested by Director, Laboratories and Personnel Office.

The evaluation effort will consist of two phases, formative and summative evaluation, covering at least five years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation and current information on impact of the project on veterans and protected groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes have achieved the desired goals, which flexibilities were most effective and whether the results can be generalized to other Federal installations.

VII. Demonstration Project Costs

NAVFAC EXWC will model its demonstration project on existing demonstration projects but must assume some expanded project costs. Current cost estimates associated with implementing the demonstration project are shown in Figure 3. These include possible automation of training and project evaluation systems. The automation and training costs are startup costs. Transition costs are one-time costs. Costs for project evaluation will be ongoing for at least five years.

Figure 3. Projected Implementation Costs

	FY 19	FY 20	FY 21	FY 22	FY 23	
Software Development and Automation	50,000			0		
Software Hosting and Sustainment	15,000	15000	15,000	15,000	15,000	
Program/Training development and deployment	74,400	9,533	9,771	9,922	10,265	
Workforce Training WCF	376,640	263,220	269,801	276,546	283,459	
Workforce Training GF	149,792	152,520	156,333	160,241	164,247	
Supervisor Training WCF	37,664	70,192	71,947	73,745	75,589	
Supervisor Training GF	20,856	51,824	53,120	54,448	55,809	
Project Evaluation	15,500	6,355	6,514	6,615	6,844	
NWCF STRL Transition (WGI Buy In)	485,602	0	0	0	0	
GF STRL Transition (WGI Buy In)	445,703	0	0	0	0	
Totals	1,671,157	568,644	582,485	596,517	611,213	**4,030,015**

VIII. Management and Oversight

A. Project Management With Automation

One of the major goals of the demonstration project is to streamline the personnel processes to increase cost effectiveness. Automation should play an integral role in achieving that goal. Without the necessary automation to support the flexibilities proposed for the demonstration project, optimal cost benefit may not be realized. In addition, adequate information to support decision-making must be available to managers if line management is to assume greater authority and responsibility for human resources management. Automation to support the demonstration project is required at the DoN and DoD level (in the form of changes to the Defense Civilian Personnel Data System (DCPDS) or successor DoD personnel system) to facilitate processing and reporting of demonstration project personnel actions and may be ultimately required by the command to assist in processing a variety of personnel-related actions in order to facilitate management processes and decision making.

DCPDS is the DoD's authoritative personnel data system and program of record and as such, DCPDS or its successor system will be the system of choice for the STRL labs. The detailed specifications for required system changes will be provided in the System Change Request (SCR), Form 804, concurrent with submission of this document.

B. Oversight

Oversight will be carried out by the command's Senior Leadership, composed of the Technical Director and Commanding Officer. The Technical Director and Commanding Officer will be assisted initially by the NAVFAC EXWC STRL Demonstration Project Implementation Team, and once established, by the NAVFAC EXWC STRL Policy Board (ESPB).

1. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and merit system principles will be maintained. Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752 remain unchanged.

2. Modifications

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed and conclusions are reached on how the new system is working. Modifications will be made in accordance with the provisions of DoDI 1400.37, or applicable superseding instructions.

IX. Required Waivers to Laws and Regulations

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request. The following waivers and adaptations of certain Title 5 U.S.C. and 5 CFR provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from applying, adopting or incorporating any law or OPM, DoD, or DoN regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5, United States Code

Chapter 5, section 552a: Records. Waived to the extent required to clarify that volunteers under the Voluntary Emeritus Program are considered employees of the Federal government for purposes of this section.

Chapter 31, section 3104: Employment of Specially Qualified Scientific and Professional Personnel. Waived to allow SSTM authority as described in this FRN and 79 FR 43722;

Chapter 31, section 3132: The Senior Executive Service: Definitions and Exclusions. Waived to allow SSTMs.

Chapter 33, Subchapter I: Examination, Certification, and Appointment;

Waived except for sections 3302 and 3328 to allow for direct hire authority for scientists and engineers with advanced degrees for professional positions, and bachelor degree candidates for scientific and engineering positions.

Waived for veteran candidates for scientific, technical, engineering and mathematics positions, including technician positions. Also waived to the extent to allow employees appointed on a Flexible Length or Renewable Term Technical Appointment to apply for federal positions as status candidates.

Chapter 33, section 3308: Competitive Service; Examinations; Educational Requirements Prohibited. This section is waived with respect to the scholastic achievement appointment authority.

Chapter 33, section 3321: Competitive Service; Probationary Period. This section is waived only to the extent necessary to replace ''grade'' with ''pay band'' and to allow for probationary periods of two years.

Chapter 33, section 3324: Appointments to Positions Classified Above GS–15; and 5 U.S.C. 3325, Appointments to Scientific and Professional Positions. Waived in its entirety.

Chapter 33, section 3327: Civil service employment information. Waived to the extent necessary to allow public notice other than USAJobs for the Distinguished Scholastic Appointment Authority described in this FRN.

Chapter 33, section 3330: Government-wide List of Vacant Positions. Waived to the extent necessary to allow public notice other than USAJobs for the Distinguished Scholastic Appointment Authority described in this FRN.

Chapter 33, section 3341: Details. Waived in its entirety, to extend the time limits for details.

Chapter 35, section 3522: Agency VSIP Plans; Approval. Waived to remove the requirement to submit a plan to OPM prior to obligating any resources for voluntary separation incentive payments.

Chapter 35, section 3523(b)(3): Authority to Provide Voluntary Separation Incentive Payments. As provided for in 82 FR 43339, September 15, 2017, waived to remove the prescribed method of incentive payment calculation and the $25,000 incentive limit. Allows Technical Director to determine amount of incentive paid to employees under the workforce shaping pilot program voluntary early retirement and separation incentive payment authorities within the limit prescribed herein.

Chapter 41, section 4107(a)(2): Academic Degree Training. Waived in its entirety.

Chapter 41, section 4108: Employee Agreements; Service After Training. Waived to the extent necessary to:

(1) Provide that the employee's service obligation is to NAVFAC EXWC for the period of the required service;

(2) Permit the Technical Director to waive in whole or in part a right of recovery; and

Require an employee in the student educational employment program who has received tuition assistance to sign a service agreement up to three times the length of the training.

Chapter 43, section 4301–4305: Related to Performance Appraisal. Waived to the extent necessary to allow provisions of the performance compensation system as described in this FRN. Replace ''grade'' with ''pay band''; does not apply to employees reduced in pay band without a reduction in pay; allows for removal for unacceptable performance within two years from the beginning of the performance improvement period; OPM responsibilities to the demonstration project are waived.

Chapter 45, section 4502: Limitation of Cash Awards to Ten-Thousand Dollars. Waived to allow Technical Director to award up to $25,000 with the same level of authority as the Secretary of Defense to grant cash awards. The requirement for certification and approval of the cash awards by OPM is not required. All other provisions of section 4502 apply.

Chapter 51, section 5101–5112: Purpose, Definitions, Basis, Classification of Positions, Review, Authority. Waived to the extent that:

(1) White collar employees will be covered by broad banding;

(2) Allow classification provisions described in this FRN and to allow for SSTM positions;

(3) Classification appeals will be decided by the Technical Director with final appeal to the DoD Appellate level.

Chapter 53, sections 5301–5304 and 5306–5307: Related to Pay Comparability System and General Schedule Pay Rates. Waived to the extent necessary to allow demonstration project employees, including SSTM employees, to be treated as GS employees, and to allow base rates of pay under the demonstration project to be treated as scheduled rates of pay. SSTM pay will not exceed EX–IV and locality adjusted SSTM rates will not exceed EX III.

Chapter 53, section 5305: Special Pay Authority. Waived in its entirety to allow for staffing supplements.

Chapter 53, section 5331–5336: General Schedule Pay Rates. Waived in entirety.

Chapter 53, sections 5361–5366: Grade and Pay Retention. Waived to the extent necessary to:

(1) Replace ''grade'' with ''pay band;''

(2) Allow demonstration project employees to be treated as GS employees;

(3) Provide that an employee on pay retention whose rating of record is

''Unacceptable'' is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position.

(4) Provided that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement;

(5) Allow no provision of grade/pay band retention under this demonstration project; and

(6) Allow demonstration project employees receiving a staffing supplement to retain.

the adjusted base pay if the staffing supplement is discontinued or reduced. This waiver may apply to Scientific and Professional (ST), Senior Level (SL) and SSTM employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Chapter 55, section 5542(a)(1) and (2): Overtime Rates; Computation. These sections are adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.

Chapter 55, section 5545(d): Related to Hazardous Duty Premium Pay. Waived only to the extent necessary to allow demonstration project employees to be treated as GS employees.

Chapter 55, section 5547(a) and (b): Limitation on Premium Pay. These sections are adapted only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, sections 5753, 5754, and 5755: Related to Recruitment, Relocation, Retention Payments, and Supervisory Differential. These sections waived to the extent necessary to allow:

(1) Employees and positions under the demonstration project to be treated as employees and positions under the GS;

(2) That management may offer a bonus to incentivize geographic mobility to employees in a student educational employment program; and

(3) To allow provisions of the retention counteroffer and incentives as described in this FRN. Also to the extent necessary, to allow SSTMs to receive pay retention and supervisory differentials as described in this FRN and 79 FR 43722.

Chapter 59, section 5941: Allowances Based on Living Costs and Conditions of Environment; employees stationed outside continental United States or Alaska. Waived to the extent necessary to provide that cost-of-living-adjustment (COLA)'s paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, section 7512(3) and (4): Adverse Actions. Waived to the extent necessary to:

Replace ''grade'' with ''pay band;''

(1) Exclude reductions in pay band that are not accompanied by a reduction in pay;

(2) Exclude conversions from GS special rates to demonstration project pay and reallocations of demonstration project pay rates within special rate extensions to locality adjusted pay rates due to promotions of general or locality pay increases, as long as the employee's total rate of pay is not reduced; and

(3) Exclude reductions in base pay due solely to the operations of the pay setting rules for geographic movement within the demonstration project; and

(4) Exclude reduction in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory, or non-team leader position.

Chapter 99, section 9902(f): Related to Voluntary Separation Incentive Payments. Waived to the extent necessary to utilize the authorities authorized by Public Law 114–92 and detailed in 82 FR 43339.

B. Waivers to Title 5, Code of Federal Regulations

Part 210, section 210.102(b)(12): Definitions, Reassignment. Waived to the extent necessary to allow assigning an employee, without a position change, to any work falling within their general level descriptor. Waived to the extent necessary to allow tracking of such assignments as a ''realignment.''

Part 300–330: Employment (General). Other than Subpart G of 300. Waived to the extent necessary to allow provisions of the direct hire authorities as described in 79 FR 43722 and 82 FR 29280.

Part 300, section 300.601–300.605: Time-in-Grade Requirements. Waived to eliminate time-in-grade restrictions.

Part 315, section 315.901 and 315.907: Related to Supervisory Probationary Periods. This waiver applies to the extent necessary to:

(1) Replace ''grade'' with ''pay band'' or ''broad band;''

(2) Allow NAVFAC EXWC to establish the length of supervisory probationary period; and

(3) Allow time spent in a temporary position to be creditable toward completion of a supervisory probationary period.

Part 316, sections 316.301, 316.303, and 316.304: Term Employment. These sections are waived to the extent necessary to allow modified term appointments and Flexible Length and Renewable Term Technical Appointments as described in this FRN.

Part 330, section 330.103–330.105: Requirement to Notify OPM. Waived to the extent necessary to allow the STRL to publish competitive announcements outside of USAJobs.

Part 332 and 335: Related to Competitive Examination. Waived to the extent necessary to allow employees appointed on a Flexible Length and Renewable Term Technical Appointment to apply for federal positions as status candidates.

Part 335, section 335.103: Agency Promotion Programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures or numerous short-term renewals.

Part 338, section 338.301: Competitive Service Appointment. Waived to allow for Distinguished Scholastic Achievement Appointment grade point average requirements as described in this FRN.

Part 359, section 359.705: Related to SES Pay. Waived to allow demonstration project rules governing pay retention to apply to a former SES placed on an SSTM position.

Part 410, section 410.308(a) and (c): Related to Degree Programs. Waived to allow the command to pay for all courses related to an academic degree program approved by the Technical Director.

Part 410, section 410.309: Agreements to Continue in Service. Waived to the extent necessary to allow the Technical Director to determine requirements related to continued service agreements, including employees under the Student Educational Employment Program who have received tuition assistance.

Part 430, Subpart B: Performance Appraisal for General Schedule, Prevailing Rate and Certain Other Employees. Waived to the extent necessary to allow the performance appraisal program as described in this FRN. Section 430.208(a) (1) and (2), waived to allow presumptive ratings for new employees hired less than 90 days before the end of the appraisal cycle, or for other situations not providing adequate time for an appraisal.

Part 432: Performance Based Reduction-in-grade and Removal

Actions. Replace ''grade'' with ''pay band.'' Modified to the extent that an employee may be removed, reduced in pay band level with a reduction in pay, reduced in pay without a reduction in pay band level and reduced in pay band level without a reduction in pay based on unacceptable performance. Also, modified to delete reference to critical element and to allow removal for unacceptable performance with two years from the beginning of a performance improvement period. For employees who are reduced in pay band level without a reduction in pay, sections 432.105 and 432.106(a) do not apply.

Part 451, section 451.106(b): Agency Responsibilities. Waived to allow the Technical Director to award up to $25,000 with the same level of authority as the Secretary of Defense to grant a cash award. The requirement for certification and approval of cash awards by OPM is not required. All other provisions of 5 CFR 451.106 apply.

Part 511, Subpart A, B and F: Classification Under the General Schedule. Waived to the extent necessary to allow classification provisions outlined in this FRN to include the list of issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate career paths; and to allow classification appeals to be decided by the Technical Director with final appeal to the DoD Appellate level.

Part 530, Subpart C: Special Rate Schedules for Recruitment and Retention. Waived in its entirety to allow for staffing supplements.

Part 531, Subparts B, D, and E: Determining the Rate of Basic Pay, Within-Grade Increases and Quality Step Increases. Waived in its entirety.

Part 531, Subpart F: Locality-Based Comparability Adjustments. This waiver applies only to the extent necessary to allow:

(1) Demonstration project employees covered by broad banding to be treated as GS employees;

(2) Basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay; and

(3) SSTM employees to be treated as GS employees and basic rates of pay under the SSTM to be treated as scheduled annual rates of pay. This waiver does not apply to FWS employees.

Part 531, section 531.604(b)(4): Determining an employee's locality rate: Waived (rounding rule) in its entirety.

Part 536: Grade and Pay Retention: Waived to the extent necessary to:

(1) Replace ''grade'' with ''pay band;''

(2) Provide that pay retention provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced, and to movement from a supervisory position to a non-supervisory position, as long as total pay is not reduced;

(3) Allow demonstration project employees to be treated as GS employees;

(4) Provide that pay retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of ''Unacceptable;''

(5) Provide that an employee on pay retention whose rating of record is ''Unacceptable'' is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position;

(6) Allow no provision of grade/pay band retention under this demonstration project;

(7) Provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement; and

(8) Allow demonstration project employees receiving a staffing supplement to retain the adjusted base pay if the staffing supplement is discontinued or reduced. This waiver may apply to Scientific and Professional (ST), Senior Level (SL) and SSTM employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Part 550, section 550.113(a): Computation of Overtime Pay. This section is adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.

Part 550, section 550.703: Severance Pay, Definitions. Definition of ''reasonable offer'' waived by replacing ''two grade or pay levels'' with ''one pay band'' and ''grade or pay level'' with ''pay band.''

Part 550, section 550.902: Definition of ''Employee'' Hazardous Duty Pay Differential. Waived to the extent necessary to treat demonstration project employees covered by broad banding as GS employees.

Part 575, Subparts A, B, C, and D: Recruitment Bonuses, Relocation Bonuses, Retention Allowances, and Supervisory Differentials. Waived only to the extent necessary to allow:

(1) Employees and positions under the demonstration project covered by broad banding to be treated as employees and positions under the GS;

(2) Relocation incentives to new employees in the student educational employment program whose worksite is in a different geographic location than that of the college enrolled;

(3) SSTMs to receive supervisory pay differentials as described in this FRN and 79 FR 43726; and

(4) To allow provisions of the retention counteroffer and incentives as described in this FRN.

Part 591, Subpart B: Cost-of-Living Allowances and Post Differential-Non Foreign Areas. Waived to the extent necessary to allow demonstration project employees covered by broad banding to be treated as employees under the GS.

Part 752, sections 752.201, 752.301 and 752.401: Principal Statutory Requirements and Coverage. Waived to the extent necessary to:

(1) Exclude reductions in pay band not accompanied by a reduction in pay;

(2) Replace ''grade'' with ''pay band;''

(3) The extent necessary to exclude conversions from a GS special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay; and

(4) The extent necessary to provide that adverse action provisions do not apply to: (a) Conversions from GS special rates to demonstration project pay; (b) reallocations of demonstration project pay rates within special rate extensions to locality adjusted pay rates due to promotions or general or locality pay increases, as long as the employee's total rate of pay is not reduced; and (c) reductions in base pay due solely to the operation of the pay setting rules for geographic movement within the demonstration project.

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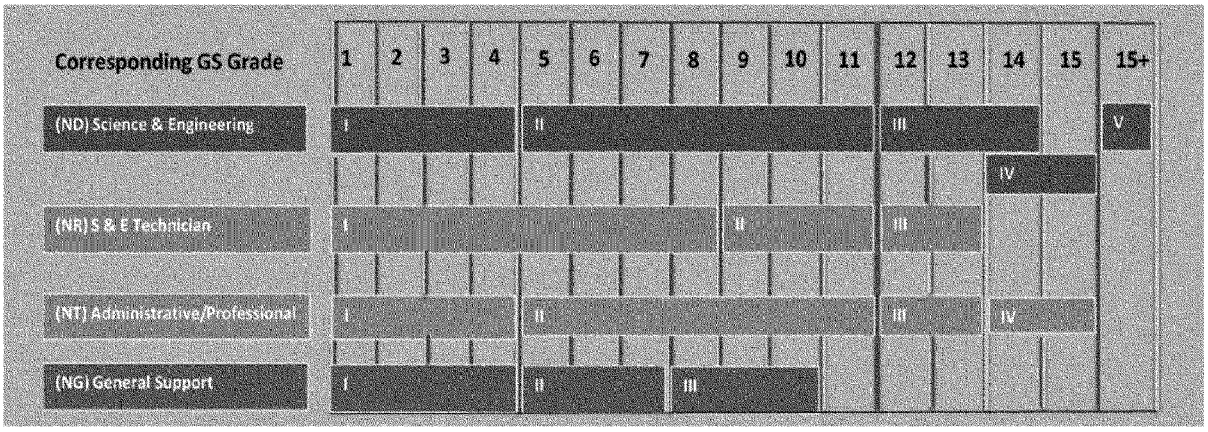
Appendix A: Career Paths and Occupational Series



SCIENCE & ENGINEERING CAREER PATH (ND)	
SERIES	TITLE
0150	GEOGRAPHER
0401	NATURAL RESOURCES MANAGEMENT AND BIOLOGICAL SCIENCES
0801	GENERAL ENGINEERING
0803	SAFETY ENGINEERING
0804	FIRE PROTECTION ENGINEERING
0806	MATERIALS ENGINEERING
0808	ARCHITECTURE
0810	CIVIL ENGINEERING
0819	ENVIRONMENTAL ENGINEERING
0830	MECHANICAL ENGINEERING
0850	ELECTRICAL ENGINEERING
0854	COMPUTER ENGINEERING
0855	ELECTRONICS ENGINEERING
0893	CHEMICAL ENGINEERING
0896	INDUSTRIAL ENGINEERING
0899	STUDENT TRAINEE (ENGINEER)
1301	PHYSICAL SCIENCE
1313	GEOPHYSICS
1315	HYDROLOGY
1320	CHEMISTRY
1321	METALLURGY
1350	GEOLOGY
1515	OPERATIONS RESEARCH
1550	COMPUTER SCIENTIST

GENERAL SUPPORT CAREER PATH (NG)	
SERIES	TITLE
0086	SECURITY CLERICAL AND ASSISTANCE
0203	HUMAN RESOURCES ASSISTANCE
0303	MISC CLERK AND ASSISTANT
0318	SECRETARY
0335	COMPUTER CLERK AND ASSISTANT
0344	MANAGEMENT & PROGRAM CLERICAL AND ASSISTANCE
0399	(STUDENT TRAINEE) ADMINISTRATION AND OFFICE SUPPORT
0503	FINANCIAL TECHNICIAN
0986	LEGAL ASSISTANCE
1106	PROCUREMENT CLERICAL AND TECHNICIAN
2005	SUPPLY CLERICAL AND TECHNICIAN

S & E TECHNCIAN CAREER PATH (NR)	
SERIES	TITLE
0802	ENGINEERING TECHNICIAN
0856	ELECTRONICS TECHNICIAN
1152	PRODUCTION CONTROL
2121	RAILROAD SAFETY

ADMINISTRATIVE/PROFESSIONAL CAREER PATH (NT)	
SERIES	TITLE
0018	SAFETY AND OCCUPATIONAL HEALTH MANAGEMENT
0020	COMMUNITY PLANNING
0028	ENVIRONMENTAL PROTECTION SPECIALIST
0080	SECURITY ADMINISTRATION
0201	HUMAN RESOURCES MANAGEMENT
0260	EQUAL EMPLOYMENT OPPORTUNITY
0301	MISC ADMINSTRATION AND PROGRAM
0340	PROGRAM MANAGEMENT
0343	MANAGEMENT AND PROGRAM ANALYST
0346	LOGISTICS MANAGEMENT
0399	(STUDENT TRAINEE) ADMINISTRATION AND OFFICE SUPPORT
0501	FINANCIAL ADMINISTRATION AND PROGRAM
0505	FINANCIAL MANAGEMENT
0510	ACCOUNTING
0905	GENERAL ATTORNEY
0950	PARALEGAL SPECIALIST
1035	PUBLIC AFFAIRS
1083	TECHNICAL WRITING AND EDITING
1101	GENERAL BUSINESS AND INDUSTRY
1102	CONTRACTING
1176	BUILDING MANAGEMENT
1670	EQUIPMENT SERVICES
1801	INSPECTOR GENERAL
2010	INVENTORY MANAGEMENT
2030	DISTRIBUTION FACILITIES AND STORAGE MANAGEMENT
2210	INFORMATION TECHNOLOGY MANAGEMENT

Appendix B: Rating Benchmark Examples

Notional Administrative/Professional Career Path Level-II	
Level 3	Level 5
- With guidance, effectively achieved the stated objective while applying well-developed knowledge and skills (including use of appropriate technology, tools, and/or equipment) to effectively perform a full range of assignments, including moderately complex work activities; seeks occasional guidance as appropriate - With guidance, organized and prioritized own task to deliver the objective, adjusting work plans and overcoming obstacles necessary - Demonstrates an understanding of overall organizational goals and needs, relevant systems, processes, and procedures that affect own work; applies this knowledge constructively when completing own assignments	- Contributed results beyond what was expected; results were far superior in quality, quantity, timeliness, and/or impact to the stated objective impact to the stated objective - Looks beyond the requirements of one's own job to offer contributions to overall work unit operations. - Takes initiative to improve technical knowledge and skills through a variety of self-directed activities, resulting in an increased ability to contribute to the mission.

Notional Science and Engineering Career Path Level-III	
Level 3	Level 5
(1) Effectively achieved the stated objective, anticipating, and overcoming significant obstacles. Adapts established methods and procedures when needed. (2) Results were technically sound, accurate, thorough, documented and met applicable authorities, standards, policies, procedures, and guidelines. (3) Planned, organized, prioritized, and scheduled own work activities to deliver the objective in a timely and effective	(1) Contributed results beyond what was expected; results were far superior in quality, quantity, timeliness and/or impact to mission. (2) Seeks out and capitalizes on opportunities to leverage expertise to make contributions with significant impacts. (3) Applied new and innovative methods and processes that contributed

manner, making adjustments to respond to changing situations and anticipating and overcoming difficult obstacles as necessary. (4) Demonstrates an extensive understanding of the organization's mission, functions, values, applicable policies and procedures, and internal and external factors; seeks out and capitalizes on opportunities to use this knowledge to help the organization accomplish its mission and move toward its long-term vision.	significantly to the success of the organization.

Dated: March 9, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–05172 Filed 3–11–21; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0198]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Formula Grant EASIE Annual Performance Report

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before April 12, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Crystal Moore, (202) 453–5593.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Formula Grant EASIE Annual Performance Report.

OMB Control Number: 1810–0726.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 1,300.

Total Estimated Number of Annual Burden Hours: 14,300.

Abstract: The purpose of Indian Education Formula Grant to Local Agencies, as authorized under section 6116 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA) is to assist grantees to provide Indian students with the opportunity to meet the same challenging state standards as all other students and meet the unique educational and culturally related academic needs of American Indian and Alaska Native students. The Indian Education Formula Grant (CFDA 84.060A), is neither competitive nor discretionary and requires the annual submission of the application from either a local education agency, tribe, Indian organization, or Indian community-based organization. The amount of the award for each applicant is determined by a formula based on the reported number of American Indian/Alaska Native students identified in the application, the state per pupil expenditure, and the total appropriation available. The Office of Indian Education (OIE) of The Department of Education (ED) collects annual performance data within the same system that collects the annual application. The application and the annual performance report are both be housed in the Education Data Exchange Network (EDEN) Submission System. The 524B Annual Performance Report (APR) was designed for discretionary grants, however the title VI program is a formula grant program. The EASIE APR goes beyond the generic 524B APR and facilitates the collection of more specific and comprehensive data due to grantees entering project specific data into an online database.

Dated: March 8, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–05112 Filed 3–11–21; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10020–97-Region 9]

Public Water System Supervision Program Revision for the State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Arizona revised its approved Public Water System Supervision (PWSS) Program under the federal Safe Drinking Water Act (SDWA) by adopting the Lead and Copper Rule (LCR), LCR Minor Revisions (LCR–MR) and LCR Short-Term Revisions (LCR–STR). The Environmental Protection Agency (EPA) has determined that these revisions are no less stringent than the corresponding Federal regulations and otherwise meet applicable SDWA primacy requirements. Therefore, EPA intends to approve the stated revisions to the State's PWSS Program.

DATES: A request for a public hearing must be received on or before April 12, 2021.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following office: Arizona Department of Environmental Quality, Records Center, 1110 West Washington Street, Phoenix, AZ 85007; or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. Documents relating to this determination are also available online at *http://azdeq.gov/notices* for inspection.

FOR FURTHER INFORMATION CONTACT: Daria Evans-Walker, United States Environmental Protection Agency, Region 9, Drinking Water Section, 75 Hawthorne Street (WTR–4–1), San Francisco, California 94105; telephone number: (415) 972–3451; email address: *evans-walker.daria@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background. The EPA approved the State of Arizona's initial application for PWSS Program primary enforcement authority (''primacy''), which became effective on August 25, 1978 (43 FR 38083). States with primacy must adopt and submit for EPA approval all new and revised national primary drinking water regulations. Since initial approval, EPA has approved various revisions to Arizona's PWSS Program. For the revisions covered by this action, the EPA promulgated the Lead and Copper Rule (LCR) on June 7, 1991 (56 FR 26460). EPA modified this rule with technical amendments that were published in the **Federal Register** on July 15, 1991 (56 FR 32113), June 29, 1992 (57 FR 28786), and June 30, 1994 (59 FR 33860). The EPA proposed the LCR–MR on April 12, 1996 (60 FR 16348) and finalized the LCR–MR on January 12, 2000 (65 FR 1949). The EPA proposed the LCR–STR on July 18, 2006 (71 FR 40828) and published the final LCR–STR on October 10, 2007 (72 FR 57782). EPA has determined that the LCR, LCR–MR and LCR–STR requirements were incorporated by reference into the Arizona Administrative Code (AAC) Title 18, Chapter 4, Article 1 and AAC Title 9, Chapter 14, Article 1, in a manner that Arizona's regulations are comparable to and no less stringent than federal requirements for these programs. Therefore, EPA intends to approve these revisions as part of the State's PWSS Program.

Public Process. Any interested party may request a public hearing on this determination. A request for a public hearing must be received or postmarked by April 12, 2021, and addressed to the Regional Administrator at the EPA Region 9 via the following email address: *R9dw-program@epa.gov.* The Regional Administrator may deny frivolous or insubstantial requests for a hearing. If a substantial request for a public hearing is made by April 12, 2021, EPA Region 9 will hold a public hearing. 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 and a brief statement of the information that the requesting person intends to submit at such hearing; and 3. The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If EPA Region 9 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on April 12, 2021, and no further public notice will be issued.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g–2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: March 5, 2021.

Deborah Jordan,

Acting Regional Administrator, EPA Region 9.

[FR Doc. 2021–05212 Filed 3–11–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9055–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed March 1, 2021 10 a.m. EST through March 8, 2021 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20210026, Final, GSA, CA, Chet Holifield Federal Building Tenant Relocation, Review Period Ends: 04/12/2021, Contact: Osmahn Kadri 415–522–3617.

EIS No. 20210027, Final, USACE, NE, U.S. Highway 275 West Point to Scribner Expressway, Review Period Ends: 04/12/2021, Contact: Phil Rezac 402–896–0896.

EIS No. 20210028, Final, BOEM, MA, Vineyard Wind 1 Offshore Wind Energy Project, Review Period Ends: 04/12/2021, Contact: Michelle Morin 703–787–1722.

EIS No. 20210029, Draft, BIA, NV, Southern Bighorn Solar Projects, Comment Period Ends: 04/26/2021, Contact: Chip Lewis 602–390–2014.

Dated: March 8, 2021.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021–05155 Filed 3–11–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 17545]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) has modified an existing system of records, FCC/OMD–2, Labor Relations and Employee Performance Files, subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency. The records in this system contain information on Commission employees that the Human Resources Management (HRM) in the Office of Managing Director (OMD) uses for purposes such as litigation, law enforcement, congressional inquiries, labor organization inquiries, and government-wide program oversight.

DATES: This system of records will become effective on March 12, 2021. Written comments on the routine uses are due by April 12, 2021. The routine uses will become effective on April 12, 2021, unless written comments are received that require a contrary determination.

ADDRESSES: Send comments to Margaret Drake, at *privacy@fcc.gov,* or at Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554 at (202) 418–1707.

FOR FURTHER INFORMATION CONTACT: Margaret Drake, (202) 418–1707, or *privacy@fcc.gov* (and to obtain a copy of the Narrative Statement and the Supplementary Document, which includes details of the modifications to this system of records).

SUPPLEMENTARY INFORMATION: FCC/OMB–2 contains information on Commission employees that the Human Resources Management (HRM) in the Office of Managing Director (OMD) uses for purposes such as litigation, law enforcement, congressional inquiries, labor organization inquiries, and government-wide program oversight. This notice serves to modify FCC/OMB–2 to reflect various necessary changes and updates, including format changes required by OMB Circular A–108 since its previous publication and the addition of two routine uses to address data breaches, as required by OMB Memorandum M–17–12. The substantive changes and modification to the previously published version of FCC/OMB–2 system of records include:

1. Updating the Security Classification to follow OMB and FCC guidance.
2. Updating the System Location to show the FCC's new headquarters address.
3. Modifying the Categories of Records to add employee grievances to the list that currently includes only employee responses or appeals.
4. Adding the Equal Employment Opportunity Commission (EEOC) to the record sources for this system when an underlying action (*e.g.,* suspension) is challenged before the EEOC, the EEO-related records may also be subject to the governmentwide EEOC SORN.
5. Revising language in four Routine Uses: (1) Adjudication and Litigation, (2) Law Enforcement and Investigation, (3) Congressional Inquiries, and (4) Government-wide Program Management and Oversight.
6. Deleting three existing Routine Uses: (5) Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by the agency, (6) Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by other than the agency, and (7) Labor Relations.
7. Adding four new Routine Uses: (5) Breach Notification, to allow the FCC address information breaches at the Commission; (6) Assistance to Federal Agencies and Entities, to allow the FCC to provide assistance to other Federal agencies in their data breach situations; (7) For Non-Federal Personnel, to allow contractors performing or working on a contract for the Federal Government access to information in this system; and (8) Non-FCC Individuals and Organizations, to disclose information to individuals, including former FCC employees, and organizations, to obtain information pertinent to an investigation or proceeding. New Routine Uses (5) and (6) are required by OMB Memorandum M–17–12.
8. Replacing the Disclosures to Consumer Reporting section with a new Reporting to a Consumer Reporting Agency section to address valid and overdue debts owed by individuals to the FCC under the Debt Collection Act, as recommended by OMB.
9. Modifying the Policies and Practices for Retrieval of Records to add the employee name as a retrieval metric and, when applicable, examining case logs will disclose an employee's name associated with a case number.
10. Updating the Records Retention and Disposal section with a new National Archives and Records (NARA) General Records Schedule (GRS) 2.3 (DAA–GRS–2018–0002).
10. Adding a History section referencing the previous publication of this SORN in the **Federal Register**, as required by OMB Circular A–108.

The system of records is also updated to reflect various administrative changes related to the policy and practices for storage of the information; administrative, technical, and physical safeguards; and updated notification, records access, and procedures to contest records.

SYSTEM NAME AND NUMBER:

FCC/OMD–2, LABOR RELATIONS AND EMPLOYEE PERFORMANCE FILES

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Human Resources Management (HRM), Office of Managing Director (OMD), Federal Communications Commission (FCC), 45 L Street NE, Washington, DC, 20554.

SYSTEM MANAGER(S):

Human Resources Management (HRM), Office of Managing Director (OMD), Federal Communications Commission (FCC).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 35, 43, 61, 63, 71, 73, 75, and 77.

PURPOSE(S):

These records contain information on Commission employees for purposes such as litigation, law enforcement, congressional inquiries, labor organization inquiries, and government-wide program oversight.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal Communications Commission (FCC) employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a variety of records relating to formal and informal actions based on conduct or performance and also includes files dealing with grievances filed under the negotiated or administrative grievance procedures, requests for reconsideration, arbitrations, appeals, and miscellaneous inquiries and complaints. These records may include:

1. Case number, employee name, Social Security Number, grade, job title, and employment history; and
2. Copies of notices of proposed actions; materials relied on by the

agency to support the proposed action; statements of witnesses; employee grievances, responses, or appeals; transcripts; and agency decisions.

RECORD SOURCE CATEGORIES:

This system of records includes information provided by an individual on whom the record is maintained; testimony of witnesses, supervisors and managers, and union officials; and decisions by arbitrators and other third-parties, *e.g.,* Department of Labor, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and Merit System Protection Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

1. Adjudication and Litigation—To disclose information to the Department of Justice (DOJ), or to other administrative or adjudicative bodies before which the FCC is authorized to appear, when: (a) The FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC have agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ or the FCC is deemed by the FCC to be relevant and necessary to the litigation.

2. Law Enforcement and Investigation—To disclose pertinent information to the appropriate Federal, State, local, or tribal agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

3. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

4. Government-wide Program Management and Oversight—To disclose information to the U.S. Treasury to disburse payment determination information to pay a claimant once the compensation decision has been reached; to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

5. Breach Notification—To appropriate agencies, entities, and persons when: (a) The Commission suspects or has confirmed that there has been a breach of data maintained in the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

6. Assistance to Federal Agencies and Entities—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

7. For Non-Federal Personnel—To disclose information to non-Federal personnel, *i.e.,* contractors, performing or working on a contract in connection with human resources management and/or IT services for the Federal Government, who may require access to this system of records.

8. Non-FCC Individuals and Organizations—To disclose information to individuals, including former FCC employees, and organizations, in the course of an investigation or proceeding to the extent necessary to obtain information pertinent to the investigation or proceeding.

REPORTING TO A CONSUMER REPORTING AGENCIES:

In addition to the routine uses cited above, the Commission may share information from this system of records with a consumer reporting agency regarding an individual who has not paid a valid and overdue debt owed to the Commission, following the procedures set out in the Debt Collection Act, 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information in this system includes both paper and electronic records. The paper records, documents, and files are maintained in file cabinets that are located in OMD. The electronic records, files, and data are stored in the FCC's computer network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved preliminarily by case number or employee name. Where applicable, an examination of case logs will disclose the name of an employee associated with a case number.

POLICIES AND PRACTIES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are subject to General Records Schedule 2.3 (DAA–GRS–2018–0002). Disposal is by shredding or burning for paper files and deletion for electronic files.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records, files, and data are stored within FCC accreditation boundaries and maintained in a database housed in the FCC's computer network databases. Access to the electronic files is restricted to authorized OMD employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other FCC employees and contractors may be granted access on a need-to-know basis. The FCC's electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal IT privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST). Paper records are kept in file cabinets in non-public rooms in the OMD office suite. The file cabinets are locked at the end of the day, or when not in use. Access to these office suites is through card-coded doors. The access points to these offices are also monitored. Only authorized OMD supervisors and staff have access to these paper records.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about

themselves should follow the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing *Privacy@fcc.gov.* Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to records as required under 47 CFR part 0, subpart E.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

The FCC previously gave full notice of FCC/OMD–2, Labor Relations and Employee Performance Files, by publication in the **Federal Register** on April 5, 2006 (71 FR 17248).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021–05102 Filed 3–11–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, March 11, 2021 at 10:00 a.m.

PLACE: Virtual meeting. *Note:* Because of the COVID–19 pandemic, we will conduct the open meeting virtually. If you would like to access the meeting, see the instructions below.

STATUS: This meeting will be open to the public. To access the virtual meeting, go to the commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Interpretive Rule: Possible Use of Campaign Funds for Residential and Personal Security

Draft Advisory Opinion 2021–03: National Republican Senatorial Committee (NRSC) and National Republican Congressional Committee (NRCC)

Draft Advisory Opinion 2021–01: Aluminate, Inc.

Audit Division Recommendation Memorandum on Dr. Raul Ruiz for Congress (A19–03)

Audit Division Recommendation Memorandum on the Grassroots Victory PAC (A19–14)

Proposed Final Audit Report on the National Tooling & Machining Association (NTMA) Committee for a Strong Economy (A19–10)

Proposed Final Audit Report on Van Drew for Congress (A19–04)

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Submitted: March 4, 2021.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2021–04906 Filed 3–5–21; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than March 26, 2021.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. This corrects the previous notification relating to *Jerome M. Bauer and Susanne M. Bauer, both of Durand, Wisconsin;* to acquire voting shares of Security Financial Services Corporation, and thereby indirectly acquire voting shares of Security Financial Bank, both of Durand, Wisconsin, and Jackson County Bank, Black River Falls, Wisconsin.

In addition, *Jerome M. Bauer, Susanne M. Bauer, Tad M. Bauer, Jodi N. Bauer, Timothy A. Hoffman, Julie M. Hoffman, Janice M. Spindler, and Steven R. Spindler, all of Durand, Wisconsin; the Chad W. and Amanda S. Smith Revocable Grantor Trust, Amanda S. Smith, both of Eau Galle, Wisconsin, individually, and together with Chad W. Smith, as co-trustees, Durand, Wisconsin; the James M. and Linda M. Bauer Revocable Grantor Trust, James M. Bauer and Linda M. Bauer, as co-trustees, the John J. and Mary Jane Brantner Revocable Grantor Trust, John J. Brantner and Mary Jane Brantner, as co-trustees, and the Larry J. and Marcia J. Weber Revocable Grantor Trust, Larry J. Weber, as trustee, all of Durand, Wisconsin;* as a group acting in concert, to retain voting shares of Security Financial Services Corporation, and thereby indirectly retain voting shares of Security Financial Bank and Jackson County Bank.

Board of Governors of the Federal Reserve System, March 9, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–05197 Filed 3–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–21AT; Docket No. CDC–2021–0027]

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 Evaluation of Venous Thromboembolism Prevention Practices in U.S. Hospitals. This proposed study is designed to support a framework for improving hospital venous thromboembolism (VTE) prevention practices through the evaluation of current VTE prevention practices in U.S. adult general medical and surgical hospitals.

DATES: CDC must receive written comments on or before May 11, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0027 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

Evaluation of Venous Thromboembolism Prevention Practices in U.S. Hospitals—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Venous thromboembolism (VTE), which includes deep vein thrombosis (DVT) and pulmonary embolism (PE), is an important and growing public health problem. Each year in the U.S., it is estimated that VTE affects as many as 900,000 people, is responsible for up to 100,000 deaths, and is associated with healthcare costs of approximately $10 billion. Recurrence after a VTE is common, and complications include post-thrombotic syndrome and chronic thromboembolic pulmonary hypertension. Over half of VTE events are associated with recent hospitalization or surgery and most occur after discharge. An analysis of the National Hospital Discharge Survey from 2007 to 2009 estimated that almost 550,000 U.S. adult hospitalizations had a discharge diagnosis of VTE each year. Hospital-associated VTE (HA–VTE) is often preventable but VTE prevention strategies are not applied uniformly or systematically across U.S. hospitals and healthcare systems.

The Agency for Healthcare Research and Quality (AHRQ) published a guide for preventing HA–VTE in 2016. The framework for improving VTE prevention in hospitalized patients includes a hospital VTE prevention policy, an interdisciplinary VTE team, standardization of VTE prevention processes, monitoring of processes and outcomes, and VTE prevention education for providers and patients. A VTE prevention protocol includes VTE risk assessment, bleeding risk assessment (risk of bleeding with anticoagulant prophylaxis) and clinical decision support for appropriate prophylaxis (*i.e.,* ambulation, anticoagulant prophylaxis, and/or mechanical prophylaxis) based on both VTE and bleeding risk assessments.

Despite evidence-based guidelines for VTE prophylaxis in at-risk hospitalized patients, there is systemic underuse of appropriate VTE prophylaxis. As many as 70% of HA–VTE events are potentially preventable but less than half of hospitalized patients receive appropriate VTE prophylaxis. An implementation gap exists between evidence-based guidelines for VTE prophylaxis in hospitalized adult patients and implementation of those guidelines in real-world hospital settings. The 2008 Surgeon General's Call to Action to Prevent DVT and PE included instituting formal systems related to risk assessment and the provision of prophylaxis to high-risk hospitalized patients. For World Thrombosis Day in 2016, the International Society on Thrombosis and Haemostasis (ISTH) issued a call to clinical leaders, hospitals, and payers to work together to make VTE risk assessment for all hospitalized patients a priority.

In England, The National Venous Thromboembolism Prevention Programme was launched in 2010 with the goal of reducing preventable HA–VTE morbidity and mortality (Roberts, 2017). VTE risk assessment was mandated for all adult patients on admission to an acute hospital utilizing a previously developed national VTE risk assessment tool/model. Hospitals were required to report VTE risk assessment rates, with a financial incentive applied to achieve a target of 90%. This resulted in an impressive, sustained increase in VTE risk assessment rates with a corresponding increase in anticoagulant prophylaxis. There was evidence of significant reductions in HA–VTE and associated mortality following implementation of this program.

Unlike England, the U.S. has no national VTE prevention program with hospital risk assessment rates tied to financial incentives and no national VTE risk assessment tool/model. Various VTE risk assessment models (RAMs) have been developed and published to identify hospitalized patients whose risk for VTE is high enough to offset the risk of bleeding with anticoagulant prophylaxis. However, there is no standardized RAM

currently in use across U.S. hospitals and healthcare systems. Implementation of risk assessment varies in terms of the patient population (*e.g.,* medical vs. surgical), time frames (*e.g.,* on admission, on transfer to another unit), method of administration (*i.e.,* electronic vs. paper), person/s performing the risk assessment (*e.g.,* physician, nurse, pharmacist), type of RAM (*e.g.,* quantitative vs. qualitative), and linkage to a clinical decision support tool for appropriate VTE prophylaxis.

An evaluation of the extent to which U.S. hospitals utilize VTE risk assessment is needed to better understand the landscape around VTE prevention practices in real-world hospital settings in order to guide efforts and inform interventions to reduce the burden of HA–VTE. CDC is funding The Joint Commission to evaluate VTE prevention practices in U.S. hospitals. The Joint Commission has had a role in patient safety through standards and performance measurement. It is the measure steward for two electronic clinical quality measures (eCQMs) on VTE prevention available for Center for Medicare and Medicaid Services Inpatient Quality Reporting and Joint Commission hospital accreditation since 2016. However, these two VTE prevention eCQMs only address the initiation of VTE prophylaxis within a specified timeframe; they do not assess the patient's level of VTE risk or the appropriateness of prophylaxis.

For this project, The Joint Commission, in collaboration with CDC, developed a survey on hospital VTE prevention practices. The survey was piloted in nine hospitals and their feedback was used to improve the survey. After OMB approval, the survey will be implemented by The Joint Commission as a one-time data collection in a nationally representative sample of U.S. adult general medical and surgical hospitals. No individual-level data will be collected. CDC will not receive any individual or hospital identifiable information.

The overall purpose of this project is to evaluate current VTE prevention practices in a nationally representative sample of U.S. hospitals (American Hospital Association adult general medical and surgical hospital service category) in order to support a framework for HA–VTE prevention. The information collected in this hospital survey will be used to improve understanding of hospital VTE prevention practices, which will guide efforts and inform interventions to reduce the burden of HA–VTE. Specifically, the information collected on hospital VTE prevention policy and protocol, VTE prevention team, VTE data collection and reporting, VTE risk assessment, VTE prophylaxis safety considerations (*i.e.,* bleeding risk assessment), ambulation protocol, VTE prevention education for providers and patients, and VTE prophylaxis monitoring and support will be used to assess the extent to which hospitals apply these components of the framework for HA–VTE prevention. The responses to specific VTE prevention practices can be used to assess VTE prevention practices by hospital characteristics (*e.g.,* bed size, urban vs. rural location, teaching vs. non-teaching status) to better target efforts or interventions to improve HA–VTE prevention. Information collected on the barriers to establishing a hospital-wide VTE prevention policy will be helpful in addressing these challenges. Information will be collected on both adult general medical and surgical units since VTE prevention practices differ by specialty. Information on VTE risk assessment (*e.g.,* who conducts the assessment, when is it performed, mandatory or optional, format, type of RAM) will improve understanding of real-world hospital VTE risk assessment practices. Information on the capacity of hospitals to collect data on VTE risk assessment will be helpful in determining the feasibility of VTE risk assessment as a VTE prevention performance measure. The data collected can also serve as a baseline for evaluation of future HA–VTE prevention initiatives.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
The Director of Patient Safety and Quality, the Chairperson of the Patient Safety Committee, other quality improvement professional.	Recruitment material: Implementation email and project information sheet.	384	1	15/60	96
The Director of Patient Safety and Quality, the Chairperson of the Patient Safety Committee, other quality improvement professional.	Evaluation of Venous Thromboembolism Prevention Practices in U.S. Hospitals Questionnaire.	384	1	1	384
Total					480

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–05113 Filed 3–11–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–2021–1061; Docket No. CDC–2021–0023]

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 Behavioral Risk Factor Surveillance System (BRFSS). BRFSS is an annual state-based health survey, designed to produce state- or sub-state jurisdiction-level data about health-related risk behaviors, chronic health conditions, use of preventive services, and emerging health issues.

DATES: CDC must receive written comments on or before May 11, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0023 by any of the following methods:

- *Federal eRulemaking Portal: 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.

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: 404–639–7570; 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

Behavioral Risk Factor Surveillance System (BRFSS) (OMB Control No. 0920–1061, Exp. 3/31/2022)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval to revise the information collection for the Behavioral Risk Factor Surveillance System (BRFSS) for the period of 2022–2024. The BRFSS is a nationwide system of cross-sectional surveys using random digit dialed (RDD) samples administered by health departments in states, territories, and the District of Columbia (collectively referred to here as states) in collaboration with CDC. Traditionally, subject recruitment and interviews have been conducted by telephone. In 2022–2024, the BRFSS will introduce the option to allow participants to voluntarily complete online surveys after telephone recruitment. The BRFSS produces state-level information primarily on health risk behaviors, health conditions, and preventive health practices that are associated with chronic diseases, infectious diseases, and injury. Designed to meet the data needs of individual states and territories, the CDC sponsors the BRFSS information collection project under a cooperative agreement with states and territories. Under this partnership, BRFSS state coordinators determine questionnaire content with technical and methodological assistance provided by CDC. For most states and territories, the BRFSS provides the only sources of data amenable to state and local level health and health risk indicator uses. Over time, it has also developed into an important data collection system that federal agencies rely on for state and local health information and to track national health objectives such as Healthy People.

CDC bases the BRFSS questionnaire on modular design principles to accommodate a variety of state-specific needs within a common framework. All participating states are required to administer a standardized core questionnaire, which provides a set of shared health indicators for all BRFSS partners. The BRFSS core questionnaire consists of fixed core, rotating core, and emerging core questions. Fixed core questions are asked every year. Rotating core questions cycle on and off the core questionnaire in two- or three-year cycles, depending on the question. Emerging core questions are included in the core questionnaire as needed to collect data on urgent or emerging health topics such as infectious disease. In addition, the BRFSS includes a series of optional modules on a variety of topics. In off years, when the rotating questions are not included in the core questionnaire, they are offered to states as optional modules. This framework allows each state to produce a customized BRFSS survey by appending selected optional modules to the core survey. States may select which, if any, optional modules to administer. As needed, CDC provides technical and methodological assistance to state BRFSS coordinators in the construction of their state-specific surveys. Each state administers its BRFSS questionnaire throughout the calendar year.

CDC periodically updates the BRFSS core survey and optional modules. The purpose of this Revision request is to

add the following topics to the questionnaires: COVID vaccination, impact of the COVID pandemic, periodontal disease, additional questions on heart attack and stroke, disaster/pandemic preparedness, veterans' health and the use of newly available tobacco products. In addition, this request seeks approval for reinstating topics which have been included in BRFSS in the past, dependent upon state interest and funding.

Participation is voluntary and there is no cost to respondents to participate other than their time. The average time burden per response will be 22 minutes. The total time burden across all respondents will be approximately 287,798 hours.

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)
U.S. General Population	Landline Screener	173,000	1	1/60	2,884
	Cell Phone Screener	694,000	1	1/60	11,567
	Field Test Screener	900	1	1/60	15
Annual Survey Respondents (Adults >18 Years).	BRFSS Core Survey by Phone Interview.	480,000	1	15/60	120,000
	BRFSS Optional Modules by Phone Interview.	440,000	1	15/60	110,000
	BRFSS Core Survey by Online Survey.	100,000	1	10/60	16,666
	BRFSS Optional Modules by Online Survey.	80,000	1	10/60	13,333
Field Test Respondents (Adults >18 Years).	Field Test Survey by Phone Interview.	500	1	45/60	13,333
Total					287,798

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–05117 Filed 3–11–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–21–0931]

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 ''Blood Lead Surveillance System (BLSS)'' 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 October 13, 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

Blood Lead Surveillance System (BLSS) (OMB Control No.0920–0931, Exp. 05/31/2021)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center for Environmental Health (NCEH) is leading an extension of the three-year information collection request (ICR), titled ''Blood Lead Surveillance System (BLSS)'' (OMB Control No. 0920–0931, Expiration Date 05/31/2021), which covers two Centers for Disease Control and Prevention (CDC) information collections, one for childhood blood lead surveillance by NCEH and another for adult blood lead surveillance by the National Institute for Occupational Safety and Health (NIOSH).

The goal of the NCEH Childhood Blood Lead Surveillance (CBLS) Program is to support blood lead screening and to promote primary prevention of exposure to lead. Also, the CBLS Program supports secondary

prevention of adverse health effects when lead exposures occur in children, through improved program management and oversight in respondent jurisdictions. The goal of the NIOSH Adult Blood Lead Epidemiology and Surveillance (ABLES) Program is to build state capacity for adult blood lead surveillance programs to measure trends in adult blood lead levels and to prevent lead over-exposures. Thus, blood lead surveillance over the human lifespan is covered under this single information collection request (ICR), specifically for children younger than 16 years through CBLS at NCEH, and for adults 16 years and older, through ABLES at NIOSH.

NCEH has a three-year cooperative agreement, titled ''Lead Poisoning Prevention—Childhood Lead Poisoning Prevention—financed partially by Prevention and Public Health Funds''—(Funding Opportunity Announcement [FOA] No. CDC–RFA–EH17–1701PPHF17) and a two-year cooperative agreement, titled ''Childhood Lead Poisoning Prevention Projects, State and Local Childhood Lead Poisoning Prevention and Surveillance of Blood Lead Levels in Children''—(Notice of Funding Opportunity [NOFO] No. CDC–RFA–EH18–1806). Both have one-year extensions (CDC–RFA–EH17–1701SUPP20 and CDC–RFA–EH18–1806 SUPP20, respectively). The first year of this ICR will extend through the first eight months of the FY21 and thus will be covered by the aforementioned one-year extensions, while the second and third years of this ICR will be considered in future fiduciary appraisals. States voluntarily participate by sharing adult BLL data received from testing laboratories with NIOSH ABLES.

Over the past several decades there have been substantial efforts in environmental lead abatement, improved protection from occupational lead exposure, and a reduction in the prevalence of population blood lead levels (BLLs) over time. The U.S. population BLLs have substantially decreased over the last four decades. For example, the CDC has reported the 1976–1980 U.S. mean BLL in children six months to five years was 16.0 micrograms per deciliter (mcg/dL), and 14.1 mcg/dL among adults 18 to 74 years. More recently, the CDC reported the 2009–2010 U.S. BLL geometric means among children one to five years and among adults 20 years and older as 1.2 mcg/dL for both age groups.

In 2012, the National Toxicology Program (NTP) concluded that there is sufficient evidence that even BLLs less than 5 mcg/dL are associated with adverse health effects in both children and adults. Despite the reduction in the overall population BLL over four decades, lead exposures continue to occur at unacceptable levels for individuals in communities and workplaces across the nation. Surveillance will continue through CBLS and ABLES to identify cases of elevated BLLs when primary prevention is not achieved. As of 2015, NCEH defines its blood lead reference level for children as 5 mcg/dL. NIOSH defines an elevated BLLs as greater than or equal to 5 mcg/dL for adults.

Respondents are defined as state, local, and territorial health departments with lead poisoning prevention programs. The estimated annual time burden for NCEH CBLS is 946 hours.

The estimated annual time burden for NIOSH ABLES is 280 hours. In total, CDC is requesting approval for a total annual time burden of 1,226 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State or Local Health Departments, or their Bona Fide Agents.	CBLS Variables (ASCII Text Files)	59	4	4
	CBLS Aggregate Records Form (Excel)	1	1	2
	ABLES Case Records Form	32	1	8
	ABLES Aggregate Records Form	8	1	3

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–05116 Filed 3–11–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–2021–0556; Docket No. CDC–2021–0022]

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 continuing information collection project titled Assisted Reproductive Technology (ART) Program Reporting System. This study is designed to collect information on ART cycles to publish information on pregnancy success rates as required under Section 2(a) of the Federal Clinic Success Rate and Certification Act (FCSRCA).

DATES: CDC must receive written comments on or before May 11, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0022 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

Assisted Reproductive Technology (ART) Program Reporting System (OMB Control No. 0920–0556, Exp. 8/31/2021)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 2(a) of Public Law 102–493 (known as the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), 42 U.S.C. 263a–1(a)) requires that each assisted reproductive technology (ART) program shall annually report to the Secretary through the Centers for Disease Control and Prevention:(1) Pregnancy success rates achieved by such ART program, and (2) the identity of each embryo laboratory used by such ART program and whether the laboratory is certified or has applied for such certification under the Act. The required information is currently reported by ART programs to CDC as specified in the Assisted Reproductive Technology (ART) Program Reporting System (OMB Control No. 0920–0556, Exp. 8/31/2021). CDC seeks to extend OMB approval for a period of three years.

The currently approved program reporting system, also known as the National ART Surveillance System (NASS), includes information about all ART cycles initiated by any of the ART programs in the United States. The start of an ART cycle is considered when a woman begins taking medication to stimulate egg production or begins monitoring with the intent of having embryos transferred. For each cycle, CDC collects information about the pregnancy outcome, as well as a number of data items deemed by experts in the field to be important to explain variability in success rates across ART programs and individuals.

Each ART program reports its annual ART cycle data to CDC in mid-December. The annual data reporting consists of information about all ART cycles that were initiated in the previous calendar year. For example, the December 2020 reports described ART cycles that were initiated between January 1, 2018, and December 31, 2018. Data elements and definitions currently in use reflect CDC's prior consultations with representatives of the Society for Assisted Reproductive Technology (SART), the American Society for Reproductive Medicine, and RESOLVE: The National Infertility Association (a national, nonprofit consumer organization), as well as a variety of individuals with expertise and interest in this field.

The estimated number of respondents (ART programs or clinics) is 456, based on the number of clinics that provided information in 2018; the estimated average number of responses (ART cycles) per respondent is 670. The total burden estimate is higher than the previous approval due to an increase in the utilization of ART in the United States and, thus, an increase in the number of ART cycles on which respondents report. Additionally, approximately 5–10% of responding clinics will be randomly selected each year to participate in data validation and quality control activities; an estimated 35 clinics will be selected to report validation data on 70 cycles each on average. Finally, respondents may provide feedback to CDC about the usability and utility of the reporting system. The option to participate in the feedback survey is presented to respondents when they complete their required data submission. Participation in the feedback survey is voluntary and is not required by the FCSRCA. CDC estimates that 50% of ART programs will participate in the feedback survey.

The collection of ART cycle information allows CDC to publish an annual report to Congress as specified by the FCSRCA and to provide information needed by consumers. OMB approval is requested for three years. CDC requests approval for 219,904 annual burden hours. There are no costs to respondents other than their time.

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)
	NASS Reporting Form	456	670	43/60	218,956
	Data Validation	35	70	23/60	939
	Feedback Survey	255	1	2/60	9
Total					219,904

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–05115 Filed 3–11–21; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–2021–0740; Docket No. CDC–2021–0028]

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 Medical Monitoring Project (MMP). The purpose of this data collection is to describe the health-related behaviors, experiences and needs of adults diagnosed with HIV in the United States. Data will be used to guide national and local HIV-related service organization and delivery, and monitor receipt of HIV treatment and prevention services and clinical outcomes.

DATES: CDC must receive written comments on or before May 11, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0028 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

Medical Monitoring Project (MMP) (OMB Control No. 0920–0740, Exp. 6/30/2021)—Revision—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), Division of HIV/AIDS Prevention (DHAP) requests a revision of the currently approved Information Collection Request: ''Medical Monitoring Project'' which expires June 30, 2021. This data collection addresses the need for national estimates of access to, and utilization of HIV-related medical care and services, the quality of HIV-related ambulatory care, and HIV-related behaviors and clinical outcomes.

For the proposed project, the same data collection methods will be used as for the currently approved project. Data would be collected from a probability sample of HIV-diagnosed adults in the U.S. who consent to an interview and abstraction of their medical records. As for the currently approved project, deidentified information would also be extracted from HIV case surveillance records for a dataset (referred to as the minimum dataset), which is used to assess non-response bias, for quality control, to improve the ability of MMP to monitor ongoing care and treatment of HIV-infected persons, and to make inferences from the MMP sample to HIV-diagnosed persons nationally. No other Federal agency collects such nationally representative population-based information from HIV-diagnosed adults. The data are expected to have significant implications for policy, program development, and resource allocation at the state/local and national levels.

The changes proposed in this request update the data collection system to meet prevailing information needs and enhance the value of MMP data, while remaining within the scope of the currently approved project purpose. The result is a 10% reduction in burden, or a reduction of 647 total burden hours annually. The reduction in burden was a result of revisions to the interview questionnaire that were made to improve coherence, boost the efficiency of the data collection, and increase the relevance and value of the information, which decreased the time of interview from 45 minutes to 40 minutes.

Changes made, that did not affect the burden, listed below:

- Non-substantive changes have been made to the respondent consent form to decrease the reading comprehension level and make the form more visual.
- Nine data elements were removed from, and three data elements were added to the Minimum Dataset. Because these data elements are extracted from the HIV surveillance system from which they are sampled, these changes do not affect the burden of the project.

• Seven data elements were added to the medical record abstraction data elements to collect information on SARS–CoV–2 (COVID–19) testing. Because the medical records are abstracted by MMP staff, these changes do not affect the burden of the project.

This proposed data collection would supplement the National HIV Surveillance System (NHSS, OMB Control No. 0920–0573, Exp. 11/30/2022) in 23 selected state and local health departments, which collect information on persons diagnosed with, living with, and dying from HIV infection and AIDS. The participation of respondents is voluntary. There is no cost to the respondents other than their time. Through their participation, respondents will help to improve programs to prevent HIV infection as well as services for those who already have HIV. Total estimated annual burden requested is 5,707 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response	Total response burden (hours)
Sampled, Eligible HIV-Infected Persons.	Interview Questionnaire (Att. 5a)	7,760	1	45/60	5,173
Facility office staff looking up contact information.	Look up contact information	1,940	1	2/60	65
Facility office staff approaching sampled persons for enrollment.	Approach persons for enrollment	970	1	5/60	81
Facility office staff pulling medical records.	Pull medical records	7,760	1	3/60	388
Total					5,707

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–05120 Filed 3–11–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–21–0199]

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 Import Permit Applications (42 CFR 71.54) 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 October 21, 2020 to obtain comments from the public and affected agencies. CDC received one comment 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

Import Permit Applications (42 CFR 71.54) (OMB Control No. 0920–0199, Exp. 04/30/2021)—Revision—Center for Preparedness and Response (CPR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 361 of the Public Health Service Act (42 U.S.C. 264), as amended, authorizes the Secretary of Health and Human Services to make and enforce such regulations as are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. Part 71 of Title 42, Code of Federal Regulations (Foreign Quarantine) sets forth provisions to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Subpart F—Importations—contains provisions for the importation of infectious biological agents, infectious substances, and vectors (42 CFR 71.54); requiring persons that import these materials to obtain a permit issued by the CDC.

The Application for Permit to Import Biological Agents, Infectious Substances and Vectors of Human Disease into the United States form is used by laboratory facilities, such as those operated by government agencies, universities, and

research institutions to request a permit for the importation of biological agents, infectious substances, or vectors of human disease. This form currently requests applicant and sender contact information; description of material for importation; facility isolation and containment information; and personnel qualifications. CDC plans to revise this application to:

(1) Remove question 10 ''Will the permittee be the courier of the imported biological agent?'' from Section A since it is the same question found in Section C, Question 1.

(2) Add example to Section F, Question 2 for clarity to read, ''Protective Clothing (*e.g.,* laboratory coat).''

These revisions will not affect the burden hours.

CDC received one comment regarding this notice. The commenter requested that the contact information for the biosafety officer field be mandatory. The commenter also requested that communications regarding the permit application be sent to the biosafety officer and permittee. CDC made no changes based on these comments as these recommendations did not request changes to the form but requested changes on how the program processes the application.

The Application for Permit to Import or Transport Live Bats form is used by laboratory facilities such as those operated by government agencies, universities, research institutions, and for educational, exhibition, or scientific purposes to request a permit for the importation, and any subsequent distribution after importation, of live bats. This form currently requests the applicant and sender contact information; a description and intended use of bats to be imported; and facility isolation and containment information. CDC does not plan to revise this application.

The Application for Permit to Import Infectious Human Remains into the United States is used by facilities that will bury/cremate the imported cadaver and educational facilities to request a permit for the importation and subsequent transfers throughout the U.S. of human remains or body parts that contains biological agents, infectious substances, or vectors of human disease. This form will request applicant and sender contact information; facility processing human remains; cause of death; biosafety and containment information; and final destination(s) of imported infectious human remains. CDC does not plan to revise this application.

Due to the implementation of eIPP and the applicants ability to complete the applications on-line without the need of the guidance document, the ''Guidance Document for Completing Application for Permit to Import Biological Agents, Infectious Substances and Vectors of Human Disease into the United States'' is no longer needed. As such, the total burden hours of 333 for applicants to review this document was reduced and this entry was removed from the burden table.

The Application Requesting to Import Live Bats is used by laboratory facilities such as those operated by government agencies, universities, research institutions, and for educational, exhibition, or scientific purposes to request a permit for the importation of bats. Based on information from eIPP, IPP receives three ''Application Requesting to Import Live Bats'' requests per year. It takes applicants 20 minutes to complete the application. The number of applicants was reduced from ten to three to accurately reflect the requests received. As such this change, the total burden hours from three to one.

Due to the implementation of eIPP and the applicants' ability to complete the applications on-line without the need of the guidance document, the ''Guidance Document for Completing Application Requesting to Import Live Bats'' is no longer needed. As such, the total of two burden hours for applicants to review this document was reduced and this entry was removed from the burden table.

Annualized burden hours were calculated based on data obtained from CDC import permit database on the number of permits issued on annual basis since 2015, which is 2,000 respondents. Due to the implementation of eIPP in 2020 which increased response efficiency and the applicants' ability to complete the applications on-line without the need of the guidance documents, the burden hours were reduced. Total response burden decreased from 1355 hours to 764 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Applicants Requesting to Import Biological Agents, Infectious Substances and Vectors.	Application for Permit to Import Biological Agents, Infectious Substances and Vectors of Human Disease into the United States (42 CFR 71.54).	2000	1	20/60
Applicants Requesting to Import Biological Agents, Infectious Substances and Vectors.	Application for Permit to Import Biological Agents, Infectious Substances and Vectors of Human Disease into the United States (42 CFR 71.54)—Subsequent Transfers.	380	1	10/60
Applicants Requesting to Import Live Bats	Application for a Permit to Import Live Bats (42 CFR 71.54).	3	1	20/60
Applicants Requesting to Import Infectious Human Remains into the United States.	Application for Permit to Import Infectious Human Remains into the United States (42 CFR 71.54).	100	1	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–05118 Filed 3–11–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-21–1169; Docket No. CDC–2021–0015]

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 reinstatement of a currently approved data collection titled ''Development of CDC's Let's Stop HIV Together Social Marketing Campaign for Consumers''. The purpose of this data collection is to inform the development of messages, concepts, and materials for CDC's *Let's Stop HIV Together* social marketing campaign for the general public and subpopulations at increased risk for HIV acquisition or transmission in support of the U.S. Department of Health and Human Services' Ending the HIV Epidemic.

DATES: CDC must receive written comments on or before May 11, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0015 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: 404–639–7570; 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

Development of CDC's Let's Stop HIV Together Social Marketing Campaign for Consumers (OMB Control No. 0920–1169, Exp. 03/31/2020)—Reinstatement—National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

To address the HIV epidemic in the U.S., the Department of Health and Human Services launched Ending the HIV Epidemic: A Plan for America, which is a cross-agency initiative aiming to reduce new HIV infections in the U.S. by 90% by 2030. CDC's Let's Stop HIV Together campaign (formerly known as Act Against AIDS) is part of the national Ending the HIV Epidemic initiative and includes resources aimed at reducing HIV stigma and promoting testing, prevention, and treatment across the HIV care continuum.

Within this context, CDC's Division of HIV/AIDS Prevention (DHAP) has and will continue implementing various communication initiatives to increase HIV awareness among the general public, reduce new HIV infections among disproportionately impacted populations, and improve health outcomes for people living with HIV/AIDS in the US and its territories. Specifically, the campaigns target consumers aged 18 to 64 years old and includes the following audiences: (1) General public; (2) men who have sex with men; (3) Blacks/African Americans; (4) Hispanics/Latinos; (5) Transgender individuals; (6) people who inject drugs; and (7) people with HIV (PWH).

The rounds of data collection include exploratory, message testing, concept testing, and materials testing. Information collected by DHAP will be used to assess consumers' informational needs about HIV testing, prevention, and treatment and pre-test campaign-related messages, concepts, and materials and evaluate the extent to which the communication initiatives are reaching the target audiences and providing them with trusted HIV-related information. Data collections will include in-depth interviews, focus groups, brief surveys, and intercept interviews.

The data gathered under this request will be summarized in reports prepared for CDC by its contractor, such as quarterly and annual reports and topline reports that summarize results from each data collection. It is possible that data from this project will be published in peer-reviewed manuscripts or presented at conferences; the manuscripts and conference presentations may appear on the internet. The total estimated annualized burden hours are 1,856. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden
Individuals aged 18–64	Study screener	2,165	1	2/60	72
	Exploratory—HIV Testing In-depth Interview	50	1	1	50
	Exploratory—HIV Prevention In-depth Interview.	52	1	1	52
	Exploratory—HIV Communication and Awareness In-depth Interview.	50	1	1	50
	Exploratory—HIV Prevention with Positives In-depth Interview.	50	1	1	50
	Message Testing In-depth Interview	50	1	1	50
	Concept Testing In-depth Interview	50	1	1	50
	Materials Testing In-depth Interview	50	1	1	50
	Exploratory—HIV Testing Focus Group	74	1	2	148
	Exploratory—HIV Prevention Focus Group	74	1	2	148
	Exploratory—HIV Communication and Awareness Focus Group.	74	1	2	148
	Exploratory—HIV Prevention with Positives Focus Group.	74	1	2	148
	Concept Testing Focus Group	68	1	2	136
	Message Testing Focus Group	68	1	2	136
	Materials Testing Focus Group	68	1	2	136
	HIV Testing Survey	213	1	15/60	53
	HIV Prevention Survey	213	1	15/60	53
	HIV Communication and Awareness Survey	213	1	15/60	53
	HIV Prevention with Positives Survey	213	1	15/60	53
	Intercept Interview	657	1	20/60	220
Total					1,856

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–05114 Filed 3–11–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Matching Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with subsection (e)(12) of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) is providing notice of the re-establishment of a computer matching program between CMS and the Department of Homeland Security (DHS)/United States Citizenship and Immigration Services (USCIS), ''Verification of United States Citizenship and Immigration Status Data for Eligibility Determinations.''

DATES: The deadline for comments on this notice is April 12, 2021. The re-established matching program will commence not sooner than 30 days after publication of this notice, provided no comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 18 months (from approximately April 20, 2021 to October 19, 2022) and within three months of expiration may be renewed for one additional year if the parties make no change to the matching program and certify that the program has been conducted in compliance with the matching agreement.

ADDRESSES: Interested parties may submit comments on the new matching program by mail at: Director, Division of Security, Privacy Policy & Governance, Information Security & Privacy Group, Office of Information Technology, CMS, 7500 Security Blvd., Baltimore, MD 21244–1870, Mailstop: N1–14–56, or by email to: *michael.pagels@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the matching program, you may contact Anne Pesto, Senior Advisor, Marketplace Eligibility and Enrollment Group, Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services, at 410–786–3492, by email at *anne.pesto@cms.hhs.gov,* or by mail at 7500 Security Blvd., Baltimore, MD 21244.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a) provides certain protections for individuals applying for and receiving federal benefits. The law governs the use of computer matching by federal agencies when records in a system of records (meaning, federal agency records about individuals retrieved by name or other personal identifier) are matched with records of other federal or non-federal agencies. The Privacy Act requires agencies involved in a matching program to:

1. Enter into a written agreement, which must be prepared in accordance with the Privacy Act, approved by the Data Integrity Board of each source and recipient federal agency, provided to Congress and the Office of Management and Budget (OMB), and made available to the public, as required by 5 U.S.C. 552a(o), (u)(3)(A), and (u)(4).

2. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).

3. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments or taking other

adverse action against the individual, as required by 5 U.S.C. 552a(p).

4. Report the matching program to Congress and the OMB, in advance and annually, as required by 5 U.S.C. 552a(o) (2)(A)(i), (r), and (u)(3)(D).

5. Publish advance notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12).

This matching program meets these requirements.

Barbara Demopulos,

Privacy Advisor, Division of Security, Privacy Policy and Governance, Office of Information Technology, Centers for Medicare & Medicaid Services.

Participating Agencies

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) is the recipient agency, and the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS) is the source agency.

Authority for Conducting the Matching Program

The principal authority for conducting the matching program is 42 U.S.C. 18001 *et seq.*

Purpose(s)

The matching program will provide CMS with USCIS data which CMS and state-based administering entities will use to determine individuals' eligibility for initial enrollment in a Qualified Health Plan through an Exchange established under the Patient Protection and Affordable Care Act, for Insurance Affordability Programs (IAPs), and for certificates of exemption from the shared responsibility payment; and to make eligibility redeterminations and renewal decisions, including appeal determinations. IAPs include:

1. Advance payments of the premium tax credit (APTC) and cost sharing reductions (CSRs),
2. Medicaid,
3. Children's Health Insurance Program (CHIP), and
4. Basic Health Program (BHP).

Categories of Individuals

The individuals whose information will be used in the matching program are consumers (applicants and enrollees) who receive the eligibility determinations and redeterminations described in the preceding Purpose(s) section.

Categories of Records

The categories of records used in the matching program are identity, citizenship, and immigration status records. The data elements are described below.

To request information from USCIS, CMS will submit a file to SSA that contains the following mandatory data elements: Last Name; First Name; Middle Name; Date of Birth; One or More Immigration Number(s) (*e.g.,* Alien Registration/USCIS Number, Arrival-Departure Record I–94 Number, SEVIS ID Number, Certificate of Naturalization Number, Certificate of Citizenship Number, or Unexpired Foreign Passport Number); and Other Information From Immigration Documentation (*e.g.,* Country of Birth, Date of Entry, Employment Authorization Category).

When USCIS is able to match the information provided by CMS, USCIS will provide CMS with the following about each individual, as relevant: Last Name; First Name; Middle Name; Date of Birth; One or More Immigration Number(s) (*e.g.,* Alien Registration/USCIS Number, Arrival-Departure Record I–94 Number, SEVIS ID Number, Certificate of Naturalization Number, Certificate of Citizenship Number, or Unexpired Foreign Passport Number); Citizenship or Immigration Data (*e.g.,* immigration class of admission and/or employment authorization); Sponsorship Data (*e.g.,* name, address, and social security number of Form I–864/I–864EZ sponsors and Form I–864A household members, when applicable); and Case Verification Number.

System(s) of Records

The records used in this matching program are disclosed from the following systems of records, as authorized by routine uses published in the System of Records Notices (SORNs) cited below:

A. System of Records Maintained by CMS

CMS Health Insurance Exchanges System (HIX), System No. 09–70–0560, last published in full at 78 FR 63211 (Oct. 23, 2013), and amended at 83 FR 6591 (Feb. 14, 2018). Routine use 3 supports CMS' disclosures to USCIS for use in this matching program.

B. System of Records Maintained by USCIS

DHS/USCIS–004 Systematic Alien Verification for Entitlements Program, 85 FR 31798 (May 27, 2020). Routine use I permits USCIS' disclosures to CMS.

[FR Doc. 2021–05192 Filed 3–11–21; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Title IV–E Programs Quarterly Financial Report (OMB No: 0970–0205)

AGENCY: Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the form CB–496: Title IV–E Programs Quarterly Financial Report. This form is currently approved under the ACF Generic Clearance for Financial Reports (OMB #0970–0510, expiration 5/31/2021), and ACF is proposing to reinstate the previous OMB number under which this form had been approved (OMB # 0970–0205). There are no substantial changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Form CB–496 Parts 1–3 is a financial report submitted following the end of each fiscal quarter by each state or tribe with an approved title IV–E plan administering any of five title IV–E entitlement grant programs—Foster Care, Adoption Assistance, Guardianship Assistance, Prevention Services, or Kinship Navigator. Part 4 of form CB–496 is an annual submission associated with the Adoption Assistance program on the calculation of adoption savings under section 473(e) of the Social Security Act, along with an accounting of the amount of expenditure of any such savings. It is required from each state or tribe with an approved title IV–E plan administering the Adoption Assistance Program. There

are no substantial changes to the forms, only minor changes such as to reflect a temporary change in the Federal Financial Participation rate.

Respondents: State and tribal agencies with approved title IV–E plans.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Form CB–496	67	4	23	6,164

Estimated Total Annual Burden Hours: 6,164.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 671(a)(6), 42 U.S.C. 671(a)(7), 42 U.S.C. 673(a)(8)(B), and 42 U.S.C. 674(a) and (b).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–05157 Filed 3–11–21; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0026]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that NULIBRY (fosdenopterin), manufactured by Origin Biosciences, Inc., meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Althea Cuff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4061, Fax: 301–796–9856, email: *althea.cuff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that NULIBRY (fosdenopterin), manufactured by Origin Biosciences, Inc., meets the criteria for a priority review voucher.

NULIBRY (fosdenopterin) is indicated to reduce the risk of mortality in patients with Molybdenum Cofactor Deficiency Type A.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *http://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about NULIBRY (fosdenopterin), go to the ''Drugs@FDA'' website at *http://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: March 9, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–05207 Filed 3–11–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1440]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on April 27, 2021, from 1 p.m. to 3:45 p.m. Eastern Time, on April 28, 2021, from 9 a.m. to 3 p.m. Eastern Time, and on April 29, 2021, from 9 a.m. to 5:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2020–N–1440. The docket will close on April 26, 2021. Submit either electronic or written comments on this public meeting by April 26, 2021. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 26, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time

at the end of April 26, 2021. 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.

Comments received on or before April 20, 2021, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate. You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1440 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday. Please call 240–402–7500 ahead of the meeting time to verify access.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, 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:

Joyce Yu and Takyiah Stevenson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform.

The committee will hear updates on certain supplemental biologics license applications (sBLAs) approved under 21 CFR 601.40 (subpart E, accelerated approval regulations) with confirmatory trial(s) that have not verified clinical benefit. These updates will provide information on: (1) The status and results of confirmatory clinical studies for a given indication; and (2) any ongoing and planned trials. Confirmatory studies are post-marketing studies to verify and describe the clinical benefit of a drug after it receives accelerated approval. Based on the updates provided, the committee will have a general discussion focused on next steps for each product including whether the indications should remain on the market while additional trial(s) are conducted.

On April 27, 2021, the committee will receive updates on the following product: BLA 761034/S–018, for TECENTRIQ (atezolizumab), submitted by Genentech, Inc., indicated in combination with paclitaxel protein-bound for the treatment of adult patients with unresectable locally advanced or metastatic triple-negative breast cancer (TNBC) whose tumors express PD–L1 (PD–L1 stained tumor-infiltrating immune cells (IC) of any intensity covering ≥1% of the tumor area), as determined by an FDA-approved test.

On April 28, 2021, the committee will receive updates on the following products: (1) BLA 125514/S–017, trade name KEYTRUDA (pembrolizumab), submitted by Merck Sharpe & Dohme Corp., indicated for the treatment of patients with locally advanced or metastatic urothelial carcinoma who are not eligible for cisplatin-containing chemotherapy; and (2) BLA 761034/S–001, trade name TECENTRIQ (atezolizumab), submitted by Genentech, Inc., indicated for patients

with locally advanced or metastatic urothelial carcinoma who are not eligible for cisplatin-containing chemotherapy.

On April 29, 2021, the committee will receive updates on the following products: (1) BLA 125514/S–024, trade name KEYTRUDA (pembrolizumab), submitted by Merck Sharpe & Dohme Corp., indicated for the treatment of patients with recurrent locally advanced or metastatic gastric or gastroesophageal junction adenocarcinoma whose tumors express PD–L1 [Combined Positive Score (CPS) ≥1] as determined by an FDA-approved test, with disease progression on or after two or more prior lines of therapy including fluoropyrimidine- and platinum-containing chemotherapy and if appropriate, HER2/neu-targeted therapy; (2) BLA 125514/S–042, trade name KEYTRUDA (pembrolizumab), submitted by Merck Sharpe & Dohme Corp., indicated for the treatment of patients with hepatocellular carcinoma (HCC) who have been previously treated with sorafenib; and (3) BLA 125554/S–041, trade name OPDIVO (nivolumab), submitted by Bristol-Myers Squibb Company, indicated as a single agent for the treatment of patients with hepatocellular carcinoma (HCC) who have been previously treated with sorafenib.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before April 20, 2021, will be provided to the committee. Oral presentations from the public will be scheduled from approximately 2:55 p.m. to 3:15 p.m. Eastern Time on April 27, 2021. Oral presentations from the public will also be scheduled between approximately 10:55 a.m. to 11:15 a.m., and 2:10 p.m. to 2:30 p.m. Eastern Time on April 28, 2021. Oral presentations from the public will also be scheduled between approximately 10:50 a.m. to 11:10 a.m., 1:55 p.m. to 2:15 p.m., and from 4:40 p.m. to 5 p.m. Eastern Time on April 29, 2021. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 12, 2021. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 13, 2021.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Joyce Yu and Takyiah Stevenson (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 8, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–05202 Filed 3–11–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2143]

Withdrawal of Approval of Five Abbreviated New Drug Applications for Bacitracin for Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Center for Drug Evaluation and Research (CDER) is withdrawing approval of five abbreviated new drug applications (ANDAs) from multiple holders. Akorn Inc. (Akorn), Mylan ASI LLC (Mylan), Pfizer Inc. (Pfizer), X–GEN Pharmaceuticals, Inc. (X–GEN), and Fresenius Kabi USA, LLC (Fresenius) have requested withdrawal of approval of their respective applications and have waived their opportunity for a hearing.

DATES: Approval is withdrawn as of March 12, 2021.

FOR FURTHER INFORMATION CONTACT: Sungjoon Chi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3600, *Sungjoon.Chi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On January 31, 2020, FDA requested that all application holders of bacitracin for injection voluntarily request withdrawal of approval of their applications under § 314.150(d) (21 CFR 314.150(d)). Bacitracin for injection is an antibiotic for intramuscular administration, the use of which is limited to the treatment of infants with pneumonia and empyema caused by staphylococci shown to be susceptible to the drug. Bacitracin for injection poses serious risks, including nephrotoxicity and anaphylactic reactions. Healthcare professionals generally no longer use bacitracin for injection to treat infants with pneumonia and empyema because other effective FDA-approved treatments are available that do not have these risks.

In April 2019, FDA's Antimicrobial Drugs Advisory Committee met and discussed the safety and effectiveness of bacitracin for injection. The advisory committee voted almost unanimously, with one abstention, that the benefits of bacitracin for intramuscular injection do not outweigh its risks, including nephrotoxicity and anaphylactic reactions, for the drug's only approved indication. Based on FDA's review of

currently available data and information, the Agency believes that the potential problems associated with bacitracin for injection are sufficiently serious that the drug should be removed from the market.

In separate letters dated February 5, 2020, Akorn and Mylan requested that FDA withdraw approval of ANDAs 206719 and 090211 under § 314.150(d). Akorn and Mylan each waived their opportunity for a hearing. Additionally, in separate letters dated February 7, 2020, Pfizer, X–GEN, and Fresenius requested that FDA withdraw approval of ANDAs 060733, 064153, and 065116, respectively, under § 314.150(d). Pfizer, X–GEN, and Fresenius also waived their opportunity for a hearing. Additionally, Akorn stated that it has never launched this product since its approval; X–GEN stated that it no longer manufactures bacitracin for injection under ANDA 064153; and Mylan stated that its product has not been in commercial distribution since 2012.

Therefore, for the reasons discussed above, which the applicants do not dispute in their letters requesting withdrawal of approval under § 314.150(d), FDA's approval of ANDAs 206719, 090211, 060733, 064153, 065116, and all amendments and supplements thereto, is withdrawn (see **DATES**). Distribution of Akorn's bacitracin for injection (50,000 units/vial), Mylan's bacitracin for injection (50,000 units/vial), Pfizer's bacitracin for injection (10,000 units/vial and 50,000 units/vial), X–GEN's bacitracin for injection (50,000 units/vial), or Fresenius's bacitracin for injection (50,000 units/vial) into interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d))).

Dated: March 1, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–05105 Filed 3–11–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0279]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prescription Drug Marketing; Administrative Procedures, Policies, and Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with prescription drug marketing under the Prescription Drug Marketing Act of 1987 and the Prescription Drug Amendments of 1992.

DATES: Submit either electronic or written comments on the collection of information by May 11, 2021.

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 May 11, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 11, 2021. 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–2011–N–0279 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Prescription Drug Marketing; Administrative Procedures, Policies, and Requirements.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management

Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prescription Drug Marketing—21 CFR Part 203

OMB Control Number 0910–0435—Extension

This information collection supports FDA regulations codified at part 203 (21 CFR part 203) implementing the Prescription Drug Marketing Act of 1987 (PDMA) and the Prescription Drug Amendments of 1992. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the PDMA, establishes requirements for the following:

- Reimportation of prescription drugs.
- The sale, purchase, or trade of or the offer to sell, purchase, or trade, prescription drugs that were purchased by hospitals or health care entities or donated to charitable organizations.
- The distribution of prescription drug samples by mail, common carrier, or another means of distribution.
- Applications for reimportation to provide emergency medical care.
- An appeal from an adverse decision by the district office.
- Drug sample storage and handling.
- Fulfillment houses, shipping and mailing services, comarketing agreements, and third-party recordkeeping.
- Donation of drug samples to charitable institutions.

The PDMA was enacted, in part, because insufficient safeguards existed over the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs. The PDMA is intended to ensure that drug products purchased by consumers are safe and effective, and to avoid an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs are sold.

The applicable regulations in part 203 include reporting and recordkeeping requirements intended to help achieve the following goals: (1) To ban the reimportation of prescription drugs produced in the United States, except when reimported by the manufacturer or under FDA authorization for emergency medical care; (2) to ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any prescription drug sample; (3) to limit the distribution of drug samples to practitioners licensed or authorized to prescribe such drugs or to pharmacies of hospitals or other healthcare entities at the request of a licensed or authorized practitioner; (4) to require licensed or authorized practitioners to request prescription drug samples in writing; (5) to mandate storage, handling, and recordkeeping requirements for prescription drug samples; and (6) to prohibit, with certain exceptions, the sale, purchase, or trade, or the offer to sell, purchase, or trade, of prescription drugs that were purchased by hospitals or other healthcare entities or that were donated or supplied at a reduced price to a charitable organization.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR citation; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
203.11; reimportation applications	1	1	1	.5 (30 minutes)	[2] 1
203.37(a); falsification of records	140	21.4	3,000	.25 (15 minutes)	750
203.37(b); loss or theft of samples	140	178.57	25,000	.25 (15 minutes)	6,250
203.37(c); conviction of representatives	1	1	1	1	1
203.37(d); contact person	20	1	20	.25 (15 minutes)	5
Total			28,022		7,007

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Rounded to the nearest whole number.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity; 21 CFR section	Number of recordkeepers	Number of records per recordkeeper [2]	Total annual records	Average burden per recordkeeping	Total hours
Subpart C: Sales Restrictions					
203.23(a) and (b); returns	2,200	71.9909	158,380	.25 (15 minutes)	39,595
203.23(c); documentation of storage of returns	2,200	71.9909	158,380	.08 (6 minutes)	12,670
Subpart D: Samples					
203.30–203.39; documentation regarding sample distributions.	140	202	28,280	~.07–.08 (~4–5 minutes).	2,121
Total			345,040		54,386

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Rounded to the nearest whole number.

Based on a review of Agency data, we assume 2,200 respondents may incur burden resulting from the information collection activity associated with the requirements in § 203.23(a) through (c). One hundred and forty pharmaceutical companies have submitted information to the Agency on drug sample distribution under part 203. Those same respondents also have recordkeeping requirements under part 203. Our estimate of the burden of the average burden per recordkeeping reflects a cumulative average to cover all applicable requirements. Since our last request for OMB approval, we have adjusted our estimate of the overall burden downward to reflect a decrease of 2,567,713 hours and 64,432,232 records annually. We attribute this adjustment to a more accurate reflection of the number of respondents to the information collection and clarification that burden attributable to requirements of the Drug Quality and Security Act are not included in this information collection.

Dated: March 9, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–05214 Filed 3–11–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0026]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that AMONDYS 45 (casimersen), manufactured by Sarepta Therapeutics Inc., meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Althea Cuff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4061, Fax: 301–796–9856, email: *althea.cuff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that AMONDYS 45 (casimersen) manufactured by Sarepta Therapeutics Inc., meets the criteria for a priority review voucher. AMONDYS 45 (casimersen) is indicated for the treatment of Duchenne Muscular Dystrophy (DMD) in patients who have a confirmed mutation of the DMD gene that is amenable to exon 45 skipping.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about AMONDYS 45 (casimersen), go to the ''Drugs@FDA'' website at *https://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: March 9, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–05208 Filed 3–11–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2197]

VistaPharm, Inc., et.al.; Withdrawal of Approval of 10 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on December 11, 2020. The document announced the withdrawal of approval (as of January 11, 2021) of 10 abbreviated new drug applications (ANDAs) from multiple applicants. The document indicated that FDA was withdrawing approval of the following two ANDAs after receiving a withdrawal request from VistaPharm, Inc., 7265 Ulmerton Rd., Largo, FL 33771: ANDA 040323, Prednisolone Syrup, 15 milligrams (mg)/5 milliliters (mL); and ANDA 075782, Valproic Acid Syrup, 250 mg/5 mL. Before FDA withdrew the approval of these ANDAs, VistaPharm, Inc., informed FDA that it did not want

the approval of the ANDAs withdrawn. Because VistaPharm, Inc., timely requested that approval of these ANDAs not be withdrawn, the approval of ANDAs 040323 and 075782 are still in effect.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Friday, December 11, 2020 (85 FR 80119), appearing in FR Doc. 2020–27303, the following correction is made:

On page 80119, in the table, the entries for ANDAs 040323 and 075782 are removed.

Dated: March 1, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–05103 Filed 3–11–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Population Sciences and Epidemiology.

Date: April 6, 2021.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, PSE IRG Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 594–6594, *steeleln@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Population Sciences and Epidemiology: Additional Applications.

Date: April 6, 2021.

Time: 12:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Andrew Louden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20817, (301) 435–1985, *loudenan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Meeting Conflict: Glioma, Neuroinflammation and Autoimmunity and Neurovirology.

Date: April 7, 2021.

Time: 1:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C. Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 8, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–05163 Filed 3–11–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Expanding Extramural Research Opportunities at the NIH Clinical Center (U01 Clinical Trial Optional).

Date: April 7, 2021.

Time: 11:00 a.m. to 1:00 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 3G41B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Zhuqing (Charlie) Li, 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 3G41B, Rockville, MD 20852, (240) 669–5068, *zhuqing.li@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 8, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–05161 Filed 3–11–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE ON DRUG ABUSE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: May 4, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Contact Person: Adrienne Snyder, Management Analyst, Office of the Scientific Director, NIH Biomedical Research Center, National Institute on Drug Abuse, 251 Bayview Boulevard, Suite 200, Room 04A524, Baltimore, MD 21224, 443–740–2394, *adrienne.snyder@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 8, 2021.

Tyeshia M. Roberson,

Program Analyst,Office of Federal Advisory Committee Policy.

[FR Doc. 2021–05160 Filed 3–11–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Assessment of Human Placenta Development and Function Across Pregnancy.

Date: April 7, 2021.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Andrew Maxwell Wolfe, Ph.D., Scientific Review Officer, Center for Scientific Review, NIH, 6701 Rockledge Dr., Room 6214, Bethesda, MD 20892, (301) 402–3019, *andrew.wolfe@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–18–901: Chronic, Non-Communicable Diseases and Disorders Across the Lifespan: Fogarty International Research Training Award.

Date: April 8, 2021.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodegeneration and Mitochondrial Dysfunction.

Date: April 8, 2021.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cellular and Molecular Neuroscience.

Date: April 8, 2021.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7850, Bethesda, MD 20892, (301) 435–1203, *laurent.taupenot@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Immunomodulatory Effects and Human Diseases.

Date: April 8, 2021.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, Bethesda, MD 20892, 301–451–5953, *tuoj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Strengthening HIV Prevention Efforts for Women in the Southern U.S.

Date: April 8, 2021.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 8, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–05162 Filed 3–11–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Audacious Goals Initiative: Translation-Enabling Models to Evaluate Survival and Integration of Regenerated Neurons in the Visual System.

Date: April 12, 2021.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ashley Fortress, Ph.D., Designated Federal Official, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20817, (301) 451–2020, *ashley.fortress@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 8, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–05122 Filed 3–11–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Epilepsy, Spinal Cord Injury, and Parkinson's Disease.

Date: March 31, 2021.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics in Aging: exercise, juvenile protective factors, stroke, dementia, sarcopenia, and post surgical and ICU outcomes on aging.

Date: April 6, 2021.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Genes, Genomes and Genetics.

Date: April 8, 2021.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rebecca Catherine Burgess, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–480–8034, *rebecca.burgess@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–20–0011: 2021 Pioneer Award Review.

Date: April 12–14, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: James W Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 9, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–05213 Filed 3–11–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2101]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; Department of Homeland Security.

ACTION: Notice; correction.

SUMMARY: On January 19, 2021, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table to be used in lieu of the erroneous information. The tables provided here represent the proposed flood hazard determinations and communities affected for Norfolk County, Massachusetts (All Jurisdictions); Plymouth County, Massachusetts (All Jurisdictions); and, Suffolk County, Massachusetts (All Jurisdictions).

DATES: Comments are to be submitted on or before June 10, 2021.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2101, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and

technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 86 FR 5228 in the January 19, 2021, issue of the **Federal Register**, FEMA published tables titled Norfolk County, Massachusetts (All Jurisdictions); Plymouth County, Massachusetts (All Jurisdictions); and Suffolk County, Massachusetts (All Jurisdictions). These tables contained inaccurate information as to the communities affected by the proposed flood hazard determinations for the Town of Plainville in Norfolk County; the Town of Hanover and the Town of Hull in Plymouth County; and the Town of Winthrop in Suffolk County. In this document, FEMA is publishing the tables containing the accurate information. The information provided below should be used in lieu of that previously published.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Norfolk County, Massachusetts (All Jurisdictions) **Project: 15–01–0633S Preliminary Date: June 19, 2020**	
City of Quincy	City Hall, 1305 Hancock Street, Quincy, MA 02169.
Town of Avon	Town Hall, 65 East Main Street, Avon, MA 02322.
Town of Bellingham	Municipal Center, 10 Mechanic Street, Bellingham, MA 02019.
Town of Braintree	Town Hall, 1 John F. Kennedy Memorial Drive, Braintree, MA 02184.
Town of Brookline	Town Hall, 333 Washington Street, Brookline, MA 02445.
Town of Canton	Town Hall, 801 Washington Street, Canton, MA 02021.
Town of Cohasset	Town Hall, 41 Highland Avenue, Cohasset, MA 02025.
Town of Dedham	Town Hall, 450 Washington Street, Dedham, MA 02026.
Town of Dover	Town House, 5 Springdale Avenue, Dover, MA 02030.
Town of Foxborough	Town Hall, 40 South Street, Foxborough, MA 02035.
Town of Franklin	Town Hall, 355 East Central Street, Franklin, MA 02038.
Town of Holbrook	Town Hall, 50 North Franklin Street, Holbrook, MA 02343.
Town of Medfield	Town Hall, 459 Main Street, Medfield, MA 02052.
Town of Medway	Town Hall, 155 Village Street, Medway, MA 02053.
Town of Millis	Veterans Memorial Building, 900 Main Street, Millis, MA 02054.
Town of Milton	Town Office Building, 525 Canton Avenue, Milton, MA 02186.
Town of Needham	Town Hall, 1471 Highland Avenue, Needham, MA 02492.
Town of Norfolk	Town Hall, 1 Liberty Lane, Norfolk, MA 02056.
Town of Norwood	Town Hall, 566 Washington Street, Norwood, MA 02062.
Town of Randolph	Town Hall, 41 South Main Street, Randolph, MA 02368.
Town of Sharon	Town Office Building, 90 South Main Street, Sharon, MA 02067.
Town of Stoughton	Town Hall, 10 Pearl Street, Stoughton, MA 02072.
Town of Walpole	Town Hall, 135 School Street, Walpole, MA 02081.
Town of Wellesley	Town Hall, 525 Washington Street, Wellesley, MA 02482.
Town of Westwood	Town Hall, 580 High Street, Westwood, MA 02090.
Town of Weymouth	Town Hall, 75 Middle Street, Weymouth, MA 02189.
Town of Wrentham	Town Hall, 79 South Street, Wrentham, MA 02093.
Plymouth County, Massachusetts (All Jurisdictions) **Project: 15–01–0633S Preliminary Date: June 19, 2020**	
Town of Abington	Town Hall, 500 Gliniewicz Way, Abington, MA 02351.
Town of Hingham	Town Hall, 210 Central Street, Hingham, MA 02043.
Town of Norwell	Town Hall, 345 Main Street, Norwell, MA 02061.
Town of Rockland	Town Hall, 242 Union Street, Rockland, MA 02370.
Suffolk County, Massachusetts (All Jurisdictions) **Project: 15–01–0633S Preliminary Date: June 19, 2020**	
City of Boston	City Hall, 1 City Hall Square, Boston, MA 02201.
City of Chelsea	City Hall, 500 Broadway, Chelsea, MA 02150.
City of Revere	City Hall, 281 Broadway, Revere, MA 02151.

[FR Doc. 2021–05220 Filed 3–11–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2020–0040; OMB No. 1660–0150]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Rated Orders, Adjustments, Exceptions, or Appeals Under the Emergency Management Priorities and Allocations System (EMPAS)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before April 12, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Marc Geier, Office of Policy and Program Analysis, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, 202.924.0196 or *FEMA-DPA@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on January 4, 2021 at 86 FR 113 with a 60-day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Rated Orders, Adjustments, Exceptions, or Appeals Under the Emergency Management Priorities and Allocations System (EMPAS).

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0150.

FEMA Forms: No forms.

Abstract: To help ensure the timely delivery of goods and services in support of approved emergency management programs, section 333.13 of the Emergency Management Priorities and Allocations System regulation requires suppliers to accept or reject priority rated orders for these goods and services within established time periods (10 working days for a ''DX'' rated order and 15 working days for a ''DO'' rated order). Rated orders may be placed directly by the Federal Government on a contractor or supplier, or they may ''flow down'' from a contractor to subsequent subcontractors or suppliers. Additionally, FEMA may facilitate sales to third parties. Section 333.13 also requires that certain emergency preparedness rated orders must be accepted or rejected within shorter time periods as specified in section 333.12(b). Section 333.13(d)(3) of the EMPAS regulation requires that, if after acceptance of a rated order the supplier discovers that shipment or performance against the order will be delayed, the supplier must notify the customer immediately in written electronic format, giving the reasons for the delay and advising the customer of a new shipment or performance date. This collection of information involves order communications between a Federal Government prime contractor and its subcontractors, unless FEMA is facilitating a sale to a third party. In those situations, FEMA would collect information on the customer as part of the sale facilitation.

Finally, under section 333.70 each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to 44 CFR part 333 or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided. Under section 333.71, any person who has had a request for adjustment or exception denied by FEMA under section 333.70 may appeal to the Administrator. Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from a full and precise statement of the reasons the decision should be modified or reversed.

Affected Public: For Profit Business; Private Non-Profit; State, local or Tribal government.

Estimated Number of Respondents: 26.

Estimated Number of Responses: 26.

Estimated Total Annual Burden Hours: 8.5.

Estimated Total Annual Respondent Cost: $533.

Estimated Respondents' Operation and Maintenance Costs: None.

Estimated Respondents' Capital and Start-Up Costs: None.

Estimated Total Annual Cost to the Federal Government: $188.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent L. Brown,

Sr. Manager, Records Management Branch, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2021–05206 Filed 3–11–21; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2115]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before June 10, 2021.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2115, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Jackson County, Arkansas and Incorporated Areas **Project: 20–06–0064S Preliminary Date: September 25, 2020**	
City of Campbell Station	Campbell Station City Hall, 5005 Keeter Circle, Tuckerman, AR 72473.
City of Diaz	Diaz Fire Department, 3401 South Main Street, Newport, AR 72112.
City of Newport	Municipal Building, 615 3rd Street, Newport, AR 72112.
City of Tupelo	Mayor's Office, 610 Pine Street, Tupelo, AR 72169.
Town of Jacksonport	Diaz City Hall, 3405 South Main Street, Newport, AR 72112.
Town of Weldon	Weldon Mayor's Office, 1404 Weldon Avenue, Newport, AR 72112.
Unincorporated Areas of Jackson County	Diaz City Hall, 3405 South Main Street, Newport, AR 72112.
Woodruff County, Arkansas and Incorporated Areas **Project: 20–06–0063S Preliminary Date: September 25, 2020**	
City of Augusta	City Hall, 210 Main Street, Augusta, AR 72006.
City of Cotton Plant	City Hall, 110 Central Avenue, Cotton Plant, AR 72036.

Community	Community map repository address
City of McCrory	City Hall, 109 North Jackson Street, McCrory, AR 72101.
City of Patterson	City Hall, 123 South Main Street, Patterson, AR 72123.
Town of Hunter	Woodruff County Courthouse, 500 North 3rd Street, Augusta, AR 72006.
Unincorporated Areas of Woodruff County	Woodruff County Courthouse, 500 North 3rd Street, Augusta, AR 72006.
City and County of Denver, Colorado Project: 19–08–0041S Preliminary Date: October 28, 2020	
City and County of Denver	Department of Transportation and Infrastructure, 201 West Colfax Avenue, Department 608, Denver, CO 80202.
Liberty County, Florida and Incorporated Areas Project: 12–04–0466S Preliminary Date: August 26, 2020	
City of Bristol	City Clerks Office, 12444 Northwest Virginia G. Weaver Street, Bristol, FL 32321.
Unincorporated Areas of Liberty County	Liberty County Building Department, 10818 Northwest State Road 20, Bristol, FL 32321.
Wakulla County, Florida and Incorporated Areas Project: 12–04–0466S Preliminary Date: April 11, 2018	
Unincorporated Areas of Wakulla County	Wakulla County Planning and Community Development Department, 3093 Crawfordville Highway, Crawfordville, FL 32327.
El Paso County, Texas and Incorporated Areas Project: 17–06–1114S Preliminary Date: July 8, 2020	
City of El Paso	City 3 Building, 801 Texas Avenue, El Paso, TX 79901.
City of San Elizario	City Hall, 12710 Church Street, San Elizario, TX 79849.
City of Socorro	Planning and Zoning Department, 860 North Rio Vista Road, Socorro, TX 79927.
Town of Anthony	Town Hall, 401 Wildcat Drive, Anthony, TX 79821.
Town of Clint	Town Hall, 200 North San Elizario Road, Clint, TX 79836.
Town of Horizon City	Town Hall, 14999 Darrington Road, Horizon City, TX 79928.
Unincorporated Areas of El Paso County	El Paso County Public Works Department, 800 East Overland Avenue, Suite 200, El Paso, TX 79901.
Village of Vinton	Village Hall, 436 East Vinton Road, Vinton, TX 79821.
Ysleta Del Sur Pueblo of Texas	Ysleta Del Sur Pueblo of Texas Department of Public Safety, Emergency Management Division, 119 South Old Pueblo Road, El Paso, TX 79907.

[FR Doc. 2021–05223 Filed 3–11–21; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2021–0009; OMB No. 1660–0054]

Agency Information Collection Activities: Proposed Collection; Comment Request; Assistance to Firefighters Grant Program and Fire Prevention and Safety Grants-Grant Application Supplemental Information

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day Notice of Revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a currently approved collection with revisions. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the applications for the Assistance to Firefighters Grant (AFG) program, the Fire Prevention and Safety (FP&S) Grants program, the Staffing for Adequate Fire and Emergency Response (SAFER) Grants program, and the Assistance to Firefighters Grant Program—COVID–19 Supplemental (AFG–S). These programs focus on enhancing the safety of the public and firefighters with respect to fire and fire-related hazards.

DATES: Comments must be submitted on or before May 11, 2021.

ADDRESSES: Submit comments at *www.regulations.gov* under Docket ID FEMA–2021–0009. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID, and 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: William Dunham, Fire Program Specialist, FEMA, Grant Programs Directorate, 202–786–9813. 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: The authority for these grant programs are derived from the Coronavirus Aid,

Relief, and Economic Security (CARES) Act, Div. B (Pub. L. 116–136); and Sections 33 and 34 of the Federal Fire Prevention and Control Act of 1974, Public Law 93–498, as amended (15 U.S.C. §§ 2229, 2229a). The information collected is grant application information that is necessary to assess the needs of the applicants as well as the benefits to be obtained from the use of funds. The information collected through the program's application is the minimum necessary to evaluate grant applications and is necessary for FEMA to comply with mandates delineated in the law.

Collection of Information

Title: Assistance to Firefighters Grant Program and Fire Prevention and Safety Grants-Grant Application Supplemental Information.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0054.

FEMA Forms: FEMA Form 080–0–2; FEMA Form 080–0–3; FEMA Form 080–0–0–13; FEMA Form 080–0–0–16; FEMA Form 080–0–4; FEMA Form 087–0–0–2.

Abstract: FEMA uses this information to ensure that FEMA's responsibilities under the legislation can be fulfilled accurately and efficiently. The information will be used to objectively evaluate each of the anticipated applicants to determine which of the applicants' proposals in each of the activities are the closest to the established program priorities.

Affected Public: State, Local or Tribal Government; Not-for-Profit Institutions.

Estimated Number of Respondents: 20,608.

Estimated Number of Responses: 24,088.

Estimated Total Annual Burden Hours: 191,501.5.

Estimated Total Annual Respondent Cost: $12,069,921.

Estimated Respondents' Operation and Maintenance Costs: There are no maintenance costs associated with this information collection.

Estimated Respondents' Capital and Start-Up Costs: There are no record keeping, capital, start-up costs associated with this information collection.

Estimated Total Annual Cost to the Federal Government: The cost to the Federal Government is $423,597.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent L. Brown,

Senior Manager, Records Management Branch, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2021–05181 Filed 3–11–21; 8:45 am]

BILLING CODE 9111–64–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of July 20, 2021 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Maricopa County, Arizona and Incorporated Areas Docket No.: FEMA–B–1972	
City of Phoenix	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.
City of Scottsdale	Planning Records, 7447 East Indian School Road, Suite 100, Scottsdale, AZ 85251.
Unincorporated Areas of Maricopa County	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.
Kane County, Illinois and Incorporated Areas Docket No.: FEMA–B–1720	
City of St. Charles	Public Works Engineering Division, 1405 South 7th Avenue, St. Charles, IL 60174.
Unincorporated Areas of Kane County	Kane County Government Center, Building A, Water Resources Department, 719 Batavia Avenue, Geneva, IL 60134.
Linn County, Iowa and Incorporated Areas Docket No.: FEMA–B–1979	
City of Alburnett	City Hall, 102 East 1st Street, Alburnett, IA 52202.
City of Bertram	City Hall, 50 Angle Street, Bertram, IA 52403.
City of Cedar Rapids	City Hall, 101 1st Street Southeast, Cedar Rapids, IA 52401.
City of Center Point	City Hall, 200 Franklin Street, Center Point, IA 52213.
City of Central City	City Hall, 137 4th Street North, Central City, IA 52214.
City of Coggon	City Hall, 118 East Main Street, Coggon, IA 52218.
City of Ely	City Hall, 1570 Rowley Street, Ely, IA 52227.
City of Fairfax	City Hall, 300 80th Street Court, Fairfax, IA 52228.
City of Hiawatha	City Hall, 101 Emmons Street, Hiawatha, IA 52233.
City of Lisbon	City Clerk Office, 115 North Washington Street, Lisbon, IA 52253.
City of Marion	City Hall, 1225 6th Avenue, Suite 200, Marion, IA 52302.
City of Mount Vernon	City Hall, 213 1st Street Northwest, Mount Vernon, IA 52314.
City of Palo	City Hall, 2800 Hollenbeck Road, Palo, IA 52324.
City of Robins	City Hall, 265 South 2nd Street, Robins, IA 52328.
City of Springville	City Hall, 304 Broadway, Springville, IA 52336.
City of Walford	City Hall, 120 5th Street North, Walford, IA 52351.
City of Walker	City Hall, 204 Greene Street, Walker, IA 52352.
Unincorporated Areas of Linn County	Linn County Planning & Development Department, 935 2nd Street Southwest, Cedar Rapids, IA 52404.
Claiborne County, Mississippi and Incorporated Areas Docket No.: FEMA–B–1936	
Unincorporated Areas of Claiborne County	Claiborne County William ''Matt'' Ross Administration Building, 510 Market Street, Port Gibson, MS 39150.
Hinds County, Mississippi and Incorporated Areas Docket No.: FEMA–B–1936	
City of Byram	Public Works Building, 550 Executive Boulevard, Byram, MS 39272.
City of Clinton	Municipal Annex Building, 961 Highway 80 East, Clinton, MS 39056.
City of Jackson	Warren Hood Building, 200 South President Street, Suite 424, Jackson, MS 39201.
Unincorporated Areas of Hinds County	Hinds County Annex Building, 127 West Main Street, Raymond, MS 39154.
Scott County, Mississippi and Incorporated Areas Docket No.: FEMA–B–1936	
Unincorporated Areas of Scott County	Scott County Chancery Clerk's Office, 100 East Main Street, Forest, MS 39074.
Smith County, Mississippi and Incorporated Areas Docket No.: FEMA–B–1936	
Unincorporated Areas of Smith County	Smith County Emergency Management Building, 143 Main Street, Raleigh, MS 39153.

[FR Doc. 2021–05224 Filed 3–11–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2102]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; Department of Homeland Security.

ACTION: Notice; correction.

SUMMARY: On January 25, 2021 FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table to be used in lieu of the erroneous information. The table provided here represents the proposed flood hazard determinations and communities affected for Columbia County, Pennsylvania (All Jurisdictions).

DATES: Comments are to be submitted on or before June 10, 2021.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2102, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 86 FR 6898–6899 in the January 25, 2021, issue of the **Federal Register**, FEMA published a table titled ''Columbia County, Pennsylvania and Incorporated Areas''. This table contained inaccurate information in the header featured in the table. In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Columbia County, Pennsylvania (All Jurisdictions) **Project: 15–03–0227S Preliminary Date: May 31, 2019 and August 28, 2020**	
Borough of Benton	Borough Office, 590 Everett Street, Benton, PA 17814.
Borough of Berwick	City Hall, 1800 North Market Street, Berwick, PA 18603.
Borough of Briar Creek	Briar Creek Borough Hall, 6029 Park Road, Berwick, PA 18603.
Borough of Catawissa	Borough Hall, 307 Main Street, Catawissa, PA 17820.
Borough of Millville	Borough Office, 136 Morehead Avenue, Millville, PA 17846.
Borough of Orangeville	Borough Building, 301 Mill Street, Orangeville, PA 17859.
Borough of Stillwater	Borough Hall, 63 McHenry Street, Stillwater, PA 17878.
Town of Bloomsburg	Town Hall, 301 East 2nd Street, Bloomsburg, PA 17815.
Township of Beaver	Beaver Township Secretary, 650 Beaver Valley Road, Bloomsburg, PA 17815.
Township of Benton	Township Building, 236 Shickshinny Road, Benton, PA 17814.
Township of Briar Creek	Briar Creek Township Building, 150 Municipal Road, Berwick, PA 18603.
Township of Catawissa	Township Building, 153 Old Reading Road, Catawissa, PA 17820.
Township of Cleveland	Cleveland Township Building, 46 Jefferson Road, Elysburg, PA 17824.

Community	Community map repository address
Township of Conyngham	Conyngham Township Building, 209 Smith Street, Wilburton, PA 17888.
Township of Fishing Creek	Fishing Creek Township Building, 3188 State Route 487, Orangeville, PA 17859.
Township of Franklin	Franklin Township Building, 313 Mount Zion Road, Catawissa, PA 17820.
Township of Greenwood	Greenwood Township Building, 90 Shed Road, Millville, PA 17846.
Township of Hemlock	Hemlock Township Building, 26 Firehall Road, Bloomsburg, PA 17815.
Township of Jackson	Jackson Municipal Building, 862 Waller-Divide Road, Benton, PA 17814.
Township of Locust	Locust Municipal Building, 1223A Numidia Drive, Catawissa, PA 17820.
Township of Madison	Madison Township Office, 136 Morehead Avenue, Millville, PA 17846.
Township of Main	Main Township Office, 345 Church Road, Bloomsburg, PA 17815.
Township of Mifflin	Mifflin Township Building, 207 East First Street, Mifflinville, PA 18631.
Township of Montour	Montour Township Office, 195 Rupert Drive, Bloomsburg, PA 17815.
Township of Mount Pleasant	Mount Pleasant Community Center, 558 Millertown Road, Bloomsburg, PA 17815.
Township of North Centre	North Centre Township Building, 1059 State Route 93, Berwick, PA 18603.
Township of Orange	Orange Municipal Building, 2028 State Route 487, Orangeville, PA 17859.
Township of Pine	Pine Township Building, 309 Wintersteen School Road, Millville, PA 17846.
Township of Roaring Creek	Roaring Creek Township Secretary, 28 Brass School Road, Catawissa, PA 17820.
Township of Scott	Scott Municipal Building, 350 Tenny Street, Bloomsburg, PA 17815.
Township of South Centre	South Centre Municipal Building, 6260 Fourth Street, Bloomsburg, PA 17815.
Township of Sugarloaf	Sugarloaf Municipal Building, 90 Schoolhouse Road, Benton, PA 17814.

[FR Doc. 2021–05221 Filed 3–11–21; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of

the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama:					
Tuscaloosa (FEMA Docket No.: B–2073).	City of Northport (20–04–4421P).	The Honorable Donna Aaron, Mayor, City of Northport, 3500 McFarland Boulevard, Northport, AL 35476.	City Hall, 3500 McFarland Boulevard, Northport, AL 35476.	Feb. 2, 2021	010202
Tuscaloosa (FEMA Docket No.: B–2073).	Unincorporated areas of Tuscaloosa County (20–04–4421P).	The Honorable Rob Robertson, Probate Judge, Tuscaloosa County, 714 Greensboro Avenue, Tuscaloosa, AL 35401.	Tuscaloosa County Public Works Department, 2810 35th Street, Tuscaloosa, AL 35401.	Feb. 2, 2021	010201
Colorado:					
Boulder (FEMA Docket No.: B–2073).	City of Boulder (20–08–0632P).	The Honorable Sam Weaver, Mayor, City of Boulder, P.O. Box 791, Boulder, CO 80306.	Central Records Department, 1777 Broadway Street, Boulder, CO 80302.	Feb. 19, 2021	080024
Boulder (FEMA Docket No.: B–2073).	Unincorporated areas of Boulder County (20–08–0632P).	The Honorable Deb Gardner, Chair, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	Boulder County Department of Public Works, 1739 Broadway, Suite 300, Boulder, CO 80306.	Feb. 19, 2021	080023
Denver (FEMA Docket No.: B–2067).	City and County of Denver (20–08–0372P).	The Honorable Michael B. Hancock, Mayor, City and County of Denver, 1437 North Bannock Street, Room 350, Denver, CO 80202.	Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202.	Feb. 11, 2021	080046
El Paso (FEMA Docket No.: B–2067).	Unincorporated areas of El Paso County (20–08–0369P).	The Honorable Mark Waller, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	Feb. 16, 2021	080059
Weld (FEMA Docket No.: B–2073).	City of Greeley (20–08–0390P).	The Honorable John Gates, Mayor, City of Greeley, 1000 10th Street, Greeley, CO 80631.	City Hall, 1000 10th Street, Greeley, CO 80631.	Feb. 16, 2021	080184
Connecticut: New Haven (FEMA Docket No.: B–2076).	Town of Seymour (20–01–0712P).	The Honorable W. Kurt Miller, First Selectman, Town of Seymour Board of Selectmen, 1 1st Street, Seymour, CT 06483.	Town Hall, 1 1st Street, Seymour, CT 06483.	Feb. 16, 2021	090088
Florida:					
Bay (FEMA Docket No.: B–2067).	Unincorporated areas of Bay County (19–04–4735P).	The Honorable Robert Carroll, Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Department, 840 West 11th Street, Panama City, FL 32401.	Feb. 16, 2021	120004
Hillsborough (FEMA Docket No.: B–2067).	City of Tampa (20–04–0296P).	The Honorable Jane Castor, Mayor, City of Tampa, 306 East Jackson Street, Tampa, FL 33602.	Planning and Development Department, 1400 North Boulevard, Tampa, FL 33607.	Feb. 8, 2021	120114
Hillsborough (FEMA Docket No.: B–2067).	Unincorporated areas of Hillsborough County (20–04–0296P).	Ms. Bonnie M. Wise, Hillsborough County Administrator, 601 East Kennedy Boulevard, Tampa, FL 33602.	Hillsborough County Development Services Department, 601 East Kennedy Boulevard, Tampa, FL 33602.	Feb. 8, 2021	120112
Lee (FEMA Docket No.: B–2052).	City of Sanibel (20–04–2943P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Community Services Department, 800 Dunlop Road, Sanibel, FL 33957.	Nov. 10, 2020	120402
Manatee (FEMA Docket No.: B–2076).	Unincorporated areas of Manatee County (20–04–3373P).	The Honorable Betsy Benac, Chair, Manatee County Board of Commissioners, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Administration Building, 1112 Manatee Avenue West, Bradenton, FL 34205.	Feb. 16, 2021	120153
Monroe (FEMA Docket No.: B–2073).	City of Marathon (20–04–4546P).	The Honorable Steve Cook, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050.	Planning Department, 9805 Overseas Highway, Marathon, FL 33050.	Feb. 16, 2021	120681
Monroe (FEMA Docket No.: B–2073).	Unincorporated areas of Monroe County (20–04–4807P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Feb. 16, 2021	125129
Orange (FEMA Docket No.: B–2067).	Unincorporated areas of Orange County (20–04–1076P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue, 5th floor, Orlando, FL 32801.	Orange County Planning and Development Department, 4200 South John Young Parkway, Orlando, FL 32839.	Feb. 12, 2021	120179
Osceola (FEMA Docket No.: B–2067).	Unincorporated areas of Osceola County (20–04–1076P).	The Honorable Viviana Janer, Chair, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Building Department, 1 Courthouse Square, Suite 1400, Kissimmee, FL 34741.	Feb. 12, 2021	120189

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Palm Beach (FEMA Docket No.: B–2073).	Village of Royal Palm Beach (20–04–3502P).	The Honorable Fred Pinto, Mayor, Village of Royal Palm Beach, 1050 Royal Palm Beach Boulevard, Royal Palm Beach, FL 33411.	Village Hall, 1050 Royal Palm Beach Boulevard, Royal Palm Beach, FL 33411.	Feb. 9, 2021	120225
Sarasota (FEMA Docket No.: B–2073).	Unincorporated areas of Sarasota County (20–04–4720P).	The Honorable Michael A. Moran, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	Feb. 11, 2021	125144
Georgia:					
Bryan (FEMA Docket No.: B–2073).	Unincorporated areas of Bryan County (20–04–2261P).	The Honorable Carter Infinger, Chairman, Bryan County Board of Commissioners, P.O. Box 430, Pembroke, GA 31321.	Bryan County Department of Community Development, 66 Captain Matthew Freeman Drive, Suite 201, Richmond Hill, GA 31324.	Feb. 5, 2021	130016
Douglas (FEMA Docket No.: B–2073).	Unincorporated areas of Douglas County (20–04–2682P).	Ms. Romona Jackson Jones, Chair, Douglas County Board of Commissioners, 8700 Hospital Drive, 3rd Floor, Douglasville, GA 30134.	Douglas County Engineering Division, 8700 Hospital Drive, 1st Floor, Douglasville, GA 30134.	Feb. 16, 2021	130306
Maine: Kennebec (FEMA Docket No.: B–2073).	City of Waterville (20–01–0604P).	Mr. Michael Roy, Manager, City of Waterville, 1 Common Street, Waterville, ME 04901.	City Hall, 1 Common Street, Waterville, ME 04901.	Feb. 19, 2021	230070
North Carolina:					
Johnston (FEMA Docket No.: B–2067).	Town of Wilson's Mills (20–04–2016P).	The Honorable Jim Uzzle, Jr., Mayor, Town of Wilson's Mills, P.O. Box 448, Wilson's Mills, NC 27593.	Town Hall, 100 Railroad Street, Wilson's Mills, NC 27593.	Feb. 4, 2021	370262
Johnston (FEMA Docket No.: B–2067).	Unincorporated areas of Johnston County (20–04–2016P).	The Honorable Chad M. Stewart, Chairman, Johnston County Board of Commissioners, P.O. Box 1049 Smithfield, NC 27577.	Johnston County Planning Department, 309 East Market Street, Smithfield, NC 27577.	Feb. 4, 2021	370138
Orange (FEMA Docket No.: B–2109).	Unincorporated areas of Orange County (19–04–6660P).	The Honorable Renee Price, Chair, Orange County Board of Commissioners, P.O. Box 8181, Hillsborough, NC 27278.	Orange County Planning Department, 131 West Margaret Lane, Suite 201, Hillsborough, NC, 27278.	Jan. 20, 2021	370342
Pennsylvania: Lackawanna (FEMA Docket No.: B–2073).	City of Scranton (20–03–0798P).	The Honorable Paige G. Cognetti, Mayor, City of Scranton, 340 North Washington Avenue, Scranton, PA 18503.	Planning Department, 340 North Washington Avenue, Scranton, PA 18503.	Feb. 16, 2021	420538
Tennessee: Williamson (FEMA Docket No.: B–2076).	City of Franklin (20–04–2146P).	The Honorable Ken Moore, Mayor, City of Franklin, 109 3rd Avenue South, Suite 103, Franklin, TN 37064.	Engineering Department, 109 3rd Avenue South Franklin, TN 37064.	Feb. 19, 2021	470206
Texas:					
Atascosa (FEMA Docket No.: B–2073).	Unincorporated areas of Atascosa County (20–06–2205P).	The Honorable Robert L. Hurley, Atascosa County Judge, 1 Courthouse Circle Drive, Suite 206, Jourdanton, TX 78026.	Atascosa County Courthouse, 1 Courthouse Circle Drive, Jourdanton, TX 78026.	Feb. 4, 2021	480014
Bell (FEMA Docket No.: B–2067).	City of Temple (20–06–2105P).	The Honorable Tim Davis, Mayor, City of Temple, 2 North Main Street, Suite 103, Temple, TX 76501.	Department of Public Works, Engineering Division, 3210 East Avenue H, Building A, Suite 107, Temple, TX 76501.	Feb. 16, 2021	480034
Bexar (FEMA Docket No.: B–2100).	City of San Antonio (20–06–1037P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Stormwater Division, 114 West Commerce, 7th Floor, San Antonio, TX 78205.	Feb. 16, 2021	480045
Bexar (FEMA Docket No.: B–2100).	Unincorporated areas of Bexar County (20–06–1037P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	Feb. 16, 2021	480035
Denton (FEMA Docket No.: B–2073).	City of Justin (20–06–1792P).	The Honorable Alan Woodall, Mayor, City of Justin, P.O. Box 129, Justin, TX 76247.	Planning and Zoning Department, 415 North College Avenue, Justin, TX 76247.	Feb. 16, 2021	480778
Kaufman (FEMA Docket No.: B–2073).	City of Crandall (20–06–2061P).	The Honorable Danny Kirbie, Mayor, City of Crandall, 110 South Main Street, Crandall, TX 75114.	City Hall, 110 South Main Street, Crandall, TX 75114.	Feb. 19, 2021	480409
Kaufman (FEMA Docket No.: B–2059).	City of Forney (20–06–1624P).	The Honorable Mary Penn, Mayor, City of Forney, P.O. Box 826, Forney, TX 75126.	City Hall, 101 East Main Street, Forney, TX 75126.	Feb. 8, 2021	480410
Kaufman (FEMA Docket No.: B–2059).	Unincorporated areas of Kaufman County (20–06–1624P).	The Honorable Hal Richards, Kaufman County Judge, 100 West Mulberry Street, Kaufman, TX 75142.	Kaufman County Development Services Department, 106 West Grove Street, Kaufman, TX 75142.	Feb. 8, 2021	480411
Kaufman (FEMA Docket No.: B–2073).	Unincorporated areas of Kaufman County (20–06–2061P).	The Honorable Hal Richards, Kaufman County Judge, 100 West Mulberry Street, Kaufman, TX 75142.	Kaufman County Development Services Department, 106 West Grove Street, Kaufman, TX 75142.	Feb. 19, 2021	480411
Randall (FEMA Docket No.: B–2073).	Unincorporated areas of Randall County (20–06–2051P).	The Honorable Ernie Houdashell, Randall County Judge, 501 16th Street, Suite 303, Canyon, TX 79015.	Randall County Road and Bridge Department, 301 West Highway 60, Canyon, TX 79015.	Feb. 19, 2021	480532

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Tarrant (FEMA Docket No.: B–2073).	City of Benbrook (20–06–0768P).	The Honorable Jerry Dittrich, Mayor, City of Benbrook, 911 Winscott Road, Benbrook, TX 76126.	City Hall, 911 Winscott Road, Benbrook, TX 76126.	Feb. 16, 2021	480586
Tarrant (FEMA Docket No.: B–2073).	City of Fort Worth (20–06–0768P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	Feb. 16, 2021	480596
Virginia:					
Goochland (FEMA Docket No.: B–2076).	Unincorporated areas of Goochland County (20–03–0873P).	The Honorable Susan F. Lascolette, Chair, Goochland County Board of Supervisors, P.O. Box 10, Goochland, VA 23063.	Goochland County Environmental and Development Review Department, 1800 Sandy Hook Road, Goochland, VA 23063.	Feb. 8, 2021	510072
Henrico (FEMA Docket No.: B–2076).	Unincorporated areas of Henrico County (20–03–0873P).	Mr. John A. Vithoulkas, Manager, Henrico County, P.O. Box 90775, Henrico, VA 23273.	Henrico County Department of Public Works, 4305 East Parham Road, Henrico, VA 23228.	Feb. 8, 2021	510077
Loudoun (FEMA Docket No.: B–2076).	Unincorporated areas of Loudoun County (20–03–1100P).	Mr. Tim Hemstreet, Loudoun County Administrator, P.O. Box 7000, Leesburg, VA 20177.	Loudoun County Office of Mapping and Geographic Information, 1 Harrison Street, Southeast, Leesburg, VA 20175.	Feb. 16, 2021	510090
Prince William (FEMA Docket No.: B–2076).	City of Manassas (20–03–0768P).	The Honorable Harry J. Parrish, II, Mayor, City of Manassas, 9027 Center Street, Manassas, VA 20110.	Public Works Department, 8500 Public Works Drive, Manassas, VA 20110.	Feb. 4, 2021	510122

[FR Doc. 2021–05222 Filed 3–11–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2021–0004; OMB No. 1660–0112]

Agency Information Collection Activities: Proposed Collection; Comment Request; FEMA Preparedness Grants: Transit Security Grant Program (TSGP)

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 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 and other Federal agencies to take this opportunity to comment on an extension, with change, of a currently approved information collection. Three new forms are added to the collection—FEMA TSGP Public Transit Risk Assessment Methodology (PT–RAM), TSGP PT–RAM Gap Analysis, and TSGP PT–RAM Implementation Plan, as these are new forms to the FEMA 089–4 Collection. TSGP is adding these forms to the collection for project risk analysis connected to the purpose of the grant program. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Transit Security Grant Program (TSGP) which is a FEMA grant program that focuses on transportation infrastructure protection activities.

DATES: Comments must be submitted on or before May 11, 2021.

ADDRESSES: Submit comments at *www.regulations.gov* under Docket ID FEMA–2021–0004. 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 Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Laila Ouhamou, Branch Chief, FEMA, 202–786–9461, *Laila.Ouhamou@fema.dhs.gov.* You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The TSGP is a FEMA grant program that focuses on transportation infrastructure protection activities. The collection of information for TSGP is mandated by Section 1406, Title XIV of the *Implementing Recommendations of the 9/11 Commission Act of 2007* (6 U.S.C. 1135), which directs the Secretary to establish a program for making grants to eligible public transportation agencies for security improvements. Additionally, information is collected in accordance with *Section 1406(c) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1135(c))* which authorizes the Secretary to determine the requirements for grant recipients, including application requirements.

Collection of Information

Title: FEMA Preparedness Grants: Transit Security Grant Program (TSGP).

Type of Information Collection: Modification of a currently approved information collection.

OMB Number: 1660–0112.

FEMA Forms: FEMA Form 089–4, TSGP Investment Justification Background Document 089–4A, TSGP Five-Year Security Capital and Operational Sustainment Plan 089–4B, FEMA Form 089–4 Public Transit Risk Assessment Methodology PT–RAM, FEMA Form 089–4 TSGP PT–RAM Implementation Plan, and the FEMA TSGP PT–RAM Gap Analysis

Abstract: The TSGP is an important component of the Department's effort to enhance the security of the Nation's critical infrastructure. The program provides funds to owners and operators of transit systems to protect critical surface transportation infrastructure and the traveling public from acts of terrorism, major disasters, and other emergencies.

Affected Public: Business or other for-profit, State and local government.

Number of Respondents: 123.

Number of Responses: 738.

Estimated Total Annual Burden Hours: 15,375.

Estimated Total Annual Respondent Cost: The estimated annual cost to respondent operations and maintenance costs for technical services is

$1,373,353. There are no annual start-up or capital costs.)

Estimated Total Annual Cost to the Federal Government: $963,792

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent L Brown,

Senior Manager, Records Management Branch Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2021–05182 Filed 3–11–21; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0016]

Meeting To Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of meetings.

SUMMARY: The Federal Emergency Management Agency (FEMA) is holding a series of meetings to implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic.

DATES: The first meeting took place on Thursday, March 4, 2021, from 3 to 5 p.m. Eastern Time (ET). The second meeting took place on Wednesday, March 10, 2021, from 3 to 5 p.m. ET. The third meeting took place on Thursday, March 11, 2021, from 3 to 5 p.m. ET. A fourth meeting will take place on Thursday, March 18, 2021, from 3 to 5 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Robert Glenn, Office of Business, Industry, Infrastructure Integration, via email at *OB3I@fema.dhs.gov* or via phone at (202) 212–1666.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided as required by section 708(h)(8) of the Defense Production Act (DPA), 50 U.S.C. 4558(h)(8), and consistent with 44 CFR part 332.

The DPA authorizes the making of ''voluntary agreements and plans of action'' with, among others, representatives of industry and business to help provide for the national defense.[1] The President's authority to facilitate voluntary agreements was delegated to the Secretary of Homeland Security with respect to responding to the spread of COVID–19 within the United States in Executive Order 13911.[2] The Secretary of Homeland Security has further delegated this authority to the FEMA Administrator.[3]

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission, FEMA completed and published in the **Federal Register** a ''Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic'' (Voluntary Agreement).[4] Unless terminated prior to that date, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Agreement may be used to prepare for or respond to any pandemic, including COVID–19, during that time.

On December 7, 2020, the first plan of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Personal Protective Equipment (PPE) to Respond to COVID–19 (Plan of Action)—was finalized.[5] The Plan of Action established several sub-committees under the Voluntary Agreement, focusing on different aspects of the Plan of Action.

These meetings were or will be chaired by the FEMA Administrator or his delegate, and attended by the Attorney General or his delegate and the Chairman of the Federal Trade Commission or his delegate. In implementing the Voluntary Agreement, FEMA adheres to all procedural requirements of 50 U.S.C. 4558 and 44 CFR part 332.

Meeting Objectives: The objectives of all of the meetings are as follows:

1. Gather committee Participants and Attendees to ask targeted questions for situational awareness.
2. Establish priorities for COVID–19 PPE under the Voluntary Agreement.
3. Identify tasks that should be completed under the appropriate Sub-Committee.
4. Identify information gaps and areas that merit sharing (both from FEMA to the private sector and vice versa).

Meetings Closed to the Public: By default, the DPA requires meetings held to implement a voluntary agreement or plan of action be open to the public.[6] However, attendance may be limited if the Sponsor[7] of the voluntary agreement finds that the matter to be discussed at a meeting falls within the purview of matters described in 5 U.S.C. 552b(c). The Sponsor of the Voluntary Agreement, the FEMA Administrator, found that these meetings to implement the Voluntary Agreement involve matters which fall within the purview of matters described in 5 U.S.C. 552b(c) and the meetings will therefore be closed to the public.

Specifically, these meetings to implement the Voluntary Agreement may require participants to disclose trade secrets or commercial or financial information that is privileged or confidential. Disclosure of such information allows for meetings to be closed pursuant to 5 U.S.C. 552b(c)(4). In addition, the success of the Voluntary Agreement depends wholly on the willing and enthusiastic participation of private sector participants. Failure to close these meetings could have a strong chilling effect on participation by the private sector and cause a substantial risk that sensitive information will be prematurely released to the public,

[1] 50 U.S.C. 4558(c)(1).

[2] 85 FR 18403 (Apr. 1, 2020).

[3] DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).

[4] 85 FR 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the voluntary agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the **Federal Register** on the same day. 85 FR 50049 (Aug. 17, 2020).

[5] *See* 85 FR 78869 (Dec. 7, 2020). *See also* 85 FR 79020 (Dec. 8, 2020).

[6] *See* 50 U.S.C. 4558(h)(7).

[7] ''[T]he individual designated by the President in subsection (c)(2) [of section 708 of the DPA] to administer the voluntary agreement, or plan of action.'' 50 U.S.C. 4558(h)(7).

resulting in participants withdrawing their support from the Voluntary Agreement and thus significantly frustrating the implementation of the Voluntary Agreement. Frustration of an agency's objective due to premature disclosure of information allows for the closure of a meeting pursuant to 5 U.S.C. 552b(c)(9)(B).

MaryAnn Tierney,

Acting Deputy Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–05232 Filed 3–11–21; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD AAK6006201 AOR3030.999900]

Draft Environmental Impact Statement for the Proposed Southern Bighorn Solar Projects, Clark County, Nevada

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), as the lead Federal agency, with the Bureau of Land Management (BLM), the Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and the Moapa Band of Paiute Indians (Moapa Band) as cooperating agencies, intends to file a draft environmental impact statement (DEIS) with the EPA for the proposed Southern Bighorn Solar Projects (SBSPs or Project). The DEIS evaluates photovoltaic (PV) solar energy generation and storage projects on the Moapa River Indian Reservation (Reservation) and collector lines along with the use of existing access roads and an existing generation interconnection (gen-tie) line located on the Reservation, Reservation lands managed by BLM, and BLM lands. This notice also announces that the DEIS is now available for public review and that public meetings will be held to solicit comments on the DEIS.

DATES: The dates and times of the virtual public meetings will be published in the *Las Vegas Review-Journal* and *Moapa Valley Progress* and on the following website 15 days before the public meetings: *www.southernbighornsolar.com/.* In order to be fully considered, written comments on the DEIS must arrive no later April 26, 2021.

ADDRESSES: You may mail, email, hand carry or telefax written comments to Mr. Chip Lewis, Regional Environmental Protection Officer, BIA Western Regional Office, Branch of Environmental Quality Services, 2600 North Central Avenue, 4th Floor Mail Room, Phoenix, Arizona 85004–3008; fax (602) 379–3833; email: *chip.lewis@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Chip Lewis, BIA Western Regional Office, Branch of Environmental Quality Services at (602) 379–6750 or Mr. Garry Cantley at (602) 379–6750.

SUPPLEMENTARY INFORMATION: The proposed Federal action, taken under 25 U.S.C. 415, is the BIA's approval of two solar energy ground leases and associated agreements entered into by the Moapa Band with 300MS 8me LLC and 425LM 8me LLC (Applicants). The agreements provide for construction, operation and maintenance (O&M), and eventual decommissioning of the PV electricity generation and battery storage facilities located entirely on the Reservation and specifically on lands held in trust for the Moapa Band, in Clark County Nevada.

The PV electricity generation and battery storage facilities would be located on up to 3,600 acres of tribal trust land (2,600 acres for SBSP I and 1,000 acres for SBSP II) and would have a combined capacity of up to 400 megawatts alternating current (MWac)—300 MWac for SBSP I, and 100 MWac for SBSP II. The two solar Projects include the solar fields, access roads, collector lines, and connection with an existing transmission gen-tie line.

Construction of the 300MWac project is expected to take approximately 14–16 months, and construction of the up to 100MWac project is expected to take approximately 8–10 months. The two projects may be constructed simultaneously or sequentially. The electricity generation and storage facilities are expected to be operated for up to 50 years under the terms of the leases, with time for construction and decommissioning. Major onsite facilities include multiple blocks of solar PV panels mounted on fixed tilt or tracking systems, pad mounted inverters and transformers, collector lines, up to 1,000 MW-hours of battery storage, access roads, and O&M facilities. Water will be needed during construction for dust control and a minimal amount will be needed during operations for administrative and sanitary water use and for panel washing. The water supply required for the Projects would be leased from the Moapa Band. Access to the SBSPs will be provided via North Las Vegas Boulevard from the I–15/US 93 interchange.

The purposes of the proposed Project are, among other things, to: (1) Provide a long-term, diverse, and viable economic revenue base and job opportunities for the Moapa Band; (2) assist Nevada to meet their State renewable energy needs; and (3) allow the Moapa Band, in partnership with the Applicant, to optimize the use of the lease site while maximizing the potential economic benefit to the Moapa Band.

The BIA and BLM will use the EIS to make decisions on the land lease and right-of-way applications under their respective jurisdiction; the EPA may use the document to make decisions under its authorities; the Band may use the DEIS to make decisions under its Environmental Policy Ordinance; and the USFWS may use the DEIS to support its decision under the Endangered Species Act.

Directions for Submitting Comments: Please include your name, return address and the caption: ''DEIS Comments, Proposed Southern Bighorn Solar Projects'' on the first page of your written comments. You may also submit comments verbally during one of the virtual public meeting presentations or provide written comments to the address listed above in the **ADDRESSES** section.

To help protect the public and limit the spread of the COVID–19 virus, virtual public meetings will be held, where team members will provide a short presentation and remain available to discuss and answer questions. The PowerPoint presentation will be posted to the project website prior to the virtual meetings. Those who cannot live stream the presentation would be able to access the meeting presentation on the website and could join by telephone. Additionally, the live presentation will be recorded and made accessible for viewing throughout the comment period. The first public meeting will be held in the afternoon by video and telephone conference and the second public meeting will be held in the evening by video and telephone conference. The dates, times, and access information for the virtual meetings will be included in notices to be published in the *Las Vegas Review-Journal* and *Moapa Valley Progress* and on the project website at *www.southernbighornsolar.com* 15 days before the meetings.

Locations Where the DEIS is Available for Review: The DEIS will be available for review at: BIA Western Regional Office, 2600 North Central Avenue, 12th Floor, Suite 210, Phoenix, Arizona; BIA Southern Paiute Agency, 180 North 200 East, Suite 111, St.

George, Utah; and the BLM Southern Nevada District Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada. The DEIS is also available on line at: *www.southernbighornsolar.com.*

To obtain an electronic copy of the DEIS, please provide your name and address in writing or by voicemail to Mr. Chip Lewis or Mr. Garry Cantley. Their contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual paper copies of the DEIS will be provided only upon request.

Public Comment Availability: Written comments, including names and addresses of respondents, will be available for public review at the BIA Western Regional Office, at the mailing address shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone 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.

Authority: This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR 1500 *et seq.*) and the Department of the Interior Regulations (43 CFR part 46) implementing the procedural requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and in accordance with the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by part 209 of the Department Manual.

Darryl LaCounte,

Director, Bureau of Indian Affairs, exercising the delegated authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2021–05092 Filed 3–11–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[212A2100DD/AAKC00103/AAKC001030/A0A501010.999900 253G]

List of Programs Eligible for Inclusion in Funding Agreements Negotiated With Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs and Fiscal Year 2021 Programmatic Targets

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in self-governance funding agreements with Indian Tribes and lists Fiscal Year 2021 programmatic targets for each of the non-Bureau of Indian Affairs (BIA) bureaus in the Department of the Interior (Department), pursuant to Title IV of the Indian Self-Determination and Education Assistance Act (Act), as amended.

DATES: These programs are eligible for inclusion in self-governance funding agreements until September 30, 2021.

ADDRESSES: Inquiries or comments regarding this notice may be directed to Ms. Sharee M. Freeman, Director, Office of Self-Governance (MS 3624–MIB), 1849 C Street NW, Washington, DC 20240–0001, telephone: (202) 219–0240, fax: (202) 219–4246, or to the bureau-specific points of contact listed below.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, Office of Self-Governance, telephone: (202) 821–7107.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of the Act instituted a permanent self-governance program at the Department. Under the self-governance program, certain programs, services, functions, and activities, or portions thereof, in Department bureaus other than BIA are eligible to be planned, conducted, consolidated, and administered by a self-governance Tribe.

Under section 405(c) of the Act, the Secretary of the Interior (Secretary) is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program and (2) programmatic targets for non-BIA bureaus.

Two categories of non-BIA programs are eligible for self-governance funding agreements:

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function, or activity that is administered by the Department that is ''otherwise available to Indian tribes or Indians,'' can be administered by a Tribe through a self-governance funding agreement. The Department interprets this provision to authorize the inclusion of programs eligible for self-determination contracts under Title I of the Act. Section 403(b)(2) also specifies, ''nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided for by law.''

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities or portions thereof that are of ''special geographic, historical, or cultural significance'' to a self-governance Tribe.

Under section 403(k) of the Act, funding agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the Tribe. However, a Tribe (or Tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance funding agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, the non-BIA bureaus will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances. In those instances, where the Tribe disagrees with the bureau's determination, the Tribe may request reconsideration from the Secretary.

Subpart G of the self-governance regulations found at 25 CFR part 1000 provides the process and timelines for negotiating self-governance funding agreements with non-BIA bureaus.

Response to Comments

No comments were received.

Changes Made From 2020 to 2021

New National Park Service contact Dorothy L FireCloud has been appointed.

II. Funding Agreements Between Self-Governance Tribes and non-BIA Bureaus of the Department of the Interior for Fiscal Year 2021

A. Bureau of Land Management (2)
- Council of Athabascan Tribal Governments
- Duckwater Shoshone Tribe of the Duckwater Reservation

B. Bureau of Reclamation (4)
- Gila River Indian Community of the Gila River Indian Reservation
- Hoopa Valley Tribe
- Karuk Tribe
- Yurok Tribe of the Yurok Reservation

C. Office of Natural Resources Revenue (none)

D. National Park Service (3)
- Grand Portage Band of Lake Superior Chippewa Indians
- Sitka Tribe of Alaska
- Yurok Tribe of the Yurok Reservation

E. Fish and Wildlife Service (1)
Council of Athabascan Tribal Governments
F. U.S. Geological Survey (none)
G. Bureau of Trust Funds Administration (1)
Confederated Salish and Kootenai Tribes of the Flathead Reservation
H. Appraisal and Valuation Services Office (30)
1. The Quapaw Tribe of Indians
2. Morongo Band of Mission Indians
3. Muckleshoot Indian Tribe
4. Pueblo of Taos
5. Confederated Tribes of the Umatilla Indian Reservation
6. Association of Village Council Presidents
7. Kawerak, Inc.
8. Native Village of Tanana
9. Tanana Chiefs Conference [includes Gwichyaa Gwich'in (aka Fort Yukon)]
10. Council of Tlingit and Haida Indian Tribes
11. Cherokee Nation
12. The Choctaw Nation of Oklahoma
13. Eastern Shawnee Tribe of Oklahoma
14. The Muscogee (Creek) Nation
15. Wyandotte Nation
16. Oneida Nation
17. Confederated Salish and Kootenai Tribes of the Flathead Reservation
18. Lummi Tribe of the Lummi Reservation
19. Port Gamble S'Klallam Tribes
20. Confederated Tribes of Siletz Indians of Oregon
21. Hoopa Valley Tribe
22. Redding Rancheria
23. Chippewa Cree Indians of the Rocky Boy's Reservation
24. Absentee-Shawnee Tribe of Indians of Oklahoma
25. Citizen Potawatomi Nation, Oklahoma
26. Kaw Nation, Oklahoma
27. Sac and Fox Nation, Oklahoma
28. Salt River Pima Maricopa Indian Community of the Salt River Reservation
29. Shoshone-Paiute Tribes of the Duck Valley Reservation Nevada
30. Osage Nation

III. Eligible Programs of the Department of the Interior Non-BIA Bureaus

Below is a listing by bureau of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance funding agreements because they are either ''otherwise available to Indians'' under Title I of the Act and not precluded by any other law, or may have ''special geographic, historical, or cultural significance'' to a participating Tribe. The list represents the most current information on programs potentially available to Tribes under a self-governance funding agreement.

The Department will also consider for inclusion in funding agreements other programs or activities not listed below, but which, upon request of a self-governance Tribe, the Department determines to be eligible under either sections 403(b)(2) or 403(c) of the Act. Tribes with an interest in such potential agreements are encouraged to begin discussions with the appropriate non-BIA bureau.

A. Eligible Bureau of Land Management (BLM) Programs

The BLM carries out some of its activities in the management of public lands through contracts and cooperative agreements. These and other activities, depending upon availability of funds, the need for specific services, and the self-governance Tribe's demonstration of a special geographic, cultural, or historical connection, may also be available for inclusion in self-governance funding agreements. Once a Tribe has made initial contact with the BLM, more specific information will be provided by the respective BLM State office.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This listing is not all-inclusive, but is representative of the types of programs that may be eligible for Tribal participation through a funding agreement:

Tribal Services

1. Minerals Management Inspection, enforcement and production verification of Indian coal and sand and gravel operations are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement. In addition, in a study conducted pursuant to Secretarial order 3377, the Office of the Solicitor determined that the following functions are available for inclusion in a funding agreement: Inspection and enforcement of Indian oil and gas operations, determining trust land locations; approving Applications for Permits to Drill; securing and enforcing bonds (for surface of spill estate), and providing mineral assessments and valuation.

2. Cadastral Survey. Tribal and allottee cadastral survey services are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

Other Activities

1. Cultural heritage. Cultural heritage activities, such as research and inventory, may be available in specific States.

2. Natural Resources Management. Activities such as silvicultural treatments, timber management, cultural resource management, watershed restoration, environmental studies, tree planting, thinning, and similar work, may be available in specific States.

3. Range Management. Activities, such as revegetation, noxious weed control, fencing, construction and management of range improvements, grazing management experiments, range monitoring, and similar activities, may be available in specific States.

4. Riparian Management. Activities, such as facilities construction, erosion control, rehabilitation, and other similar activities, may be available in specific States.

5. Recreation Management. Activities, such as facilities construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

6. Wildlife and Fisheries Habitat Management. Activities, such as construction and maintenance, implementation of statutory, regulatory and policy or administrative plan-based species protection, interpretive design and construction, and similar activities may be available in specific States.

7. Wild Horse Management. Activities, such as wild horse round-ups, adoption and disposition, including operation and maintenance of wild horse facilities, may be available in specific States.

For questions regarding self-governance, contact Bryon Loosle, Bureau of Land Management (HQ 410), telephone (202) 302–1442.

B. Eligible Bureau of Reclamation (Reclamation) Programs

The mission of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To this end, most of Reclamation's activities involve the construction, operation and maintenance, and management of water resources projects and associated facilities, as well as research and development related to its responsibilities. Reclamation water resources projects provide water for agricultural, municipal and industrial water supplies; hydroelectric power generation; flood control, enhancement of fish and wildlife habitats; and outdoor recreation.

Components of the following water resource projects listed below may be eligible for inclusion in a self-governance annual funding agreement. This list was developed with consideration of the proximity of identified self-governance Tribes to Reclamation projects.

1. Klamath Project, California and Oregon
2. Trinity River Fishery, California
3. Central Arizona Project, Arizona
4. Indian Water Rights Settlement Projects, as authorized by Congress

Upon the request of a self-governance Tribe, Reclamation will also consider for inclusion in funding agreements other programs or activities which Reclamation determines to be eligible under Section 403(b)(2) or 403(c) of the Act.

For questions regarding self-governance, contact Mr. Kelly Titensor, Native American Affairs Advisor, Native American and International Affairs Office, Bureau of Reclamation (96–43000) (MS 7069–MIB); 1849 C Street NW, Washington DC 20240, telephone: (202) 513–0558, fax: (202) 513–0311.

C. Eligible Office of Natural Resources Revenue (ONRR) Programs

The Office of Natural Resources Revenue (ONRR) collects, accounts for, and distributes mineral revenues from both Federal and Indian mineral leases.

The ONRR also evaluates industry compliance with laws, regulations, and lease terms, and offers mineral-owning Tribes opportunities to become involved in its programs that address the intent of Tribal self-governance. These programs are available to self-governance Tribes and are a good preparation for assuming other technical functions. Generally, ONRR program functions are available to Tribes because of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) at 30 U.S.C. 1701. The ONRR promotes Tribal self-governance and self-determination over trust lands and resources through the following program functions that may be available to self-governance Tribes:

1. Audit of Tribal Royalty Payments. Audit activities for Tribal leases, except for the issuance of orders, final valuation decisions, and other enforcement activities. Under FOGRMA Section 202, Tribes may participate in a cooperative agreement with ONRR in order to perform audits, compliance reviews and other investigations.

2. Verification of Tribal Royalty Payments. Financial compliance verification, monitoring activities, and production verification.

3. Tribal Royalty Valuation. Preliminary analysis and recommendations for valuation and allowance determinations and approvals.

4. Intergovernmental Personnel Act (IPA) Internship Program. Under 5 CFR part 334, a Tribe may request an IPA with ONRR for the purpose of on-the-job training program. Auditors and accountants acquaint Tribal staff from mineral-producing Tribes with royalty laws, procedures, and techniques. This program is recommended for Tribes that are considering a FOGRMA Section 202 cooperative agreement, but have not yet acquired mineral revenue expertise.

For questions regarding self-governance FOGRMA Section 202 cooperative agreements, contact Yvette Smith, Program Manager, Office of Natural Resources Revenue, Denver Federal Center, 6th & Kipling, Building 85, Denver, Colorado 80225–0165, telephone: (303) 231–3485.

D. Eligible National Park Service (NPS) Programs

NPS administers the National Park System, which is made up of national parks, monuments, historic sites, battlefields, seashores, lake shores and recreation areas. NPS maintains the park units, protects the natural and cultural resources, and conducts a range of visitor services such as law enforcement, park maintenance, and interpretation of geology, history, and natural and cultural resources.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This list below was developed considering the proximity of an identified self-governance Tribe to a national park, monument, preserve, or recreation area and the types of programs that have components that may be suitable for administering through a self-governance funding agreement. This list is not all-inclusive, but is representative of the types of programs which may be eligible for Tribal participation through funding agreements.

Elements of Programs That May Be Eligible for Inclusion in a Self-Governance Funding Agreement

1. Archaeological Surveys
2. Comprehensive Management Planning
3. Cultural Resource Management Projects
4. Ethnographic Studies
5. Erosion Control
6. Fire Protection
7. Gathering Baseline Subsistence Data—Alaska
8. Hazardous Fuel Reduction
9. Housing Construction and Rehabilitation
10. Interpretation
11. Janitorial Services
12. Maintenance
13. Natural Resource Management Projects
14. Operation of Campgrounds
15. Range Assessment—Alaska
16. Reindeer Grazing—Alaska
17. Road Repair
18. Solid Waste Collection and Disposal
19. Trail Rehabilitation
20. Watershed Restoration and Maintenance
21. Beringia Research
22. Elwha River Restoration
23. Recycling Programs

Locations of National Park Service Units With Close Proximity to Self-Governance Tribes

1. Aniakchack National Monument & Preserve—Alaska
2. Bering Land Bridge National Preserve—Alaska
3. Cape Krusenstern National Monument—Alaska
4. Denali National Park & Preserve—Alaska
5. Gates of the Arctic National Park & Preserve—Alaska
6. Glacier Bay National Park and Preserve—Alaska
7. Katmai National Park and Preserve—Alaska
8. Kenai Fjords National Park—Alaska
9. Klondike Gold Rush National Historical Park—Alaska
10. Kobuk Valley National Park—Alaska
11. Lake Clark National Park and Preserve—Alaska
12. Noatak National Preserve—Alaska
13. Sitka National Historical Park—Alaska
14. Wrangell-St. Elias National Park and Preserve—Alaska
15. Yukon-Charley Rivers National Preserve—Alaska
16. Casa Grande Ruins National Monument—Arizona
17. Hohokam Pima National Monument—Arizona
18. Montezuma Castle National Monument—Arizona
19. Organ Pipe Cactus National Monument—Arizona
20. Saguaro National Park—Arizona
21. Tonto National Monument—Arizona
22. Tumacacori National Historical Park—Arizona
23. Tuzigoot National Monument—Arizona
24. Arkansas Post National Memorial—Arkansas

25. Death Valley National Park—California
26. Devils Postpile National Monument—California
27. Joshua Tree National Park—California
28. Lassen Volcanic National Park—California
29. Point Reyes National Seashore—California
30. Redwood National Park—California
31. Whiskeytown National Recreation Area—California
32. Yosemite National Park—California
33. Hagerman Fossil Beds National Monument—Idaho
34. Effigy Mounds National Monument—Iowa
35. Fort Scott National Historic Site—Kansas
36. Tallgrass Prairie National Preserve—Kansas
37. Boston Harbor Islands National Recreation Area—Massachusetts
38. Cape Cod National Seashore—Massachusetts
39. New Bedford Whaling National Historical Park—Massachusetts
40. Isle Royale National Park—Michigan
41. Sleeping Bear Dunes National Lakeshore—Michigan
42. Grand Portage National Monument—Minnesota
43. Voyageurs National Park—Minnesota
44. Bear Paw Battlefield, Nez Perce National Historical Park—Montana
45. Glacier National Park—Montana
46. Great Basin National Park—Nevada
47. Aztec Ruins National Monument—New Mexico
48. Bandelier National Monument—New Mexico
49. Carlsbad Caverns National Park—New Mexico
50. Chaco Culture National Historic Park—New Mexico
51. Pecos National Historic Park—New Mexico
52. White Sands National Monument—New Mexico
53. Fort Stanwix National Monument—New York
54. Great Smoky Mountains National Park—North Carolina/Tennessee
55. Cuyahoga Valley National Park—Ohio
56. Hopewell Culture National Historical Park—Ohio
57. Chickasaw National Recreation Area—Oklahoma
58. Crater Lake National Park—Oregon
59. John Day Fossil Beds National Monument—Oregon
60. Alibates Flint Quarries National Monument—Texas
61. Guadalupe Mountains National Park—Texas
62. Lake Meredith National Recreation Area—Texas
63. Ebey's Landing National Recreation Area—Washington
64. Fort Vancouver National Historic Site—Washington
65. Mount Rainier National Park—Washington
66. Olympic National Park—Washington
67. San Juan Islands National Historic Park—Washington
68. Whitman Mission National Historic Site—Washington

For questions regarding self-governance, contact Dorothy FireCloud, Manager, American Indian Liaison Office, National Park Service, 1849 C Street NW, Room 7351, Washington, DC 20240, telephone: (202) 354–2090, or email: *Dorothy_FireCloud@nps.gov.*

E. Eligible Fish and Wildlife Service (Service) Programs

The mission of the Service is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people. Primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. The Service also has a continuing cooperative relationship with a number of Indian Tribes throughout the National Wildlife Refuge System and the Service's fish hatcheries. Any self-governance Tribe may contact a National Wildlife Refuge or National Fish Hatchery directly concerning participation in Service programs under the Tribal Self-Governance Act. This list is not all-inclusive, but is representative of the types of Service programs that may be eligible for Tribal participation through an annual funding agreement.

1. Subsistence Programs within the State of Alaska. Evaluate and analyze data for annual subsistence regulatory cycles and other data trends related to subsistence harvest needs and facilitate Tribal Consultation to ensure ANILCA Title VII terms are being met, as well as activities fulfilling the terms of Title VIII of ANILCA.

2. Technical Assistance, Restoration and Conservation. Conduct planning and implementation of population surveys, habitat surveys, restoration of sport fish, capture of depredating migratory birds, and habitat restoration activities.

3. Endangered Species Programs. Conduct activities associated with the conservation and recovery of threatened or endangered species protected under the Endangered Species Act (ESA) or candidate species under the ESA. These activities may include, but are not limited to, cooperative conservation programs, development of recovery plans and implementation of recovery actions for threatened and endangered species, and implementation of status surveys for high priority candidate species.

4. Education Programs. Provide services in interpretation, outdoor classroom instruction, visitor center operations, and volunteer coordination both on and off National Wildlife Refuge lands in a variety of communities, and assist with environmental education and outreach efforts in local villages.

5. Environmental Contaminants Program. Conduct activities associated with identifying and removing toxic chemicals, to help prevent harm to fish, wildlife and their habitats. The activities required for environmental contaminant management may include, but are not limited to, analysis of pollution data, removal of underground storage tanks, specific cleanup activities, and field data gathering efforts.

6. Wetland and Habitat Conservation Restoration. Provide services for construction, planning, and habitat monitoring and activities associated with conservation and restoration of wetland habitat.

7. Fish Hatchery Operations. Conduct activities to recover aquatic species listed under the Endangered Species Act, restore native aquatic populations, and provide fish to benefit National Wildlife Refuges and Tribes. Such activities may include, but are not limited to: Tagging, rearing and feeding of fish, disease treatment, and clerical or facility maintenance at a fish hatchery.

8. National Wildlife Refuge Operations and Maintenance. Conduct activities to assist the National Wildlife Refuge System, a national network of lands and waters for conservation, management and restoration of fish, wildlife and plant resources and their habitats within the United States. Activities that may be eligible for a self-governance funding agreement may include, but are not limited to: Construction, farming, concessions, maintenance, biological program efforts, habitat management, fire management, and implementation of comprehensive conservation planning.

Locations of Refuges and Hatcheries With Close Proximity to Self-Governance Tribes

The Service developed the list below based on the proximity of identified

self-governance Tribes to Service facilities that have components that may be suitable for administering through a self-governance funding agreement.

1. Alaska Maritime National Wildlife Refuge—Alaska
2. Alaska Peninsula National Wildlife Refuge—Alaska
3. Arctic National Wildlife Refuge—Alaska
4. Becharof National Wildlife Refuge—Alaska
5. Innoko National Wildlife Refuge—Alaska
6. Izembek National Wildlife Refuge—Alaska
7. Kanuti National Wildlife Refuge—Alaska
8. Kodiak National Wildlife Refuge—Alaska
9. Koyukuk National Wildlife Refuge—Alaska
10. Nowitna National Wildlife Refuge—Alaska
11. Selawik National Wildlife Refuge—Alaska
12. Tetline National Wildlife Refuge—Alaska
13. Togiak National Wildlife Refuge—Alaska
14. Yukon Delta National Wildlife Refuge—Alaska
15. Yukon Flats National Wildlife Refuge—Alaska
16. Alchesay National Fish Hatchery—Arizona
17. Humboldt Bay National Wildlife Refuge—California
18. Kootenai National Wildlife Refuge—Idaho
19. Agassiz National Wildlife Refuge—Minnesota
20. Mille Lacs National Wildlife Refuge—Minnesota
21. Rice Lake National Wildlife Refuge—Minnesota
22. National Bison Range—Montana
23. Ninepipe National Wildlife Refuge—Montana
24. Pablo National Wildlife Refuge—Montana
25. Sequoyah National Wildlife Refuge—Oklahoma
26. Tishomingo National Wildlife Refuge—Oklahoma
27. Bandon Marsh National Wildlife Refuge—Washington
28. Dungeness National Wildlife Refuge—Washington
29. Makah National Fish Hatchery—Washington
30. Nisqually National Wildlife Refuge—Washington
31. Quinault National Fish Hatchery—Washington
32. San Juan Islands National Wildlife Refuge—Washington
33. Tamarac National Wildlife Refuge—Wisconsin

For questions regarding self-governance, contact Scott Aikin, Fish and Wildlife Service, National Native American Programs Coordinator, 1211 SE Cardinal Court, Suite 100, Vancouver, Washington 98683, telephone (360) 604–2531 or fax (360) 604–2505.

F. Eligible U.S. Geological Survey (USGS) Programs

The mission of the USGS is to collect, analyze, and provide information on biology, geology, hydrology, and geography that contributes to the wise management of the Nation's natural resources and to the health, safety, and well-being of the American people. This information is usually publicly available and includes maps, data bases, and descriptions and analyses of the water, plants, animals, energy, and mineral resources, land surface, underlying geologic structure, and dynamic processes of the earth. The USGS does not manage lands or resources. Self-governance Tribes may potentially assist the USGS in the data acquisition and analysis components of its activities.

For questions regarding self-governance, contact Monique Fordham, Esq., Tribal Partnership Coordinator, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–4437 or fax (703) 648–6683.

G. Eligible Bureau of Trust Funds Administration (BTFA) Programs

The Department has responsibility for what may be the largest land trust in the world, approximately 56 million acres. BTFA oversees the management of Indian trust assets, including income generated from leasing and other commercial activities on Indian trust lands, by maintaining, investing and disbursing Indian trust financial assets, and reporting on these transactions. The mission of the BTFA is to serve Indian communities by fulfilling Indian fiduciary trust responsibilities. This is to be accomplished through the implementation of a Comprehensive Trust Management Plan (CTM) that is designed to improve trust beneficiary services, ownership information, management of trust fund assets, and self-governance activities.

A Tribe operating under self-governance may include the following programs, services, functions, and activities or portions thereof in a funding agreement:

1. Beneficiary Processes Program (Individual Indian Money Accounting Technical Functions).

The MOU between the Tribe/Consortium and BTFA outlines the roles and responsibilities for the performance of the BTFA program by the Tribe/Consortium. If those roles and responsibilities are already fully specified in the existing funding agreement with the OSG, an MOU is not necessary. To the extent that the parties desire specific program standards, an MOU will be negotiated between the Tribe/Consortium and BTFA, which will be binding on both parties and attached and incorporated into the OSG funding agreement.

If a Tribe/Consortium decides to assume the operation of a BTFA program, the new funding for performing that program will come from BTFA program dollars. A Tribe's newly-assumed operation of the BTFA program(s) will be reflected in the Tribe's OSG funding agreement.

For questions regarding self-governance, contact Lee Frazier, Program Analyst, Office of External Affairs, Bureau of Trust Funds Administration (MS 5140—MIB), 1849 C Street NW, Washington, DC 20240–0001, phone: (202) 208–7587, fax: (202) 208–7545.

H. Eligible Appraisal and Valuation Services Office Programs

The Appraisal and Valuation Services Office (AVSO), established on March 19, 2018 by Secretarial Order No. 3363, provides appraisal, valuation, evaluation, and consulting expertise to Indian beneficiaries, federal clients and other stakeholders in accordance with the highest professional and ethical standards. AVSO is responsible for all real property appraisal and valuation services within the Department of the Interior as well as conducting mineral economic evaluations to the following bureau clients: Bureau of Indian Affairs, Bureau of Indian Education, Bureau of Land Management, Bureau of Reclamation, US Fish and Wildlife Service, and the National Park Service. Within AVSO are four land valuation divisions; Indian Trust Property Valuation Division, Land Buy-Back Program Valuation Division, Division of Minerals Evaluation and Federal Land Division.

The MOU between the Tribe/Consortium and AVSO outlines the roles and responsibilities for the performance of the AVSO program by the Tribe/Consortium. An MOU will be negotiated between the Tribe/Consortium and AVSO, which will be binding on both parties and attached and incorporated into the OSG funding agreement.

If a Tribe/Consortium decides to assume the operation of an AVSO program, the new funding for

performing that program will come from AVSO program dollars. A Tribe's newly-assumed operation of an AVSO program will be reflected in the Tribe's OSG funding agreement.

For questions regarding the assumption of an AVSO program under self-governance, contact Eldred F. Lesansee, Associate Deputy Director, Appraisal and Valuation Services Office, 4400 Masthead Street NE, Albuquerque, NM 87109, (505) 816–1318, fax (505) 816–3129.

IV. Programmatic Targets

The programmatic target for Fiscal Year 2020 provides that, upon request of a self-governance Tribe, each non-BIA bureau will negotiate funding agreements for its eligible programs beyond those already negotiated.

Darryl LaCounte,

Director, Bureau of Indian Affairs, exercising the delegated authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2021–05134 Filed 3–11–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/ A0A501010.999900; OMB Control Number 1076–0182]

Agency Information Collection Activities; Sovereignty in Indian Education Grant Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 11, 2021.

ADDRESSES: Send written comments on this information collection request (ICR) by mail to Spike Bighorn, Program Manager, Office of Sovereignty in Indian Education (SIE), Bureau of Indian Education, 200 NW 4th Street, Suite 4049, Oklahoma City, OK 73102 or by email to *spike.bighorn@bie.edu.* Please reference OMB Control Number 1076–0182 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Spike Bighorn by email at *spike.bighorn@bie.edu,* or by telephone at (202) 499–0482. 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, 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.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIE; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIE enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIE minimize the burden of this collection on the respondents, including through the use of information technology.

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: Indian Tribes and Tribal Organizations may submit proposals to support their efforts to take control and operate BIE-funded schools located on the Tribe's reservation. Each proposal must include a project narrative, a budget narrative, a work plan outline, and a Project Director to manage the execution of the grant. The Project Directors will participate in monthly collaboration meetings, submit quarterly budget updates, ensure an annual report is submitted at the end of each project year, and ultimately ensure that the tribal education agency fulfills the obligations of the grant.

Title of Collection: Sovereignty in Indian Education Grant Program.

OMB Control Number: 1076–0182.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Indian Tribes and/or Tribal Education Departments.

Total Estimated Number of Annual Respondents: 11 per year.

Total Estimated Number of Annual Responses: 198 per year.

Estimated Completion Time per Response: Ranges from 1 hour to 40 hours.

Total Estimated Number of Annual Burden Hours: 682 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Proposals and Annual reports once per year and Budget Reports are submitted 4 times per year.

Total Estimated Annual Nonhour Burden Cost: $0.

Total Estimated Annual Nonhour Burden Cost: $0.

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.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2021–05135 Filed 3–11–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(LLCA930000.L13400000.DS0000.212X) MO#4500151907]

Notice of Termination of Draft Desert Plan Amendment and Draft Environmental Impact Statement, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of termination.

SUMMARY: By this notice, the Bureau of Land Management (BLM) is announcing the termination of the land use planning process described in the Draft Land Use Plan Amendment (LUPA) and Draft Environmental Impact Statement (EIS) for an amendment to the California Desert Conservation Area (CDCA) Plan and the Bakersfield and Bishop Resource Management Plans (RMPs).

DATES: The land use planning process described in the Draft LUPA/Draft EIS is discontinued as of the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Jeremiah Karuzas, Renewable Energy

Program Manager, telephone: 916–978–4644, email: *jkaruzas@blm.gov;* address Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Karuzas during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: In accordance with the National Environmental Policy Act (NEPA) and its implementing regulations (40 CFR parts 1500–1508 and 43 CFR part 46), as well as 43 CFR 1610.7–2(b), the BLM published a Notice of Availability of a Draft LUPA/Draft EIS, as well as a concurrent public comment period on proposed management changes, and proposed boundary modifications or elimination of existing Areas of Critical Environmental Concern (ACEC), pursuant to 43 CFR 1610.7–2(b), on January 14, 2021 (86 FR 3181). The BLM is now discontinuing this planning and NEPA process in accordance with bureau policy, including its consideration of changes to ACECs, in order to evaluate consistency with Departmental and Executive priorities related to conservation and promotion of renewable energy development. While the BLM does not intend to issue a Proposed Plan/Final EIS or a Record of Decision for this planning process, it will continue to work with cooperating agencies and stakeholders in the implementation of the existing land use plans, which may result in future planning efforts. The BLM will inform the public of any future planning efforts related to the three land use plans.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.7–2)

Karen E. Mouritsen,

BLM California State Director.

[FR Doc. 2021–05136 Filed 3–11–21; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2021–0012]

Notice of Availability of a Final Environmental Impact Statement for Vineyard Wind LLC's Proposed Wind Energy Facility Offshore Massachusetts

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability; final environmental impact statement.

SUMMARY: In accordance with National Environmental Policy Act (NEPA) regulations, BOEM announces the availability of the Final Environmental Impact Statement (FEIS) prepared for the Vineyard Wind Offshore Wind Energy Project Construction and Operation Plan (COP) submitted by Vineyard Wind LLC (Vineyard Wind). The FEIS analyzes the potential environmental impacts of the COP (the proposed action) and alternatives to it and will inform BOEM's decision whether to approve, approve with modifications, or disapprove the COP.

ADDRESSES: The FEIS can be found on BOEM's website at: *https://www.boem.gov/Vineyard-Wind/.*

FOR FURTHER INFORMATION CONTACT: For information on the EIS or BOEM's policies associated with this notice, please contact: BOEM—Michelle Morin, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787–1722 or *michelle.morin@boem.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action: Vineyard Wind seeks to construct, operate, maintain, and eventually decommission an 800-megawatt wind energy facility on the Outer Continental Shelf (OCS) offshore Massachusetts (the Project). The Project and associated export cables would be developed within the range of design parameters outlined in the Vineyard Wind COP, subject to applicable mitigation measures. The COP proposes installing up to 100 wind turbine generators and one or two offshore substations or electrical service platforms. As currently proposed, the Project would be located approximately 14 miles southeast of Martha's Vineyard and a similar distance southwest of Nantucket. The turbines would be located in water depths ranging from approximately 37 to 49 meters (121 to 161 feet). The COP proposes one export cable landfall near the town of Barnstable, Massachusetts. Onshore construction and staging are proposed to take place at the New Bedford Marine Commerce Terminal.

Alternatives: BOEM considered 20 alternatives during the preparation of the EIS and carried forward seven for further analysis. These alternatives included six action alternatives (one of which has two sub-alternatives) and the no action alternative. The other 13 alternatives were not further analyzed because they did not meet the purpose and need for the proposed action or did not meet screening criteria. The screening criteria used included: Consistency with statutes and regulations; operational, technical, and economic feasibility; environmental impact; and geographical considerations. The FEIS also considers mitigation and monitoring measures that BOEM and other agencies may select.

Availability of the FEIS: The FEIS, Vineyard Wind COP, and associated information are available on BOEM's website at: *https://www.boem.gov/Vineyard-Wind/.* BOEM has distributed digital copies of the FEIS to all parties listed in the FEIS appendix J, which includes the location of all libraries receiving a copy. If you require a paper copy, BOEM will provide one upon request, as long as copies are available. You may request a CD or paper copy of the FEIS by calling (847) 258–8992.

Cooperating Agencies: The following nine agencies and governmental entities participated as cooperating agencies in the preparation of the FEIS: The Bureau of Safety and Environmental Enforcement; the U.S. Environmental Protection Agency; the National Marine Fisheries Service; the U.S. Army Corps of Engineers; the U.S. Coast Guard; the Massachusetts Office of Coastal Zone Management; the Rhode Island Department of Environmental Management; the Rhode Island Coastal Resource Management Council; and the Narragansett Indian Tribe.

Authority: This NOA was prepared under NEPA, as amended (42 U.S.C. 4231 *et seq.*), and published in accordance with 40 CFR 1506.6.

William Yancey Brown,

Chief Environmental Officer, Bureau of Ocean Energy Management.

[FR Doc. 2021–05176 Filed 3–11–21; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Toner Supply Containers and Components Thereof, DN 3536;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the

Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Canon Inc., Canon U.S.A., Inc., and Canon Virginia, Inc. on March 8, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner supply containers and components thereof. The complainant names as respondents: Ninestar Corporation of China; Ninestar Image Tech Limited of China; Ninestar Technology Company, Ltd. of Chino, CA; Static Control Components, Inc. of Sanford, NC; General Plastic Industrial Co. Ltd. of Taiwan; Katun Corporation of Minneapolis, MN; Sichuan XingDian Technology Co., Ltd. of China; Sichuan Wiztoner Technology Co., Ltd. of China; Anhuiyatengshangmaoyouxiangongsi of China; ChengDuXiangChangNanShi YouSheBeiYouXianGongSi of China; Copier Repair Specialists, Inc. of Lewisville, TX; Digital Marketing Corporation d/b/a Digital Buyer Marketing Company of Los Angeles, CA; Do It Wiser LLC d/b/a Image Toner of Wilmington, DE; Easy Group, LLC of Irwindale, CA; Hefeierlandianzishang wuyouxiangongsi of China; Ink Technologies Printer Supplies, LLC of Dayton, OH; Kuhlmann Enterprises, Inc. d/b/a Precision Roller of Phoenix, AZ; LD Products, Inc. of Long Beach, CA; NAR Cartridges of Burlingame, CA; Shenzhenshi Keluodeng Kejiyouxiangognsi of China; Sun Data Supply, Inc. of Los Angeles, CA; The Supplies Guys, LLC of Lancaster, PA; MITOCOLOR INC. of Rowland Heights, CA; Xianshi yanliangqu canqiubaihuodianshanghang of China; Zhuhai Henyun Image Co., Ltd. of China; and Zinyaw LLC d/b/a TonerPirate.com and Supply District of Houston, TX. The complainant requests that the Commission issue a permanent general exclusion order, or, alternatively, a limited exclusion order, and permanent cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3536'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 8, 2021.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2021–05126 Filed 3–11–21; 8:45 am]

BILLING CODE 7020–02–P

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Equal Access to Justice Act

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of the Assistant Secretary for Administration and Management (OASAM)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 12, 2021.

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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Anthony May by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act (EAJA) (5 United States Code Section 504(a)(2)) provides payment of fees and expenses to eligible parties who have prevailed against a Federal agency in certain administrative proceedings. These requirements are codified in the Department of Labor's regulations in 29 Code of Federal Regulations Part 16, Subpart B. In order to obtain an award, the statute and associated DOL regulations require parties to file an application. Other agencies may have their own EAJA regulations.

For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 15, 2020 (85 FR 81222).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OASAM.

Title of Collection: Equal Access to Justice Act.

OMB Control Number: 1225–0013.

Affected Public: Private sector: businesses or other for-profits institutions, farms, not-for-profit.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Time Burden: 50 hours.

Total Estimated Annual Other Costs Burden: $23.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: March 5, 2021.

Anthony May,

Management and Program Analyst.

[FR Doc. 2021–05152 Filed 3–11–21; 8:45 am]

BILLING CODE 4510–23–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–21–0005; NARA–2021–022]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by April 26, 2021.

ADDRESSES: You may submit comments by the following method. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal: http://www.regulations.gov*

Due to COVID–19 building closures, we are currently temporarily not accepting comments by mail. However, if you are unable to comment via *regulations.gov*, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite

public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Defense, Defense Logistics Agency, DLA Criminal Incident Reporting System (DAA–0361–2021–0021).

2. Department of Defense, Defense Threat Reduction Agency, Action-Operation Files (DAA–0374–2020–0003).

3. Department of the Treasury, Bureau of Engraving and Printing, Records of the Security Features Design and Development, Research and Testing (DAA–0318–2020–0003).

4. Department of Veterans Affairs, Agency-wide, Contracting Officer Appointment Records (DAA–0015–2021–0001).

5. Administrative Office of the United States Courts, Agency-wide, Personnel Records (DAA–0116–2019–0001).

6. National Archives and Records Administration, Agency-wide, Engagement and Public Affairs Records (DAA–0064–2018–0008).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2021–05205 Filed 3–11–21; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Biological Sciences (#1110).

Date and Time: April 15, 2021; 10:00 a.m.–5:30 p.m.; April 16, 2021; 10:00 a.m.–1:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 | Virtual. Due to ongoing social distancing best practices because of COVID–19 the meeting will be held virtually among the Advisory Committee members. Livestreaming will be accessible through this page: *https://nsf.gov/bio/advisory.jsp.*

Type of Meeting: Open.

Contact Person: Karen Cone, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone Number: (703) 292–8400.

Purpose of Meeting: The Advisory Committee for the Directorate for Biological Sciences (BIO) provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Agenda items will include a directorate business update, update on BIO's responses to the COVID–19 pandemic, a joint session to discuss matters of mutual interest with the Advisory Committee for Geosciences, discussion of recent Committee of Visitors report for the Division of Biological Infrastructure, and discussion with the NSF Director.

Dated: March 8, 2021.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2021–05111 Filed 3–11–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; NSF I-Corps Regional Hubs Assessment

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to establish this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by May 11, 2021 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF I-Corps Regional Hubs Assessment.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection.

Abstract: NSF's Division of Industrial Innovation and Partnerships (IIP), within the Engineering Directorate, serves a wide range of grantees across five major programs.

The NSF Innovation Corps (I-Corps) program was established at NSF in FY 2012 to equip scientists with the entrepreneurial tools needed to transform discoveries with commercial realization potential into innovative technologies. The goal of the I-Corps Program is to use experiential education to help researchers reduce the time necessary to translate a promising idea from the laboratory bench to widespread implementation. In addition to accelerating technology translation, NSF seeks to reduce the risk associated with technology development conducted without insight into industry requirements and challenges. The I-Corps Program uses a lean startup approach to encourage scientists to think like entrepreneurs through intensive workshop training and ongoing support. The program focuses on teams comprised of a Principal Investigator, Entrepreneurial Lead, and Mentor that work together to explore commercialization for their research-derived products.

In FY 2017, the American Innovation and Competitiveness Act (AICA), Public Law 114–329, Sec 601, formally authorized and directed the expansion of NSF I-Corps Program by increasing the economic competitiveness of the United States, enhancing partnerships between academia and industry, developing an American STEM workforce that is globally competitive, and supporting female entrepreneurs and individuals from historically underrepresented groups in STEM through mentorship, education, and training.

To that end, NSF built and has continued expanding an I-Corps National Innovation Network (NIN). NIN is a collection of NSF I-Corps Nodes and Sites that together with NSF implement the I-Corps program to grow and sustain the national innovation ecosystem. I-Corps Nodes are typically large, multi-institutional collaborations that deliver NSF national I-Corps Teams training curriculum as well as recruit and train the National I-Corps instructors. Sites are entrepreneurial centers located at individual colleges and universities to catalyze potential I-Corps teams within their local institutions. Together, the Nodes and Sites serve as the backbone of the NIN.

Recently, IIP published a new I-Corps Program Solicitation, NSF 20–529—NSF Innovation Corps Hubs Program (I-Corps™ Hubs), that has placed a strong emphasis on developing and further expanding the NIN. The I-Corps Hubs Program has strengthened the requirements to support a diverse and inclusive community of innovators, in that teams are encouraged to recruit diverse members at all levels. In addition, the I-Corps Hubs Program also provides new pathways for teams to qualify for the participation in the national I-Corps Teams program (at the Nodes). Through this solicitation, NSF seeks to evolve the current structure, in which NSF I-Corps Teams, Nodes, and Sites are funded through separate programs, towards a more integrated operational model capable of sustained operation at the scope and scale required to support the expansion of the NSF I-Corps Program as directed by AICA.

In order to support the agency's congressional reporting requirements in response to the AICA, we are asking NIN grantees to report the following information:

- Expansion of NIN
  - Number of teams trained
  - Number of teams advancing to national I-Corps Teams program (applicable to I-Corps Hubs and I-Corps Sites)
- STEM Workforce
  - Team size (number of members on the team)
  - Team characteristics (participation of females, veterans, and underrepresented minorities)
  - Participant status at the time of program
- Subsequent Commercialization Outcomes
  - Company formation
  - Following-on funding
    - SBIR Phase I, II funding
    - Other Federal Funding
    - Private Funding (including competition, and prize awards)
  - Revenues (sales, licensing fees, other operational cash flows)

The reporting of this information is in addition to the agency's annual report requirement for the grantees. Not only will the information help the agency report on NIN activities to Congress, they also provide managing Program Directors a means to monitor the operational states of these I-Corps Sites, Nodes, and Hubs, and ensure that their awards are in good standing. These data will also allow NSF to assess these awardees in terms of intellectual, broader, and commercial impacts that are core to our merit review criteria. Finally, in compliance with the Evidence Act of 2019, information collected will be used in satisfying congressional requests, responding to queries from the public, NSF's external merit reviewers who serve as advisors, and NSF's Office of the Inspector General, and supporting the agency's policymaking and internal evaluation and assessment needs.

Information collected will include name of the participants, their affiliated organizations, email addresses, and home states. These personal identifiable information (PII) are collected primarily to track recipients of their roles in the I-Corps teams, and allow us to perform due diligence and quality check on the data provided by the grantees. These PII data will be accessed only by the I-Corps Sites, Nodes, and Hubs, the managing Program Directors, NSF senior management, and supporting staff

conducting analyses using the data as authorized by NSF. Any public reporting of data will be in aggregate form, and any personal identifiers will be removed.

Use of the Information: The information collected is primarily for the agency's AICA Reporting requirements, and other congressional requests.

Estimate Burden on the Public: Estimated at 40 hours per award, per year, for the life of the award.

Respondents: I-Corps Sites, Nodes, and Hubs Grantees.

Estimated Number of Respondents: 110.

Average Time per Reporting: 20 hours.

Frequency: Twice per year.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Please submit one copy of your comments by only one method. All submissions received must include the agency name and collection name identified above for this information collection. Commenters are strongly encouraged to transmit their comments electronically via email. Comments, including any personal information provided become a matter of public record. They will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

Dated: March 5, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–05130 Filed 3–11–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, March 23, 2021.

PLACE: Virtual.

STATUS: The one item may be viewed by the public through webcast only.

MATTERS TO BE CONSIDERED:

66508 Aviation Investigation Report—Enhance Safety of Revenue Passenger-Carrying Operations Conducted Under Title 14 *Code of Federal Regulations* Part 91

CONTACT PERSON FOR MORE INFORMATION: Candi Bing at (202) 590–8384 or by email at *bingc@ntsb.gov.*

Media Information Contact: Peter Knudson by email at *peter.knudson@ntsb.gov* or (202) 314–6100.

This meeting will take place virtually. The public may view it through a live or archived webcast by accessing a link under ''Webcast of Events'' on the NTSB home page at *www.ntsb.gov.*

There may be changes to this event due to the evolving situation concerning the novel coronavirus (COVID–19). Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

The National Transportation Safety Board is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Dated: March 4, 2021.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2021–04937 Filed 3–5–21; 11:15 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374; NRC–2021–0034]

Exelon Generation Company, LLC; LaSalle County Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating License Nos. NPF–11 and NPF–18 issued to Exelon Generation Company, LLC (Exelon, the licensee) for operation of LaSalle County Station, Units 1 and 2 (LaSalle), located in Brookfield Township, LaSalle County, Illinois. The proposed action would revise the technical specifications (TS) for the plant to allow for an average, rather than absolute, ultimate heat sink (UHS) sediment level and would modify the UHS temperature curve to increase the allowable TS diurnal temperature limits of the cooling water supplied to the plant from the UHS. The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the proposed license amendments.

DATES: The EA and FONSI referenced in this document are available on March 12, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0034 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0034. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Briana Grange, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1042; email: *Briana.Grange@nrc.gov;* and Bhalchandra Vaidya, Office of Nuclear Reactor Regulation, telephone: 301–415–3308; email: *Bhalchandra.Vaidya@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating License Nos. NPF–11 and NPF–18 issued to Exelon for LaSalle located in LaSalle County, Illinois. Exelon submitted its license amendment request in accordance with section 50.90 of title 10 of the *Code of Federal Regulation* (10 CFR), by letter dated July 17, 2020, as supplemented by letters dated September 11, 2020, and October 22, 2020.

In accordance with 10 CFR 51.21, the NRC staff prepared the following EA that analyzes the environmental impacts of the proposed licensing action. Based on the results of this EA, the NRC staff did not identify any significant environmental impacts associated with the proposed amendments and the NRC staff is, therefore, issuing a FONSI in accordance with 10 CFR 51.32.

II. Environmental Assessment

Plant Site and Environs

LaSalle is a two-unit nuclear power plant located in Brookfield Township in LaSalle County, Illinois, approximately 75 miles (mi) (120 kilometers (km)) southwest of downtown Chicago, Illinois. The LaSalle site lies in a rural area predominantly used for agriculture and wind-power generation. An onsite 2,058 acre (ac) (833-hectare (ha)) cooling pond provides condenser cooling. Cooling water that is not otherwise lost from the pond through evaporation or seepage is recirculated from the cooling pond through the condenser systems in a continuous loop. Underground pipelines approximately 3.5 mi (5.6 km) long connect the cooling pond to the Illinois River, which is the source of the plant's makeup water and the receiving body of water for plant blowdown. A small screen house located on the river provides makeup water to the cooling pond, and a portion of the water in the cooling pond is discharged as blowdown to the river on a near continuous basis.

A dedicated portion of the cooling pond located immediately adjacent to the LaSalle intake canal serves as the plant's UHS. The UHS is also known as the core standby cooling system (CSCS) pond, and it directly supplies water to the CSCS cooling water system equipment. The UHS provides a heat sink for process and operating heat from safety-related components during the UHS design basis event. The UHS design basis event includes a failure of the cooling pond dike. In such an event, the UHS would become the remaining source of cooling water to plant safety systems. In such an event, the UHS allows for the safe shutdown and cooldown of both LaSalle units for a 30-day period with no additional makeup water source. The UHS also provides a source of emergency makeup water for the spent fuel pools and can provide water for fire protection equipment.

The cooling pond is a wastewater treatment works as defined by Section 301.415 of Title 35 of the *Illinois Administrative Code* (35 IAC 301.415). Under this definition, the cooling pond is not considered waters of the State under Illinois Administrative Code (35 IAC 301.440) or waters of the United States under the Federal Clean Water Act (40 CFR 230.3(s)), and so the cooling pond is not subject to Federal or State water quality standards.

Exelon leases a large portion of the cooling pond to the Illinois Department of Natural Resources (IDNR), which maintains the leased portion of the pond as an outdoor recreation area for public use and fishing. IDNR has actively managed fish populations in the cooling pond since 1984. The cooling pond can be characterized as a highly managed ecosystem in which IDNR fish stocking and other human activities primarily influence the species composition and population dynamics. IDNR surveys the cooling pond each year and determines which fish to stock based on fishermen preferences, fish abundance, different species' tolerance to warm waters, predator and prey dynamics, and other factors. Currently, commonly stocked species include largemouth bass (*Micropterus salmoides*), smallmouth bass (*M. dolomieu*), black crappie (*Pomoxis nigromaculatus*), white crappie (*P. annularis*), channel catfish (*Ictalurus punctatus*), blue catfish (*I. furcatus*), striped bass hybrid (*Morone saxatilis* x *M. chrysops*), walleye (*Sander vitreus*), and bluegill (*Lepomis macrochirus*). Because cooling pond temperatures are high in the summer months, the introductions of warm-water species, such as largemouth bass and blue catfish, has been more successful than the introductions of cool-water species, such as walleye and muskellunge (*Esox masquinongy*). In addition to the stocked species, gizzard shad (*Dorosoma cepedianum*) and threadfin shad (*D. petenense*) also occur in the cooling pond. Shad are not recreationally fished, and IDNR does not currently stock these fish. IDNR stocks some recreationally fished species that consume shad (*e.g.,* catfish and striped bass) in part to limit the size of shad populations.

The plant site and environs are described in greater detail in Chapter 3 of the NRC's August 2016, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding LaSalle County Station, Units 1 and 2, Final Report'' (NUREG–1437, Supplement 57; (herein referred to as the ''LaSalle FSEIS'' [Final Supplemental Environment Impact Statement]). Figures 3–3 and 3–4 on pages 3–4 and 3–5 of the LaSalle FSEIS, respectively, depict the plant layout. Figure 3–6 on page 3–9 depicts the cooling pond, including the portion of the pond that constitutes the UHS, as well as the blowdown line to the Illinois River.

Description of the Proposed Action

If approved, the proposed action would revise TS Surveillance Requirement (SR) 3.7.3.2 concerning the UHS sediment level verification requirement to allow for an average, rather than absolute, sediment level. The proposed action would also modify the temperature curve associated with TS SR 3.7.3.1 to increase the allowable TS diurnal temperature limits of the cooling water supplied to the plant from the UHS. Other conforming TS changes would also be made.

Specifically, the proposed action would modify TS SR 3.7.3.2. This TS currently requires Exelon to verify that the sediment level in the intake flume and CSCS pond is less than or equal to (≤) 1.5 feet (ft) (18 inches (in.) or 0.5 meters (m)). This TS would be modified to allow an average, rather than absolute, sediment level. The revised requirement would state, ''Verify average sediment level is 6 inches in the intake flume and the CSCS pond.''

The proposed action would also modify the temperature curve associated with TS SR 3.7.3.1. This requirement currently states, ''Verify cooling water temperature supplied to the plant from the CSCS pond is within the limits of Figure 3.7.3–1.'' Under the proposed action, Figure 3.7.3–1 would be modified to specify new diurnal temperature limits. The revised TS temperature limits would continue to vary with the diurnal cycle and would continue to limit the maximum temperature of the UHS supplied to plant safety systems to below 107 degrees Fahrenheit (°F) (41.7 degrees Celsius (°C)), the design limit of the plant. The revised limits would increase the allowable maximum UHS temperature of cooling water by 1.54 to 3.54 °F (0.85 to 1.97 °C) as compared to current limits and depending on time of day. Table 1 lists the current and proposed temperature limits, and Figure 1 depicts these limits graphically.

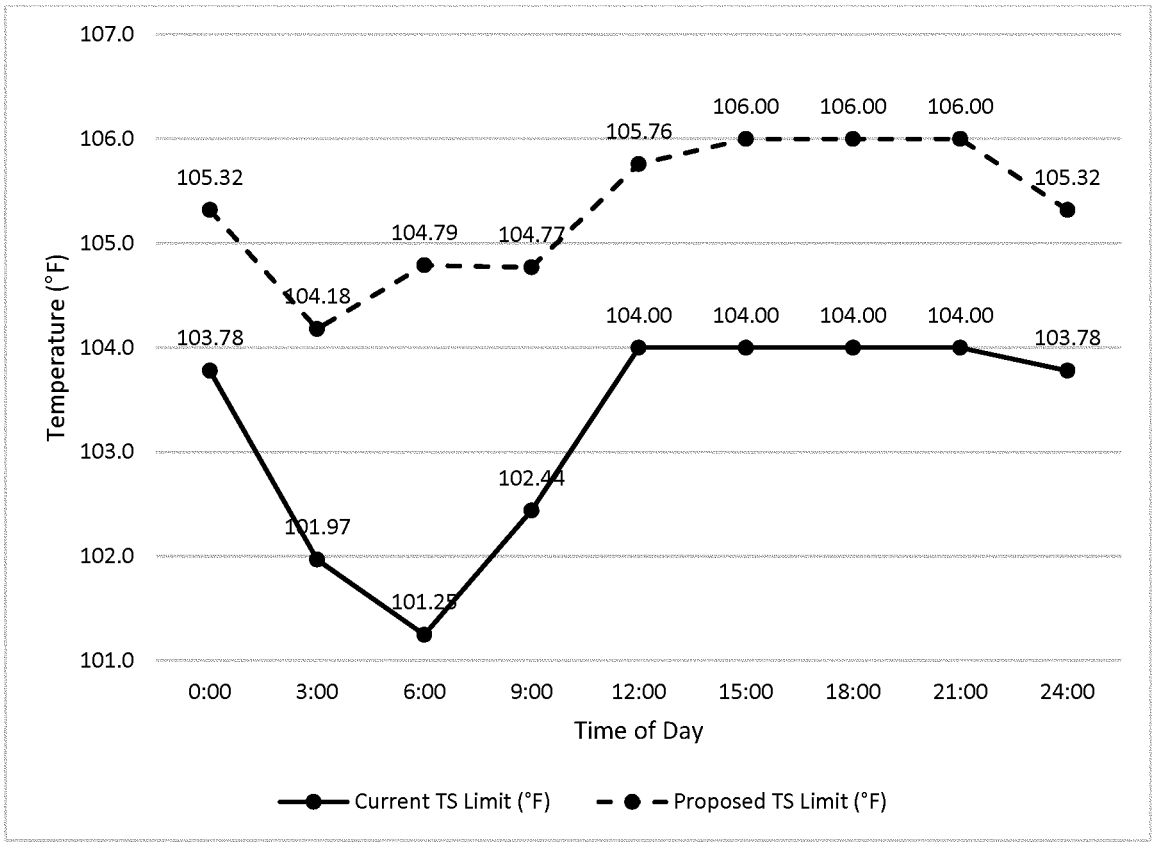
Additionally, the proposed action would make conforming changes to the LaSalle TS as described in the licensee's

application dated July 17, 2020, as supplemented by letters dated September 11, 2020, and October 22, 2020. The proposed action would be in accordance with the licensee's application.

TABLE 1—CURRENT AND PROPOSED UHS TEMPERATURE LIMITS

Time of day	Current TS limit (°F)	Proposed TS limit (°F)	TS limit difference (°F)
0:00	103.78	105.32	1.54
3:00	101.97	104.18	2.21
6:00	101.25	104.79	3.54
9:00	102.44	104.77	2.33
12:00	104.00	105.76	1.76
15:00	104.00	106.00	2.00
18:00	104.00	106.00	2.00
21:00	104.00	106.00	2.00
24:00	103.78	105.32	1.54

Figure 1. Current and Proposed Temperature of Cooling Water Supplied to the Plant from the CSCS Pond Versus Time of Day Requirements



Need for the Proposed Action

The licensee has requested the proposed amendments in connection with recent meteorological and atmospheric conditions that have resulted in challenges to the TS UHS temperature. These conditions include elevated air temperatures, high humidity, and low wind speed. The proposed action would provide the licensee with operational flexibility during periods of high UHS temperatures in order to prevent plant shutdown.

Environmental Impacts of the Proposed Action

With regard to radiological impacts, the proposed action would not result in any changes in the types of radioactive effluents that may be released from the plant offsite. No significant increase in the amount of any radioactive effluent released offsite or significant increase in occupational or public radiation exposure is expected from the proposed action. Separate from this EA, the NRC staff is evaluating the licensee's safety analyses of an accident that may result from the proposed action. The results of the NRC staff's evaluation will be documented in a safety evaluation (SE). If the NRC staff concludes in the SE that all pertinent regulatory requirements are met by the proposed amendments, then

the proposed action would result in no significant radiological impact to the environment. The NRC staff's SE will be issued with the license amendments, if approved by the NRC.

With regard to potential non-radiological impacts, raising the maximum allowable UHS diurnal temperature limits could cause the UHS portion of the cooling pond to experience increased water temperatures. Because the proposed action would not affect LaSalle's licensed thermal power level, the temperature rise across the condensers as cooling water travels through the cooling system would remain constant. Thus, if water in the UHS were to rise to the proposed allowable limits according to the proposed temperature curve, heated water returning to the cooling pond would also experience a corresponding 1.54 to 3.54 °F (0.85 to 1.97 °C) increase compared to current limits and depending on time of day. That additional heat load would dissipate across some thermal gradient as discharged water mixes within the cooling pond.

Many freshwater fish, such as those species that inhabit the cooling pond, experience thermal stress and can die when they encounter water temperatures at or above 95 °F (35 °C). Fish kills tend to occur when water temperatures rise above this level for some prolonged period of time and fish are unable to tolerate the higher temperatures or cannot retreat into cooler waters. Fish that experience thermal effects within the region of the cooling pond that is thermally affected by LaSalle's effluent discharge (*e.g.,* the discharge canal, the flow path between the discharge canal and UHS, and the UHS itself) are experiencing effects that are, at least in part, attributable to plant operation.

Under current operating conditions, LaSalle's cooling pond occasionally experiences fish kills. Such events only occur in the summer months and tend to be correlated with periods of high ambient air temperatures, low winds, and high humidity. Appendix B, Section 4.1 of the LaSalle renewed facility operating licenses requires Exelon to report fish kills to the NRC as unusual or important environmental events if they are causally related to plant operation. Since 2001, Exelon has reported four fish kill events. The events occurred in July 2001, June 2005, June 2009, August 2010, and primarily affected gizzard shad. The IDNR identified other dead fish to include carp (*Cyprinus carpio*), smallmouth buffalo (*Ictiobus bubalus*), freshwater drum (*Aplodinotus grunniens*), channel catfish, striped bass hybrid, smallmouth bass, walleye, bluegill, white bass (*Morone chrysops*), yellow bullhead catfish (*Ameiurus natalis*), and yellow bass (*M. mississippiensis*). The temperature in the cooling pond during these events ranged from 93 °F (33.9 °C) to 101 °F (38.3 °C), and each event resulted in the death of approximately 1,500 to 94,500 fish. During the largest of these events, which was in July 2001, the IDNR found the maximum temperature in the cooling pond discharge canal to be 120 °F (48.9 °C) and dissolved oxygen levels to range from 6.2 to 18.8 parts per million. Section 3.7.2.2 of the LaSalle FSEIS describes these events in more detail. Since the NRC issued the FSEIS in 2016, Exelon has not reported any more recent fish kill events to the NRC. However, Exelon has observed several smaller non-reportable fish kills in the cooling pond since that time. Exelon attributes these non-reportable events to a combination of high-water temperatures, low winds, and high humidity. The most recent non-reportable fish kill occurred in July 2020.

In Section 4.7.1.3 of the LaSalle FSEIS, the NRC staff concluded that thermal impacts associated with continued operation of LaSalle during the license renewal term would be small for all aquatic resources in the cooling pond except for gizzard shad and threadfin shad, which would experience moderate thermal impacts. Moderate impacts are environmental effects that are sufficient to alter noticeably, but not destabilize, important attributes of the resource. The NRC staff determined that fish kills would have noticeable impacts on important attributes of the aquatic environment within the cooling pond (*i.e.,* shad) based on the following:

- Exelon and IDNR noted reductions in shad population sizes following fish kills in the cooling pond.
- Exelon and IDNR attributed the decline in shad populations to fish kills causally related to plant operation.
- Based on the definition of important species in the NRC's Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal, Revision 1 (NUREG–1555, Supplement 1, Revision 1, shad is an important aquatic attribute to the cooling pond ecosystem because it is prey for many recreationally important species.
- Fish kills are not destabilizing to shad populations because they tend to recover in about a year.
- Fish kills are expected to continue to occur in the cooling pond during the license renewal term.

For all other aquatic species, including recreationally important fish stocked by the IDNR, the NRC staff concluded in the FSEIS that thermal effects during the license renewal term would be small. Stocked species are a minor portion of affected fish during most fish kills, and the NRC staff found no evidence that fish kills noticeably altered populations of stocked species. Additionally, the staff noted that if a future fish kill negatively impacts a stocked species, the IDNR could mitigate such an effect by increasing the stocking level of that species during the following spring. At the time the NRC staff performed its license renewal review, the UHS TS temperature limits were the same as the current limits (see Table 1 and Figure 1).

The NRC staff anticipates that thermal effects under the proposed action would be qualitatively similar to those described in the FSEIS. The primary difference under the proposed action would be an incremental increase in the likelihood in the summer that fish in the thermally affected portion of the cooling pond would experience thermal effects causally related to plant operation. This is because under the proposed action, Exelon could continue to operate LaSalle during periods of higher UHS temperatures when it would currently be required to shut down. However, because the UHS is a small portion of the cooling pond, the majority of the cooling pond would be unaffected by the proposed action, and fish would be able to seek refuge in those cooler areas. Therefore, only fish within the region of the cooling pond that is thermally affected by LaSalle's effluent discharge (*e.g.,* the discharge canal, the flow path between the discharge canal and UHS, and the UHS itself) at the time of elevated temperatures would likely be affected. Thermal effects would be most intense in or near the discharge canal and would decrease across a thermal gradient extending from the discharge canal.

As described previously in this EA, the fish species most likely to experience thermal effects in the cooling pond are threadfin shad and gizzard shad. These species are the most likely to die from thermal stress. However, shad populations generally recover quickly, and shad are consistently the most abundant species in the cooling pond. Thus, fish kills and other thermal effects do not appear to significantly influence these species' populations. Stocked species generally constitute a small portion of fish affected by fish

kills, and these species would continue to be assessed and stocked by the IDNR on an annual basis in accordance with the lease agreement between Exelon and IDNR. Continued stocking would mitigate any minor effects resulting from the proposed action.

In addition to the increase in allowable TS diurnal temperature limits, the proposed action would revise the TS to allow for an average, rather than absolute, UHS sediment level. This TS relates to ensuring an adequate volume of cooling water is available. This change would have no adverse effect on aquatic resources.

Based on the foregoing analysis, the NRC staff concludes that the proposed action would not result in significant impacts to aquatic resources in the cooling pond.

Some terrestrial species, such as birds or other wildlife, rely on fish or other aquatic resources from the cooling pond as a source of food. The NRC staff does not expect any significant impacts to birds or other wildlife because, if a fish kill occurs, the number of dead fish would be a small proportion of the total population of fish in the cooling pond. Furthermore, during fish kills, birds and other wildlife could consume many of the floating, dead fish.

With respect to water resources and ecological resources along and within the Illinois River, the Illinois Environmental Protection Agency (IEPA) imposes regulatory controls on LaSalle's thermal effluent through Title 35, Environmental Protection, Section 302, ''Water Quality Standards,'' of the Illinois Administrative Code (35 IAC 302) and through the National Pollutant Discharge Elimination System (NPDES) permitting process pursuant to the Clean Water Act. Section 302 of the Illinois Administrative Code stipulates that ''[t]he maximum temperature rise shall not exceed 2.8 °C (5 °F) above natural receiving water body temperatures,'' (35 IAC 302.211(d)) and that ''[w]ater temperature at representative locations in the main river shall at no time exceed 33.7 °C (93 °F) from April through November and 17.7 °C (63 °F) in other months'' (35 IAC 302.211(e)). Additional stipulations pertaining to the mixing zone further protect water resources and biota from thermal effluents. The LaSalle NPDES permit contains special conditions that mirror these temperature requirements and that stipulate more detailed temperature requirements at the edge of the mixing zone. Under the proposed action, LaSalle's thermal effluent would continue to be limited by the Illinois Administrative Code and the LaSalle NPDES permit to ensure that LaSalle operations do not create adverse effects on water resources or ecological resources along or within the Illinois River. Occasionally, Exelon has applied for a provisional variance to allow higher-than-permitted temperatures at the edge of the discharge mixing zone. For instance, Exelon applied for and the IEPA granted provisional variances in March, July, and August 2012, during unusual weather conditions and associated high ambient river water temperatures that impacted the ability for LaSalle's thermal discharges to meet the requirements of its NPDES permit. Exelon reported no fish kills or other events to the IEPA or the NRC that would indicate adverse environmental effects resulting from the provisional variance. The details of this provisional variance are described in Section 3.5.1.3 of the LaSalle FSEIS.

Under the proposed action, Exelon would remain subject to these Federal and State regulatory controls. The NRC staff finds it reasonable to assume that Exelon's continued compliance with, and the State's continued enforcement of, the Illinois Administrative Code and the LaSalle NPDES permit would ensure that Illinois River water and ecological resources are protected. Further, the proposed action would not alter the types or amount of effluents being discharged to the river as blowdown. Therefore, the NRC staff does not expect any significant impacts to water resources or ecological resources within and along the Illinois River as a result of the proposed action.

With respect to federally listed species, the NRC staff considered federally listed species and designated critical habitats protected under the Endangered Species Act (ESA) during its license renewal environmental review for LaSalle. Based on its review of aquatic surveys conducted in the cooling pond and Illinois River both upstream and downstream of LaSalle, the NRC staff found that no federally listed species had the potential to occur in areas that would be directly or indirectly affected by license renewal (*i.e.,* the action area). The NRC staff also confirmed that no designated critical habitats occurred in the action area. Accordingly, the NRC staff concluded that continued operation of LaSalle during the license renewal term would have no effect on federally listed species or designated critical habitats.

As previously described, impacts of the proposed action would be confined to the cooling pond and would not affect water resources or ecological resources along and within the Illinois River. The NRC staff's previous ESA section 7 review determined that no federally listed aquatic species or designated critical habitats occur within or near the cooling pond. The NRC staff has not identified any information indicating the presence of federally listed species in the area since that consultation concluded, and the U.S. Fish and Wildlife Service (FWS) has not listed any new aquatic species that may occur in the area since that time. The proposed action would not result in any disturbance or other impacts to terrestrial habitats, and thus, no federally listed terrestrial species would be affected. Accordingly, the NRC staff concludes that the proposed action would have no effect on federally listed species or designated critical habitats. Consultation with the FWS for the proposed action is not necessary because Federal agencies are not required to consult with the FWS if the agency determines that an action will have no effect on listed species or critical habitat.

The NRC staff has identified no foreseeable land use, visual resource, noise, or waste management impacts given that the proposed action would not result in any physical changes to LaSalle facilities or equipment or changes to any land uses on or off site. The NRC staff has identified no air quality impacts given that the proposed action would not result in air emissions beyond what would be experienced during current operations. Additionally, there would be no socioeconomic, environmental justice, or historic and cultural resource impacts associated with the proposed action since no physical changes would occur beyond the site boundaries and any impacts would be limited to the cooling pond.

Based on the foregoing analysis, the NRC staff concludes that the proposed action would have no significant environmental impacts.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered the denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the license amendment request would result in no changes to the current TS. Thus, under the no-action alternative, the licensee would continue to be required to verify that the cooling water temperature supplied to the plant from the CSCS pond is within the limits of the current TS Figure 3.7.3–1 and that the absolute sediment level in the intake flume and CSCS pond is ≤1.5 ft (18 in. or 0.5 m). If these conditions are not met, the licensee would be required to begin shutdown of LaSalle. The no-action alternative would result in no

change in current environmental conditions or impacts at LaSalle. Denial of the LAR, however, could result in reduced operational flexibility and could require Exelon to derate or shutdown LaSalle if the UHS temperature approaches or exceeds the current TS temperature limit. Shutdown of operations at LaSalle due to an inability to meet current UHS temperature limit could result in various impacts, including loss of the energy and economic benefits that arise from plant operation.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action. However, in accordance with 10 CFR 50.91(b), the licensee provided copies of its application to the State of Illinois.

III. Finding of No Significant Impact

The NRC is considering issuing amendments for Renewed Facility Operating License Nos. NPF–11 and NPF–18, issued to Exelon for operation of LaSalle that would revise the TS for the plant to allow for an average, rather than absolute, UHS sediment level and would modify the UHS temperature curve to increase the allowable TS diurnal temperature limits of the cooling water supplied to the plant from the UHS.

Based on the EA included in Section II in this notice and incorporated by reference in this finding, the NRC staff concludes that the proposed action would not have significant effects on the quality of the human environment. The NRC staff's evaluation considered information provided in the licensee's application as well as the NRC staff's independent review of other relevant environmental documents. Section IV in this notice lists the environmental documents related to the proposed action and includes information on the availability of these documents. Based on its finding, the NRC staff has decided not to prepare an environmental impact statement for the proposed action.

This FONSI and other related environmental documents are accessible online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov.*

IV. Availability of Documents

The documents identified in the following table are available to interested persons in ADAMS, as indicated.

Document description	ADAMS accession No.
License Amendment Request:	
Exelon Generation Company, LLC. Request for a License Amendment to LaSalle County Station, Units 1 and 2, Technical Specification 3.7.3, ''Ultimate Heat Sink,'' dated July 17, 2020.	ML20204A775
Exelon Generation Company, LLC. Licensee Response to the NRC requirement for Supplemental Information regarding the request for a License Amendment to LaSalle County Station, Units 1 and 2, Technical Specification 3.7.3, ''Ultimate Heat Sink,'' dated September 11, 2020.	ML20259A454
Exelon Generation Company, LLC. Revised Licensee Response to the NRC requirement for Supplemental Information regarding the request for a License Amendment to LaSalle County Station, Units 1 and 2, Technical Specification 3.7.3, ''Ultimate Heat Sink,'' dated October 22, 2020.	ML20296A456
Other Referenced Documents:	
U.S. Fish and Wildlife Service. Endangered Species Consultations: Frequently Asked Questions, dated July 15, 2013	ML16120A505
U.S. Nuclear Regulatory Commission. Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal, Revision 1 (NUREG-1555, Supplement 1, Revision 1, dated June 30, 2013.	ML13106A246
U.S. Nuclear Regulatory Commission. Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding LaSalle County Station, Units 1 and 2, Final Report (NUREG–1437, Supplement 57), dated August 31, 2016.	ML16238A029
U.S. Nuclear Regulatory Commission. Exelon Generation Company, LLC; Docket No. STN 50–373; LaSalle County Station, Unit 1 Renewed Facility Operating License, issued on October 19, 2016.	ML052990324
U.S. Nuclear Regulatory Commission. Exelon Generation Company, LLC; Docket No. STN 50–374; LaSalle County Station, Unit 2 Renewed Facility Operating License, issued on October 19, 2016.	ML052990387

Dated: March 9, 2021.

For the Nuclear Regulatory Commission.

Bhalchandra K. Vaidya,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–05195 Filed 3–11–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91279; File No. SR–ICC–2021–003]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Operational Risk Management Framework

March 8, 2021.

I. Introduction

On January 21, 2021, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change notice to revise the ICC Operational Risk Management Framework.[3] The proposed rule change was published for comment in the **Federal Register** on February 5, 2021.[4] The Commission did not receive comments regarding the proposed rule change. For the reasons

[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 ICC's Clearing Rules.

[4] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the ICC Operational Risk Management Framework, Exchange Act Release No. 91024 (February 1, 2021); 86 FR 8447 (February 5, 2021) (SR–ICC–2021–003) (''Notice'').

discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC is proposing to revise its Operational Risk Management Framework to incorporate reference to the Intercontinental Exchange, Inc. (''ICE, Inc.'') Enterprise Risk Management Policy (''ERM Policy'') and to ICC's status as a covered clearing agency and the relevant rules applicable to ICC as a covered clearing agency relating to operational risk requirements, namely Rules 17Ad–22(e)(17) and (21) under the Act.[5]

The proposal would make updates to the risk assessment process in the Operational Risk Management Framework, which addresses identifying, assessing, monitoring, and mitigating plausible sources of operational risk.[6] Under the ''identify'' component, the proposal would use the more general term ''risk-based assessment methodology,'' to replace use of the term ''risk-scenario-based assessment methodology.''[7] ICC proposes similar changes throughout the ''assess'' component to replace ''risk scenarios'' with ''risks.''[8] The proposed changes also cross reference the Enterprise Risk Management Policy (''ERM Policy''), noting that the ICE, Inc. Enterprise Risk Management Department (''ERM'') maintains an inventory of material risks faced by ICC.[9]

Further, under the ''assess'' component, ICC proposes to incorporate the ERM Policy and its relevant risk assessment guidelines.[10] ICC also proposes additional information relating to the determination of risk ratings for identified risks.[11] With respect to the ''mitigate'' component, the proposed changes cross-reference relevant guidelines in the ERM Policy and include minor updates regarding documenting output and reviewing risk assessments.[12] The proposed changes also update the ''report'' component to more clearly state that ERM is responsible for operational risk reporting to appropriate parties.[13]

Appendix 1 of the Operational Risk Management Framework summarizes relevant regulatory requirements and industry guidance applicable to ICC. The proposal would revise appendix 1 to reference ICC's status as a covered clearing agency and to update relevant regulations applicable to ICC as a covered clearing agency relating to operational risk,[14] namely Rules 17Ad–22(e)(17) and (21).[15]

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.[16] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[17] and Rule 17Ad–22(e)(17)(i) thereunder.[18]

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 ICC 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 ICC or for which it is responsible, and, in general, to protect investors and the public interest.[19]

As discussed above, the proposed rule change would amend the Operational Risk Management Framework to explicitly reference the ICE, Inc. ERM Policy and the role that the ERM plays in establishing guidelines for operational risk management. In particular, the proposed rule change would state that the ICE, Inc. ERM Policy provides the Risk Assessment guidelines, including how ICC rates, identifies and mitigates various risks.

Additionally, the proposed rule change updates Appendix 1 of the Operational Risk Management Framework to state that ICC is a ''covered'' clearing agency and that it is subject to Rules 17Ad–22(e)(17) and (21), which require policies and procedures designed to manage operational risk.

As described above, the proposal would update the ICC Operational Risk Management Framework to note with more specificity ERM's role in ICC's operational risk management and to reference the ERM Policy as a source of information for such things as an inventory of material risks faced by ICC. With these changes, the Commission believes that ICC's Risk Management Framework should better reflect a more comprehensive set of the risk assessment standards used by ICC with respect to operational risk.

Further, the Commission believes that by adding references to ICC as a ''covered'' clearing agency and that, as such, ICC is subject to Rules 17Ad–22(e)(17) and (21), the proposed rule change strengthens the Operational Risk Framework by highlighting its specific regulatory obligations.

By enhancing ICC's risk management tools as noted above, the Commission finds the proposed rule change would enhance ICC's ability to identify and respond to operational risks presented by its clearing activities, adhere to specific regulatory requirements and, in turn, enhance its ability to avoid disruption to clearing operations and address operational risks in a timely fashion. By better positioning ICC to continue its critical operations and services and mitigating the risk of financial loss contagion that could be caused by ICC's failure, the Commission believes that these changes are designed to help facilitate prompt and accurate clearance and settlement and assure the safeguarding of securities and funds which are in the custody or control of ICC. Therefore, the Commission finds the proposed rule change is consistent with section 17A(b)(3)(F) of the Act.[20]

B. Consistency With and Rule 17Ad–22(e)(17)(i)

Rule 17Ad–22(e)(17)(i) requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, manage its operational risks by, among other things, identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[21]

As noted above, the proposed rule change would revise the Operational Risk Framework to note that ERM maintains a register of material risks faced by ICC. The Commission believes

[5] 17 CFR 240.17Ad–22(e)(17) and (21).

[6] Notice, 86 FR at 8447.

[7] *Id.*

[8] *Id.*

[9] *Id.* The ICE, Inc. Enterprise Risk Management Department (''ERM'') provides the oversight and framework for identifying, assessing, managing, monitoring and reporting on risk across the ICE, Inc.'s various business units, including ICC. ERM, in conjunction with relevant ICC individuals, oversees the management of this Operational Risk Management Framework.

[10] Notice, 86 FR at 8447–8448.

[11] Notice, 86 FR at 8448.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] 17 CFR 240.17Ad–22(e)(17) and (21).

[16] 15 U.S.C. 78s(b)(2)(C).

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17Ad–22(e)(17)(i).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 17 CFR 240.17Ad–22(e)(17)(i).

that this reference facilitates ICC's ability to more effectively identify plausible sources of operational risk, monitor them on an ongoing basis, and thus take appropriate and timely action to mitigate the impact of these risks. The proposal would further note that ERM provides risk assessment guidelines. The Commission believes this change also enhances ICC's ability to manage risks by providing clear and specific guidance in how to assess and mitigate a particular risk's impact once identified.

The Commission also believes that the regulatory update in Appendix 1 will strengthen ICC's ability to manage and mitigate operational risk by specifically noting the legal standards with respect to operational risk applicable to it as a covered clearing agency. In particular, the covered clearing agency standards added to the Operational Risk Framework address the obligation of ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, manage operational risk through a system for identification and mitigation of risk, ensuring that systems have a high degree of operational reliability, and establishment of a business continuity plan, as well as procedures for regularly reviewing the efficiency and effectiveness of its clearing and settlement arrangements, operating structure, products, and use of technology.

For the reasons stated above, the Commission believes that the proposed rule change is consistent with the obligation under Rule 17Ad–22(e)(17)(i).[22]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act,[23] and Rule 17Ad–(e)(17)(i)[24] thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act[25] that the proposed rule change (SR–ICC–2021–003), be, and hereby is, approved.[26]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–05133 Filed 3–11–21; 8:45 am]

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[22] 17 CFR 240.17Ad–22(e)(17)(i).

[23] 15 U.S.C. 78q–1.

[24] 17 CFR 240.17Ad–22(e)(17)(i).

[25] 15 U.S.C. 78s(b)(2).

[26] 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).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91278; File No. SR–ICC–2021–002]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the Clearance of an Additional Credit Default Swap Contract

March 8, 2021.

I. Introduction

On January 15, 2021, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to revise the ICC Rulebook (the ''Rules'')[3] to provide for the clearance of an additional Standard Emerging Market Sovereign CDS contract (the ''EM Contract''). The proposed rule change was published for comment in the **Federal Register** on February 1, 2021.[4] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the Rules to provide for the clearance of an additional EM Contract.[5] Specifically, the proposed rule change would amend Subchapter 26D of the Rules to provide for the clearance of the additional EM Contract, Ukraine. The proposed rule change would make a minor revision to Subchapter 26D (Standard Emerging Market Sovereign Single Name) of the Rules to provide for clearing the additional EM Contract. Specifically, the proposed rule change would amend the term ''Eligible SES Reference Entities'' in Rule 26D–102 (Definitions) to include Ukraine in the list of specific Eligible SES Reference Entities to be cleared by ICC. ICC represents that this additional EM Contract has terms consistent with the other EM Contracts approved for clearing at ICC and governed by Subchapter 26D of the Rules, and that clearance of this additional EM contract would not require any changes to ICC's Risk Management Framework.[6]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[7] Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.[8]

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[9] The Commission has reviewed the terms and conditions of the additional EM Contract proposed for clearing and has determined that those terms and conditions are substantially similar to the terms and conditions of the other contracts listed in Subchapter 26D of the ICC Rules, all of which ICC currently clears, with the key difference being that the underlying reference obligations will be issuances by Ukraine. Moreover, after reviewing the Notice and ICC's Rules, policies and procedures, the Commission finds that ICC would clear the additional EM Contract pursuant to its existing clearing arrangements and related financial safeguards, protections and risk management procedures.

In addition, based on its own experience and expertise, including a review of data on volume, open interest, and the number of ICC Clearing

[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] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the Clearance of an Additional Credit Default Swap Contract; Exchange Act Release No. 90989 (Jan. 26, 2021); 86 FR 7751 (Feb. 1, 2021) (''Notice'').

[5] The description that follows is excerpted from the Notice, 86 FR at 7751.

[6] *See* Notice, 86 FR at 7751.

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1(b)(3)(F).

Participants (''CPs'') that currently trade in the additional EM Contract as well as certain model parameters for the additional EM Contract, the Commission finds that ICC's rules, policies, and procedures are reasonably designed to price and measure the potential risk presented by the additional EM Contract, collect financial resources in proportion to such risk, and liquidate this product in the event of a CP default. This should help ensure ICC's ability to maintain the financial resources it needs to provide its critical services and function as a central counterparty, thereby promoting the prompt and accurate settlement of the additional EM Contract and other credit default swap transactions. For the same reasons, the Commission believes that the proposed rule change should help assure the safeguarding of securities or funds in the custody or control of ICC.

Therefore, the Commission finds that clearance of the additional EM Contract would promote the prompt and accurate clearance and settlement of securities transactions and would help assure safeguarding of securities and funds in the custody or control of ICC, consistent with Section 17A(b)(3)(F) of the Act.[10]

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.[11]

It is therefore ordered pursuant to Section 19(b)(2) of the Act [12] that the proposed rule change (SR–ICC–2021–002), be, and hereby is, approved.[13]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–05132 Filed 3–11–21; 8:45 am]

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[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 15 U.S.C. 78s(b)(2).

[13] 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).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91275; File No. SR–CBOE–2021–013]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 5.52(d) in Connection With a Market-Maker's Electronic Volume Transacted on the Exchange

March 8, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 5.52(d) in connection with a Market-Maker's electronic volume transacted on the Exchange. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.52(d) in connection with a Market-Maker's electronic volume transacted on the Exchange. Rule 5.52(d)(1) provides that if a Market-Maker never trades more than 20% of the Market-Maker's contract volume electronically in an appointed class during any calendar quarter (''Electronic Volume Threshold''),[3] a Market-Maker will not be obligated to quote electronically in any designated percentage of series within that class pursuant to subparagraph (d)(2) (which governs the continuous electronic quoting requirements for Market-Makers in their appointed classes). That is, once a Market-Maker surpasses the Electronic Volume Threshold in an appointed class, the Market-Maker is required to provide continuous electronic quotes in that appointed classes going forward. Neither Rule 5.52(d)(1) nor (d)(2) permit a Market-Maker to reduce its electronic volume after surpassing the Electronic Volume Threshold in order to reset the electronic volume trigger or otherwise undo the resulting obligation to stream electronic quotes once the Electronic Volume Threshold is triggered in an appointed class.

Market-Makers accustomed to executing volume on the trading floor have sophisticated and complicated risk modeling associated with their floor trading activity, including quoting, monitoring, and responding to the trading crowd. However, the Exchange understands that while such Market-Makers do have separate systems or third-party platforms for quoting, monitoring and responding to electronic markets, because these Market-Makers are almost exclusively floor-based, their technology or other platforms enabling them to quote electronically do not achieve the level of sophistication or complexity as the systems used by Market-Makers accustomed to quoting electronically. Indeed, to satisfy the continuous electronic quoting requirements, a Market-Maker must provide continuous bids and offers for 90% of the time the Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day and must provide continuous quotes in 60% of the series

[3] The proposed rule change provides additional clarity within Rule 5.52(d)(1) by defining this threshold and adding the defined term throughout Rule 5.52(d)(1).

of the Market-Maker's appointed classes. The Exchange determines compliance by a Market-Maker with this quoting obligation on a monthly basis. In addition to this, a Market-Maker must, among other things, compete with other Market-Makers in its appointed classes, update quotations in response to changed market conditions in its appointed classes, maintain active markets in its appointed classes, and, overall, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. Market-Makers that are predominantly floor-based generally do not have the technology or electronic trading sophistication to fully satisfy the continuous electronic quoting obligations, as well as other heightened standards required of a Market-Maker in its appointed classes electronically, once the Electronic Volume Threshold is triggered.

The Exchange has observed that, around the end of calendar year 2019, particularly given the significant increase in market volatility and unpredictability of market conditions in the months leading up to and during the COVID–19 pandemic,[4] Market-Makers that almost exclusively executed their volume in open outcry and had not prior triggered an electronic quoting obligation pursuant to Rule 5.52(d)(2), incidentally breached the Electronic Volume Threshold in certain appointed classes and were thereby obliged to provide continuous electronic quotes in those classes going forward. As stated above, once a Market-Maker surpasses the Electronic Volume Threshold in an appointed class, and the electronic quoting obligation is triggered, Rules 5.52(d)(1) and (d)(2) do not permit a Market-Maker to reset the trigger—a Market-Maker is required to stream electronic quotes in that appointed class beginning the next calendar quarter and from there on out. As such, once the Electronic Volume Threshold was surpassed by Market-Makers accustomed to quoting on the trading floor, these Market-Makers had to be equipped to uphold continuous electronic quoting obligations by just the next calendar quarter, production of which was exacerbated by the volatile and unusual market conditions present in the markets over the past year. As a result, the Exchange has observed that at least one Market-Maker[5] has been unable to successfully fulfill its new continuous electronic quoting obligations in subsequent months. The Exchange understands this is due to the Market-Maker not having the appropriate technology to successfully provide continuous electronic quotes. The Exchange believes requiring a Market-Maker not accustomed to and lacking the appropriate technology to provide continuous electronic quotes may potentially pose risk to the maintenance of fair and order markets as well as risk to the Market-Makers themselves as they are not able to compete in the electronic markets. Also, given the ongoing impact of the COVID–19 pandemic, the Exchange believes that additional floor-based Market-Makers may be susceptible to incidentally breaching the Electronic Volume Threshold in subsequent calendar quarters.

Therefore, the Exchange proposes to amend Rule 5.52(d)(1) in a manner that provides a potential path of recourse for Market-Makers that incidentally exceed the Electronic Volume Threshold, due, for example, to extraordinary or extreme volatility as experienced in the markets in the last year, but that may not be able to satisfy the continuous electronic quoting requirement on a monthly basis going forward given their primarily floor-based operation. Specifically, the proposed rule change adopts Rule 5.52(d)(1)(B)[6] which provides that the Exchange may, in exceptional cases and where good cause is shown, grant a Market-Maker a reset of the Electronic Volume Threshold in subparagraph (d)(1)(A). If a Market-Maker trades more than 20% of the Market-Maker's contract volume electronically in an appointed class during a calendar quarter, the Market-Maker may submit to the Exchange a request that the Exchange consider a reset of the Electronic Volume Threshold in the appointed class. If the Exchange determines that a Market-Maker qualifies for a reset of the 20% threshold in an appointed class, then the Market-Maker will not become subject to the continuous electronic quoting requirements pursuant to subparagraph (d)(2) in the appointed class in the next calendar quarter, and will again become subject to subparagraph (d)(1)(A) in the appointed class. In order to determine if a Market-Maker qualifies for a reset of the Electronic Volume Threshold in an appointed class, the Exchange may consider: (i) A Market-Maker's trading activity and business model in the appointed class; (ii) any previous requests for a reset of the Electronic Volume Threshold in the appointed class, including previously granted requests; (iii) market conditions and general trading activity in the appointed class; and (iv) any other factors as the Exchange deems appropriate in determining whether to approve a Market-Maker's request for an Electronic Volume Threshold reset. In this way, the proposed rule change allows those Market-Makers that predominantly provide liquidity on the trading floor and incidentally surpass (or have incidentally surpassed) the electronic volume threshold, and, subsequently, are not able to satisfy the continuous electronic quoting requirement on a monthly basis going forward, an opportunity to submit a request to the Exchange that they again be subject only to open outcry quoting requirements and continue to focus on providing liquidity in open outcry in accordance with their business models.[7] The Exchange notes that many of its rules currently allow it to make similar determinations regarding Market-Maker requirements and obligations. Rule 5.52(d)(2) similarly permits the

[4] The Exchange notes that after volatility and unusual market conditions beginning at the end of 2019 and continuously increasing through 2020 as a result of the impact of COVID19 and related factors, some market participants may have experienced significant trading losses, resulting in their limiting their trading behavior and risk exposure. The Exchange understands that firms, not otherwise highly active in the electronic markets, may have executed electronically in order to close positions, reduce exposure, and otherwise mitigate losses and reduce risk in light of market conditions experienced at various points throughout the year. These firms may have also reduced open outcry activity as part of the same risk-reducing strategy, resulting in a coincidental change in the mix of electronic versus open outcry volume for such generally floor-based Market-Makers.

[5] The Exchange is aware of at least two Market-Makers that triggered the Electronic Volume Threshold in the last months of 2019 and were subsequently unable to satisfy the continuous electronic quoting obligations. One such Market-Maker had been registered as a Market-Maker on the Exchange since 1997 (however, such firm has recently been dissolved) and one has been registered as a Market-Maker on the Exchange since 2001. The Exchange also notes that there are other Market-Makers that are not currently subject to the continuous electronic quoting requirements in their appointed classes. For example, the Exchange is aware of at least three Market-Makers that are not currently obligated to provide continuous electronic quotes in SPX.

[6] The proposed rule change also updates the format of Rule 5.51(d)(1) by adopting the title ''Electronic Volume Threshold'' and Rule 5.51(d)(1)(A) to govern the provision under current Rule 5.51(d)(1), and adopts the title ''Continuous Electronic Quotes'' for Rule 5.52(d)(2).

[7] The Exchange notes that the proposed rule change does not preclude the application of Rule 13.15(g)(14)(A), which, as part of the Minor Rule Violation Plan (''MRVP''), allows the Exchange to impose a fine on Market-Makers for failure to meet their continuous quoting obligations, including on any Market-Maker that is able to ''reset'' upon Commission approval of this proposal. The Exchange additionally notes that the proposed rule change also does not preclude the Exchange from referring matters covered under the MRVP for formal disciplinary action, pursuant to Rule 13.15(f), whenever it determines that any violation is intentional, egregious or otherwise not minor in nature.

Exchange to consider exceptions to a Market-Maker's continuous electronic quoting obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances. Rule 3.53(b) permits the Exchange to determine the appropriate number of Designated Primary Market-Makers (''DPMs'') by considering factors such as trading experience, history of an applicant's adherence to Exchange Rules, and Rules 3.53(g)(3), 3.55(a)(2), and 5.50(h) permit the Exchange to authorize a Market-Maker to operate as an On-Floor DPM or an On-Floor Lead Market-Maker (''LMM''), or to appoint a class to a DPM, respectively, by considering factors such as performance, volume, capacity, operational factors, and experience. Like the factors listed in proposed Rule 5.52(d)(1), where the Exchange may consider any other factors as the Exchange deems appropriate, the factors for Exchange consideration listed in Rules 5.52(d)(2), 3.53(b) and (g)(3), 3.55(a)(2) and 5.50(h) are also not limited and non-exhaustive.

Overall, the Exchange believes the propose rule change provides an opportunity for Market-Makers that are accustomed to providing liquidity on the trading floor, that incidentally may breach the Electronic Volume Threshold, to appeal to the Exchange to allow them, if good cause is shown, not to be subject to the continuous electronic quoting requirements and, instead, to continue to focus on providing liquid markets in open outcry in accordance with their business models. As such, the proposed rule change is designed to maintain fair and orderly markets, in that, if so determined appropriate by the Exchange, an Electronic Volume Threshold reset reduces the likelihood that Market-Makers not equipped to compete and stream quotes in the electronic markets at competitive prices, because their business models apply primarily to open outcry trading, are not compelled to attempt do so. The Exchange believes that automatically imposing continuous electronic quoting obligations on such Market-Makers without potential recourse may result in their inability to consistently stream electronic quotes on a monthly basis going forward and to comply with their other Market-Maker responsibilities, including engaging in a course of dealings that must be reasonably calculated to contribute to the maintenance of a fair and orderly market, refraining from making bids or offers that are inconsistent with such course of dealings, and updating quotations in response to changed market conditions. The proposed rule change instead allows the Exchange to consider whether those Market-Makers may continue to provide liquid markets on the Exchange's trading floor without having to quote electronically.

Finally, the proposed rule change also removes the rollout period for new classes in Rule 5.52(d)(1), which currently provides that for a period of 90 days commencing immediately after a class begins trading on the System, this subparagraph (d)(1) governs trading in that class. The rollout period was implemented in connection with the transition of certain classes to the Exchange's former Hybrid System.[8] As of 2018, all classes listed for trading on the Exchange now trade on the same platform, the Exchange's System. Therefore, a rollout period is no longer necessary. All Market-Makers in new classes and likewise all new Market-Makers will be equally subject to the electronic volume threshold pursuant to Rule 5.52(d)(1) and (d)(2) upon starting out.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change is consistent with the Act in that it removes impediments to and perfects the mechanism of a free and open market and in general protects investors by allowing Market-Makers accustomed to quoting on the trading floor and, therefore, not readily equipped to successfully stream electronic quotes on a continuous basis going forward, to appeal to the Exchange for a reset of the Electronic Volume Threshold if such Market-Makers incidentally breach the threshold. As described above, the Exchange understands that certain Market-Makers who primarily operate on the trading floor do not support systems with the level of sophistication and complexity that would allow them to compete in the electronic markets or satisfy the continuous electronic quoting obligations month-to-month pursuant to the Exchange Rules. The Exchange also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market, as it will permit it to remove a potentially undue burden on floor-based Market-Makers, which the Exchange believes may help preserve the presence of such Market-Makers that provide key liquidity to the Exchange's trading floor, which benefits all investors. Therefore, the Exchange believes the proposed rule change to allow a Market-Maker to request that the Exchange consider a reset of the Electronic Volume Threshold will assist in the maintenance of a fair and orderly market, and the protection of investors generally, by providing a potential path of recourse to Market Makers that predominantly provide liquidity to the Exchange's trading floor but may incidentally breach the Electronic Volume Threshold due, for example, to high volatility or unusual market conditions. Like other Exchange Rules governing Market-Maker requirements and obligations, the Exchange may consider a non-exhaustive list of factors in determining whether to grant a reset. The Exchange believes that an opportunity for a Market-Maker to appeal to the Exchange to potentially receive a reset of the Electronic Volume Threshold may reduce the likelihood that Market-Makers without sufficient equipment to stream competitive electronic quotes on an ongoing basis that may incidentally trigger the electronic volume threshold, especially in light of market volatility and unusual market conditions that continue to arise as a result of the ongoing COVID–19 pandemic, are not necessarily required to do so. This way, such Market-Makers may, if determined appropriate by the Exchange, continue to focus on providing liquidity on the trading floor in accordance with their operations and satisfy their obligation to engage in a

[8] *See* Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (SR–CBOE–2002–05).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market and their other Market-Maker obligations. Therefore, the Exchange also believes the proposed rule change furthers the objectives of Section 6(c)(3) of the Act,[12] which authorizes the Exchange to, among other things, prescribe standards of financial responsibility or operational capability and standards of training, experience and competence for its Trading Permit Holders and person associated with Trading Permit Holders. The Exchange believes that the proposed rule change will generally protect investors as it is designed to support the overall purpose of the rule in permitting open outcry Market-Makers to continue to conduct their business as intended—providing liquid markets on the Exchange's trading floor without having to quote electronically.

Finally, the Exchange believes that the proposed rule change to remove the rollout provision for new classes will remove impediments to and perfect the mechanism of a free and open market and national market system because it removes a provision that is no longer necessary as a result of the full transition of all classes listed on the Exchange to trading on the Exchange's System. All Market-Makers in new classes, and likewise all new Market-Makers, will continue to have the opportunity to acclimate to their market making obligations in newly appointed classes as they will be equally subject to the electronic volume threshold pursuant to Rule 5.52(d)(1) and (d)(2) upon starting out.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed rule change will apply in the same manner to all Market-Makers, in that, all Market-Makers that incidentally reach (or have incidentally reached) the Electronic Volume Threshold will have the opportunity to request that Exchange consider a reset of the threshold. In addition to this, the proposed deletion of the new class rollout period would not impose any burden on competition as it merely removes a rollout period related to the Exchange's prior transition of classes to its former Hybrid System that is no longer necessary. All new classes and all new Market-Makers will be equally subject to the electronic volume threshold pursuant to Rule 5.52(d)(1) and (d)(2) upon starting out.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Electronic Volume Threshold applies only for the purposes of determining when a Market-Maker is subject to certain quoting obligations on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 will:

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–CBOE–2021–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2021–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and 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–CBOE–2021–013 and should be submitted on or before April 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–05131 Filed 3–11–21; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f(c)(3).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–5696]

Notice of Intention To Cancel Registration Pursuant to Section 203(H) of The Investment Advisers Act of 1940

March 9, 2021.

Notice is given that the Securities and Exchange Commission (the ''Commission'') intends to issue an order, pursuant to section 203(h) of the Investment Advisers Act of 1940 (the ''Act''), cancelling the registration of BWM Advisory LLC [File No. 801–108290], hereinafter referred to as the ''*registrant.*''

Section 203(h) of the Act provides, in pertinent part, that if the Commission finds that any person registered under section 203 of the Act, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A of the Act, the Commission shall by order, cancel the registration of such person.

The registrant indicated on its Form ADV that it is no longer eligible to remain registered with the Commission but has not filed a Form ADV–W to withdraw from Commission registration. As a result, it appears that the registrant is prohibited from registering as an investment adviser under section 203A of the Act. Accordingly, the Commission believes that reasonable grounds exist for finding that the registrant is not eligible to be registered with the Commission as an investment adviser and that the registration should be cancelled pursuant to section 203(h) of the Act.

Notice also is given that any interested person may, by April 3, 2021, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation, accompanied by a statement as to the nature of his or her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he or she may request that he or she be notified if the Commission should order a hearing thereon. Any such communication should be emailed to the Commission's Secretary at *Secretarys-Office@sec.gov.*

At any time after April 3, 2021, the Commission may issue an order cancelling the registration, upon the basis of the information stated above, unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or who requested to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any adviser whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Alexis Palascak, Senior Counsel at 202–551–6999; SEC, Division of Investment Management, Investment Adviser Regulation Office, 100 F Street NE, Washington, DC 20549–8549.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.[1]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–05170 Filed 3–11–21; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 200.30–5(e)(2).

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2021–0005]

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes new information collections, and revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA.

Comments: https://www.reginfo.gov/public/do/PRAMain. Submit your comments online referencing Docket ID Number [SSA–2021–0005].

SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2021–0005].

SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than April 12, 2021. Individuals can obtain copies of these OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. *Retaining Employment and Talent After Injury/Illness Network (RETAIN) 0960–NEW*

Background

The Social Security Administration (SSA) and the U.S. Department of Labor (DOL) are undertaking the Retaining Employment and Talent After Injury/Illness Network (RETAIN) demonstration. The RETAIN demonstration will test the impact of early intervention strategies to improve stay-at-work/return-to-work (SAW/RTW) outcomes of individuals who experience work disability while employed. We define ''work disability'' as an injury, illness, or medical condition that has the potential to inhibit or prevent continued employment or labor force participation.

SAW/RTW programs succeed by returning injured or ill workers to productive work as soon as medically possible during their recovery process, and by providing interim part-time or light duty work and accommodations, as necessary. The RETAIN demonstration is loosely modeled after promising programs operating in Washington State, including the Centers of Occupational Health and Education (COHE), the Early Return to Work (ERTW), and the Stay at Work programs. While these programs operate within the state's workers' compensation system, and are available only to people experiencing work-related injuries or illnesses, the RETAIN demonstration provides opportunities to improve SAW/RTW outcomes for both occupational and non-occupational injuries and illnesses of people who are employed, or at a minimum in the labor force, when their injury or illness occurs.

The primary goals of the RETAIN demonstration are:

1. To increase employment retention and labor force participation of individuals who acquire, or are at risk of developing, work disabilities; and

2. To reduce long-term work disability among RETAIN service users, including the need for Social Security Disability Insurance and Supplemental Security Income.

The ultimate purpose of the demonstration is to validate and expand implementation of evidence-based strategies to accomplish these goals. DOL is funding the intervention approaches and programmatic technical assistance for the demonstration. SSA is

funding evaluation support, including technical assistance and the full evaluation for the demonstration.

Project Description

The demonstration consists of two phases. The first involves the implementation and assessment of cooperative awards to eight states to conduct planning and start-up activities, including the launch of a small pilot demonstration. During phase 1, SSA will provide evaluation-related technical assistance and planning, and conduct evaluability assessments to assess which states' projects would allow for a rigorous evaluation if continued beyond the pilot phase. DOL will select a subset of the states to continue to phase 2, full implementation.

Phase 2 will include a subset of states for full implementation and evaluation. During phase 2, DOL will fund the operations and program technical assistance activities for the recommended states, and SSA will fund the full set of evaluation activities.

SSA is requesting clearance for the collection of data needed to implement and evaluate RETAIN. The four components of this evaluation, completed during site visits, interviews with RETAIN service users, surveys of RETAIN enrollees, and surveys of RETAIN service providers, include:

- *The participation analysis:* Using RETAIN service user interviews and surveys, this analysis will provide insights into which eligible workers choose to participate in the program, in what ways they participate, and how services received vary with participant characteristics. Similarly, it will assess the characteristics of, and if possible, reasons for non-enrollment of non-participants.
- *The process analysis:* Using staff interviews and logs, this analysis will produce information about operational features that affect service provision; perceptions of the intervention design by service users, providers, administrators, and other stakeholders; the relationships among the partner organizations; each program's fidelity to the research design; and lessons for future programs with similar objectives.
- *The impact analysis:* This analysis will produce estimates of the effects of the interventions on primary outcomes, including employment and Social Security disability applications, and secondary outcomes, such as health and service usage. SSA will identify evaluation designs for each state to generate impact estimates. The evaluation design could include experimental or non-experimental designs.
- *The cost-benefit analysis:* This analysis will assess whether the benefits of RETAIN justify its costs. We conduct this assessment from a range of perspectives, including those of the participants, state and Federal governments, SSA, and society as a whole.

The proposed data collections to support these analyses include qualitative and quantitative data. At this time, SSA requests clearance for all of these data collection activities. The qualitative data collection consists of: (1) Semi-structured interviews with program staff and service users; and (2) staff activity logs. The program staff will complete interviews during two rounds of site visits. They will focus on staff's perceptions of the successes and challenges of implementing each state's program. The staff activity logs will house information on staff's time to inform the benefit-cost analysis. The service user interviews will inform SSA's understanding of users' experiences with program services. The quantitative data include SSA's program records and survey data. The survey data collection consists of: (1) Two rounds of follow-up surveys, focusing on individual-level outcomes, with enrollees, all of whom who have experienced a disability onset; and (2) two rounds of surveys with RETAIN providers.

The respondents are staff members selected for staff interviews and staff activity logs, and RETAIN service users, enrollees, and providers.

Type of Request: Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Average wait time in field office (minutes)**	Total annual opportunity cost (dollars)***
RETAIN 2021 Burden Figures							
Enrollee Survey Round 1 (Respondents)	320	1	15	80	* $25.72	** 24	*** $5,350
Enrollee Survey Round 1 (Nonrespondents)	80	1	3	4	* 25.72	** 24	*** 926
Totals	400			84			*** 6,276
RETAIN 2022 Burden Figures							
Staff Interviews (state administrators/directors)	4	1	105	7	* 45.23	** 24	*** 407
Staff Interviews (program line staff)	72	1	75	90	* 32.58	** 24	*** 3,870
Service User Interviews (Respondents)	60	1	36	36	* 25.72	** 24	*** 1,543
Service User Interviews (Nonrespondents)	540	1	6	54	* 25.72	** 24	*** 6,945
Staff Activity Logs (state administrators/directors)	4	1	70	5	* 45.23	** 24	*** 298
Staff Activity Logs (program line staff)	48	1	70	56	* 32.58	** 24	*** 2,450
Enrollee Survey Round 1 (Respondents)	3,840	1	15	960	* 25.72	** 24	*** 64,197
Enrollee Survey Round 1 (Nonrespondents)	960	1	3	48	* 25.72	** 24	*** 11,111
Enrollee Survey Round 2 (Respondents)	960	1	21	336	* 25.72	** 24	*** 18,518
Enrollee Survey Round 2 (Nonrespondents)	240	1	3	12	* 25.72	** 24	*** 2,778
Provider Survey Round 2 (Respondents)	320	1	17	91	* 32.58	** 24	*** 7,135
Provider Survey Round 2 (Nonrespondents)	80	1	3	4	* 32.58	** 24	*** 1,173
Totals	7,128			1,699			*** 120,425
RETAIN 2023 Burden Figures							
Enrollee Survey Round 1 (Respondents)	3,840	1	15	960	* 25.72	** 24	*** 64,197
Enrollee Survey Round 1 (Nonrespondents)	960	1	3	48	* 25.72	** 24	*** 11,111
Enrollee Survey Round 2 (Respondents)	3,840	1	21	1,344	* 25.72	** 24	*** 74,074
Enrollee Survey Round 2 (Nonrespondents)	960	1	3	48	* 25.72	** 24	*** 11,111
Provider Survey Round 2 (Respondents)	320	1	17	91	* 32.58	** 24	*** 7,135

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
Provider Survey Round 2 (Nonrespondents)	80	1	3	4	* 32.58	** 24	*** 1,173
Totals	10,000			2,495			*** 168,801
RETAIN 2024 Burden Figures							
Enrollee Survey Round 1 (Respondents)	1,600	1	15	400	* 25.72	** 24	*** 26,749
Enrollee Survey Round 1 (Nonrespondents)	400	1	3	20	* 25.72	** 24	*** 4,629
Enrollee Survey Round 2 (Respondents)	3,840	1	21	1,344	* 25.72	** 24	*** 74,074
Enrollee Survey Round 2 (Nonrespondents)	960	1	3	48	* 25.72	** 24	*** 11,111
Totals	6,800			1,812			*** 116,563
RETAIN 2025 Burden Figures							
Enrollee Survey Round 2 (Respondents)	960	1	21	336	* 25.72	** 24	*** 18,518
Enrollee Survey Round 2 (Nonrespondents)	240	1	3	12	* 25.72	** 24	*** 2,778
Totals	1,200			348			*** 21,296
RETAIN Grand Total Burden Figures							
Totals	25,528			6,438			*** 433,361

* We based these figures on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*), and average local Government Management and staff hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes110000.htm*) & (*https://www.bls.gov/oes/current/oes131071.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Internet and Telephone Appointment Applications—20 CFR 404.620–404.630, and 416.330–416.340—0960–NEW. SSA offers both internet and telephone appointment options for individuals who wish to request an appointment when they are unable to complete one of SSA's online or automated telephone applications because they failed the initial verification checks, or because they state their reading language preference is other than English.

iAppointment: iAppointment is an online process that allows members of the public an easy-to-use method to schedule an appointment with the servicing office of their choice. Since the application date can affect when a claimant's benefit begins, iAppointment establishes a protective filing date and provides respondents information related to the date by which they must file their actual application. The iAppointment application propagates information the applicant already entered onto any of SSA's internet applications for SSN, name, date of birth, and gender. Applicants must provide minimal additional information: Mailing address; telephone number; language preference; type of appointment (Disability, Retirement, Medicare); and whether they prefer a telephone interview or in-office appointment. iAppointment is a customer-centric application. If the available appointment times do not meet the customer's needs, iAppointment allows the user to enter a different zip code to identify another field office, which may offer different appointment times. At this time, SSA only allows domestic first party applicants to use iAppointment. If users indicate they are filing as third parties, iAppointment provides a message directing them to call the National 800 Number for assistance. If a foreign first party user is unable to complete iClaim, iAppointment directs them to contact a Social Security representative, and provides a link to SSA's Service Around the World website.

Enhanced Leads and Appointment System (eLAS): eLAS is an Intranet-based version of the iAppointment screens for use by SSA technicians in both the field offices and call centers. eLAS interacts with iAppointment to ensure we always record the same information whether an individual requests an appointment through our internet screens or via telephone. eLAS is a non-public facing system that allows SSA employees in the field offices, workload support units, and teleservice centers to use an telephone interview process to schedule appointments and document an individual's intent to file using a script and asking the same questions to each individual. We use eLAS with individuals who use our automated telephone system or who prefer not to use iAppointment to set up their appointment.

The respondents are individuals who are unable to use our internet or automated telephone systems because they failed the initial verification checks; or because they state their reading language preference is other than English.

This is a correction notice: SSA published the incorrect burden information for this collection at 86 FR 667, on 1/6/21. We are providing the correct burden here.

Type of Request: Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average combined wait time in field office or for teleservice center (minutes) **	Total annual opportunity cost (dollars) ***
iAppointment	17,621	1	10	2,937	* $25.72		*** $75,540
eLAS	5,885,731	1	10	980,955	* 25.72	** 21	*** 78,213,513
Totals	5,903,352			983,892			*** 78,289,053

* We based these figures on average U.S. worker's hourly wages (based on *BLS.gov* data, *https://www.bls.gov/oes/current/oes_nat.htm*).
** We based this figure on the combined average FY 2020 wait times for field offices (approximately 24 minutes per respondent) and teleservice centers (approximately 17 minutes per respondent), based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Letter to Employer Requesting Wage Information—20 CFR 416.203 & 416.1110—0960–0138. SSA must establish and verify wage information for Supplemental Security Income (SSI) applicants and recipients when determining SSI eligibility and payment amounts. SSA collects wage data from employers on Form SSA–L4201 to determine eligibility and proper payment amounts for SSI applicants and recipients. The respondents are employers of SSI applicants and recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–L4201	133,000	1	30	66,500	* $22.79	** $1,515,535

* We based this figure on the average Payroll and Timekeeping Clerks hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes433051.htm*).
** This figure does not represent actual costs that we are imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. *Statement of Funds You Provided to Another and Statement of Funds You Received—20 CFR 416.1103(f)—0960–0481.* SSA uses Forms SSA–2854 (Statement of Funds You Provided to Another) and SSA–2855 (Statement of Funds You Received) to gather information to verify if a loan is bona fide for SSI recipients. The SSA–2854 asks the lender for details on the transaction, and Form SSA–2855 asks the borrower the same basic questions independently. Agency personnel then compare the two statements, gather evidence if needed, and make a decision on the validity of the bona fide status of the loan.

For SSI purposes, we consider a loan bona fide if it meets these requirements:

- Must be between a borrower and lender with the understanding that the borrower has an obligation to repay the money;
- Must be in effect at the time the cash goes to the borrower, that is, the agreement cannot come after the cash is paid; and
- Must be enforceable under State law, as often there are additional requirements from the State.

SSA collects this information at the time of initial application for SSI, or at any point when an individual alleges being party to an informal loan while receiving SSI. SSA collects information on the informal loan through both interviews and mailed forms. The agency's field personnel conduct the interviews and mail the form(s) for completion, as needed. The respondents are SSI recipients and applicants, and individuals who lend money to them.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–2854	20,000	1	15	5,000	* $25.72	** 24	*** $334,360
SSA–2855	20,000	1	15	5,000	* 25.72	** 24	*** 334,360
Totals	40,000			10,000			*** 668,720

* We based this figure on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).
** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. *Social Security Benefits Application—20 CFR 404.310–404.311, 404.315–404.322, 404.330–404.333, 404.601–404.603, and 404.1501–404.1512—0960–0618.* Title II of the Social Security Act provides retirement, survivors, and disability benefits to individuals who meet the eligibility criteria and file the appropriate application. This collection comprises the various application methods for each type of benefits. SSA uses the

information we gather through the multiple information collection tools in this information collection request to determine applicants' eligibility for specific Social Security benefits, as well as the amount of the benefits. Individuals filing for disability benefits can, and in some instances SSA may require them to, file applications under both Title II, Social Security disability benefits, and Title XVI, SSI payments. We refer to disability applications filed under both titles as ''concurrent applications.'' This collection comprises the various application methods for each type of benefits. These methods include the following modalities: Paper forms (Forms SSA–1, SSA–2, and SSA–16); Modernized Claims System (MCS) screens for in-person interview applications; and internet-based iClaim application. SSA uses the information we collect through these modalities to determine: (1) The applicants' eligibility for the above-mentioned Social Security benefits, and (2) the amount of the benefits. The respondents are applicants for retirement, survivors, and disability benefits under Title II of the Social Security Act, or their representative payees.

This is a correction notice: SSA published the incorrect burden information for this collection at 85 FR 86638, on 12/30/20. We are providing the correct burden here.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)	Average theoretical cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–1							
Paper version/SSA–1	2,346	1	11	430	* $25.72	** 24	*** $35,185
Interview/MCS	1,925,180	1	10	320,863	* 25.72	** 24	*** 28,058,842
Internet/iClaim—Domestic Residence:							
First Party	1,470,043	1	15	367,511	* 25.72		*** 9,452,383
Third party initiated (complete and submit)	25,706	1	15	6,427	* 25.72		*** 165,302
Internet/iClaim—Foreign Residence:							
First Party	7,993	1	18	2,398	* 25.72		*** 61,677
Third party-initiated (complete and submit)	645	1	18	194	* 25.72		*** 4,990
Totals	3,431,913			697,823			*** 37,778,379
SSA–2							
Paper version/SSA–2	779	1	15	195	* $25.72	** 24	*** $13,040
Interview/MCS	407,415	1	14	95,064	* 25.72	** 24	*** 6,636,532
iClaim	124,499	1	15	31,125	* 25.72		*** 800,535
Totals	532,693			126,384			*** 7,450,107
SSA–16							
Paper version/SSA–16	29,485	1	20	9,828	* 25.72	** 24	*** 556,118
Interview/MCS	920,938	1	19	291,630	* 25.72	** 24	*** 16,975,329
Internet/iClaim—Domestic Residence:							
First Party	503,567	1	15	125,892	* 25.72		*** 3,237,942
Third party initiated (complete and submit)	528,474	1	15	132,119	* 25.72		*** 3,398,101
Internet/iClaim—Foreign Residence:							
First Party	781	1	18	234	* 25.72		*** 6,018
Third party-initiated (complete and submit)	123	1	18	37	* 25.72		*** 952
Totals	1,983,368			559,740			*** 24,174,460
Grand Total							
Total	5,947,974			1,383,947			*** 69,402,946

* We based this figure on the average hourly wage for all occupations in May 2019 as reported by the U.S. Bureau of Labor Statistics (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. *Redetermination of Eligibility for Help with Medicare Prescription Drug Plan Costs—20 CFR 418.3125—0960–0723.* Under the Medicare Modernization Act of 2003, SSA conducts low-income subsidy eligibility redeterminations for Medicare beneficiaries who currently receive Medicare Part D subsidy and who meet certain criteria. Respondents complete Form SSA–1026–OCR–SM–REDE under the following circumstances: (1) When individuals became entitled to the Medicare Part D subsidy during the past 12 months; (2) if they were eligible for the Part D subsidy for more than 12 months; or (3) if they reported a change in income, resources, or household size. Part D beneficiaries complete Form SSA–1026–OCR–SM–SCE when they need to report a potentially subsidy-changing event, including the following: (1) Marriage; (2) spousal separation; (3) divorce; (4) annulment of a marriage; (5) spousal death; or (6) moving back in with one's spouse following a separation. The respondents are current recipients of Medicare Part D low-income subsidy who will undergo an eligibility redetermination for one of the reasons mentioned above.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)	Average theoretical cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–1026–OCR–SM–REDE	120,220	1	18	36,066	* $25.72		*** $927,618
SSA–1026–OCR–SM–SCE	3,462	1	18	1,039	* 25.72		*** 26,723
REDE Field Office Interview	50,879	1	18	15,264	* 25.72	** 24	*** 916,033
SCE Field Office Interview	4,441	1	18	1,332	* 25.72	** 24	*** 79,948
Totals	179,002			53,701			*** 1,950,322

* We based this figure on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).
** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: March 9, 2021.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2021–05179 Filed 3–11–21; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1310X]

Northwestern Pacific Railroad Company—Discontinuance of Service Exemption—in Marin, Napa, and Sonoma Counties, Cal.

On February 22, 2021, Northwestern Pacific Railroad Company (NWPCO) filed a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over the rail line extending between approximately milepost NWP 89 near the Sonoma-Mendocino County, Cal., border and approximately milepost SP 63.4 at Lombard, Cal., a distance of approximately 87.65 miles, in Marin, Napa, and Sonoma Counties, Cal. (the Line). The Line traverses U.S. Postal Service Zip Codes 95448, 95425, 95492, 95441, 95439, 95403, 95401, 95407, 94928, 94931, 94951, 94954, 94952, 94945, 94949, 94503, 95476, and 94559.

According to NWPCO, it provides service on the Line pursuant to a lease with the North Coast Railroad Authority (NCRA). *See Nw. Pac. R.R.—Change in Operators Exemption—N. Coast R.R. Auth.,* FD 35073 (STB served Aug. 30, 2007). NWPCO states that NCRA owns the portion of the Line between the Sonoma-Mendocino County border and NWP milepost 68.2, in Healdsburg, Cal., and that NCRA has a freight rail operating easement on the portion of the Line between Healdsburg and Lombard, which is owned by Sonoma-Marin Area Rail Transit District (SMART). *See Sonoma-Marin Area Rail Transit Dist.—Acquis. Exemption—Nw. Pac. R.R. Auth.,* FD 34400 (STB served Mar. 10, 2004). NWPCO explains that NCRA is expected to transfer its property interests and common carrier obligations on the Line to SMART, and that SMART has filed for acquisition authority with the Board. *See Sonoma-Marin Area Rail Transit Dist.—Acquis. & Operation Exemption—N. Coast R.R. Auth.,* FD 36481 (STB served Feb. 18, 2021). NWPCO asserts that SMART would then assume operations on the Line as a rail common carrier [1] and that no customer on the Line would have an interruption in service as a result of the proposed discontinuance.

NWPCO asserts that, because it is seeking discontinuance rather than an abandonment, the question of whether the Line contains any federally granted rights-of-way is inapplicable. NWPCO states, however, that any documentation related to title in its possession would be made available to those requesting it. NWPCO states that the Line over which it seeks discontinuance authority represents the entire scope of its ''active rail service,'' and it therefore requests that the Board decline to impose labor protection conditions.[2]

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 11, 2021.

Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during any subsequent abandonment, this discontinuance does not require an environmental review. *See* 49 CFR 1105.6(c)(5), 1105.8(b).

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner.[3] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by March 22, 2021, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(1)(i).

All filings in response to this notice must refer to Docket No. AB 1310X and should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on NWPCO's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. NW, Suite 1300 South, Washington, DC 20004. Replies to this petition are due on or before April 1, 2021.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

Board decisions and notices are available at *www.stb.gov.*

Decided: March 8, 2021.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2021–05104 Filed 3–11–21; 8:45 am]

BILLING CODE 4915–01–P

[1] The petition indicates that, at least temporarily, SMART would engage NWPCO as SMART's contract operator on the Line.

[2] NWPCO states that, for the immediate future, it will retain operating authority over a segment of rail line north of the Line from milepost 89 to milepost 142.5. NWPCO, however, asserts that it has never offered service on this portion of rail line due to an emergency order by the Federal Railroad Administration prohibiting railroad operations.

[3] The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36486]

Grainbelt Corporation—Trackage Rights Exemption—BNSF Railway Company

Grainbelt Corporation (GNBC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for the grant of amended, local trackage rights on trackage owned by BNSF Railway Company (BNSF) between approximately milepost 668.73 in Long, Okla., and approximately milepost 723.30 in Quanah, Tex. (the Line), allowing GNBC to (1) use the Line to access the Plains Cotton Cooperative Association (PCCA) facility near BNSF Chickasha Subdivision milepost 688.6 at Altus, Okla., and (2) to operate additional trains on the Line to accommodate the movement of trains transporting BNSF customers' railcars (loaded or empty) located along the Line, to unit train facilities on the Line.[1] GNBC and BNSF have agreed to the amended trackage rights pursuant to a written amendment[2] to their existing trackage rights agreement dated February 19, 2021.[3]

The transaction may be consummated on or after March 28, 2021, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than March 19, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36486, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on GNBC's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market St., Philadelphia, PA 19103.

According to GNBC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: March 8, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2021–05108 Filed 3–11–21; 8:45 am]

BILLING CODE 4915–01–P

[1] GNBC states that it already holds overhead trackage rights granted by BNSF's predecessor between Snyder Yard at milepost 664.00 and Quanah at milepost 723.30 allowing GNBC to interchange at Quanah with BNSF and Union Pacific Railroad Company. According to GNBC, these original trackage rights were supplemented in 2009 to allow GNBC to operate between Snyder, Okla., and Altus, with the right to perform limited local service at Long, Okla. *See Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry. & Stillwater Cent. R.R.,* FD 35332 (STB served Dec. 17, 2009). GNBC states that the trackage rights were further amended in 2013 to allow GNBC to provide local grain service to a shuttle facility in Headrick, Okla., and again in 2014 to allow GNBC to provide local service to a grain shuttle facility in Eldorado, Okla. *See Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry.,* FD 35719 (STB served Mar. 15, 2013); *Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry.,* FD 35831 (STB served June 12, 2014). According to GNBC, the existing trackage rights will not be affected by the new trackage rights that are the subject of this proceeding.

[2] A redacted copy of the amendment is attached to the verified notice. An unredacted copy was filed under seal along with a motion for protective order pursuant to 49 CFR 1104.14. That motion was granted in a decision served on March 4, 2021.

[3] GNBC states that its verified notice is related to a petition for partial revocation filed in Docket No. FD 36486 (Sub-No. 1), in which GNBC seeks authority to allow the proposed trackage rights to expire automatically twelve months after the effective date of the exemption. On March 4, 2021, GNBC filed in Docket Nos. FD 36486 and FD 36486 (Sub-No. 1) two letters of support from PCCA and Cargill Cotton asking that the Board promptly grant GNBC's requests in both dockets. GNBC's petition for partial revocation will be addressed in a separate decision.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36479]

Palouse River & Coulee City Railroad, L.L.C.—Lease Exemption With Interchange Commitment—Union Pacific Railroad Company

Palouse River & Coulee City Railroad, L.L.C. (PRCC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to renew its lease of 11.5 miles of rail line known as the Condon Subdivision owned by Union Pacific Railroad Company (UP) between milepost 0.0 at Arlington, Or., and milepost 11.5 at Gilliam, Or. (the Line).

According to the verified notice, PRCC has leased and operated the Line since 2003, *see Palouse River & Coulee City R.R.—Lease & Operation Exemption—Union Pac. R.R.,* FD 34385 (STB served Aug. 21, 2003), and PRCC and UP have executed an amendment to the lease (Amendment) that extends the term of the lease through August 31, 2025.[1] PRCC states that it will continue to operate and provide all rail common carrier freight service to shippers on the Line.

PRCC certifies that its projected annual revenues from this transaction will not result in its becoming a Class I or Class II rail carrier and will not exceed $5 million. As required under 49 CFR 1150.43(h)(1), PRCC has disclosed in its verified notice that its lease agreement with UP contains an interchange commitment and has provided additional information regarding the interchange commitment as required by 49 CFR 1150.43(h).

The earliest this transaction may be consummated is March 27, 2021, the effective date of the exemption (30 days after the verified notice was filed).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than March 19, 2021.

All pleadings, referring to Docket No. FD 36479, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on PRCC's representative, Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to PRCC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: March 9, 2021.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2021–05198 Filed 3–11–21; 8:45 am]

BILLING CODE 4915–01–P

[1] Copies of the 2003 lease and the Amendment were submitted under seal. *See* 49 CFR 1150.43(h)(1).

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36356]

Vicksburg Southern Railroad, L.L.C.—Lease and Operation Exemption—The Kansas City Southern Railway Company

Vicksburg Southern Railroad, L.L.C. (VSOR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease and operate from The Kansas City Southern Railway Company (KCS) approximately 21.7 miles of rail line on the Redwood Branch, consisting of two segments (the Lines): (1) Between milepost 21.9, at the end of the line near Redwood, Miss., and milepost 220.3, north of KCS's Vicksburg Yard, at Vicksburg, Miss.; and (2) between milepost 223.0, south of the connection with the KCS main line, and milepost 225.6 at Vicksburg.

According to the verified notice, VSOR has operated the Lines since 2006. *See Vicksburg S. R.R.—Lease & Operation Exemption—Kan. City S. Ry.,* FD 34765 (STB served Jan. 13, 2006). VSOR and KCS entered into an amended and restated lease in 2017 (Restated Lease), which currently governs VSOR's lease and operation of the Lines. *See Vicksburg S. R.R.—Lease & Operation Exemption—Kan. City S. Ry.,* FD 36128 (STB served Dec. 7, 2017). The verified notice states that VSOR and KCS executed an amendment on July 20, 2020 (Amendment) to the Restated Lease. The Amendment extends the terms of the Restated Lease until November 30, 2034. According to VSOR, the Amendment does not contain a provision that prohibits VSOR from interchanging traffic with a third party or limits VSOR's ability to interchange with a third party.

VSOR certifies that its projected annual revenues as a result of this transaction will not exceed $5 million and will not result in the creation of a Class I or Class II rail carrier.

The earliest this transaction may be consummated is March 27, 2021, the effective date of the exemption (30 days after the verified notice was filed).[1]

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than March 19, 2021.

All pleadings, referring to Docket No. FD 36356, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on VSOR's representative, Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to VSOR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: March 8, 2021.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2021–05127 Filed 3–11–21; 8:45 am]

BILLING CODE 4915–01–P

[1] VSOR initially submitted its verified notice on February 23, 2021. On February 25, 2021, VSOR filed a supplement; therefore, February 25 is deemed the filing date of the verified notice.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2021–2054]

Petition for Exemption; Summary of Petition Received; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc)

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

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition by Rolls-Royce Deutschland LTD & Co KG seeking relief from specific regulatory requirements. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before April 1, 2021.

ADDRESSES: You may send comments using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tara Fitzgerald, Federal Aviation Administration, Policy Implementation, AIR–613, Strategic Policy Management Branch, 1200 District Avenue, Burlington, Massachusetts 01803–5529; (781) 238–7130; facsimile: (781) 238–7199; email: *Tara.Fitzgerald@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Burlington, Massachusetts, on January 29, 2021.

Robert J. Ganley,

Strategic Policy Propulsion Section, Aircraft Certification Service.

Petition for Exemption

Docket No.: FAA–2018–0880.

Petitioner: Rolls-Royce Deutschland Ltd & Co KG (RRD).

Section(s) of 14 CFR Affected: § 33.14 at amendment 33–10 and § 33.83(d) at amendment 33–17.

Description of Relief Sought: RRD requests an extension until 30 June 2023, to previously granted temporary Exemption No 18082 from 14 CFR 33.14 and § 33.83(d) for the following RRD engine models: Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent 1000–N3, Trent 1000–P3, Trent 1000–Q3, Trent 1000–R3, Trent 7000–72, and Trent 7000–72C. Because of the COVID–19 pandemic and resultant significant changes to the Trent 1000 fleet usage profile and engine overhaul capacity during 2020, the date of 31 December 2021, for

restoring compliance with 14 CFR 33.14 and § 33.83(d) can no longer reasonably be met.

[FR Doc. 2021–02206 Filed 3–11–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

DATES: Comments must be received by May 11, 2021.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0238, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0238'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection [1] by the following method:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0238'' or ''Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transactions Act of 2003.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests and requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of part 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed extension of this collection of information.

Title: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

OMB Control No.: 1557–0238.

Type of Review: Regular.

Description: Pursuant to section 312 of the FACT Act, the OCC issued guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and prescribed regulations that require furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also required the issuance of regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer.

Twelve CFR 1022.42(a) requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of consumer information that they provide to a consumer reporting agency (CRA).

Twelve CFR 1022.43(a) requires a furnisher to conduct a reasonable investigation of a dispute initiated directly by a consumer in certain circumstances. Furnishers are required to have procedures to ensure that disputes received directly from consumers are handled in a substantially similar manner to those complaints received through CRAs.

Twelve CFR 1022.43(f)(2) incorporates the statutory requirement that a furnisher must notify a consumer by mail or other means (if authorized by the consumer) not later than five business days after making a determination that a dispute is frivolous or irrelevant. Twelve CFR 1022.43(f)(3) incorporates the statute's content requirements for the notices.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,032 respondents.

Estimated Total Annual Burden: 185,603 hours.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility; (b) The accuracy of the OCC's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information

[1] Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2021–05180 Filed 3–11–21; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

2021 Terrorism Risk Insurance Program Data Call

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Data Collection.

SUMMARY: Pursuant to the Terrorism Risk Insurance Act of 2002, as amended (TRIA), insurers that participate in the Terrorism Risk Insurance Program (TRIP or Program) are directed to submit information for the 2021 TRIP Data Call, which covers the reporting period from January 1, 2020 to December 31, 2020. Participating insurers are required to register and report information in a series of forms approved by the Office of Management and Budget (OMB). All insurers writing commercial property and casualty insurance in lines subject to TRIP, subject to certain exceptions identified in this notice, must respond to this data call no later than May 15, 2021.

DATES: Participating insurers must register and submit data no later than May 15, 2021.

ADDRESSES: Participating insurers will register through a website that has been established for this data call. After registration, insurers will receive data collection forms through a secure file transfer portal, and they will submit the requested data through the same secure portal. Participating insurers can register for the 2021 TRIP Data Call at *https://tripsection111data.com.* Additional information about the data call, including sample data collection forms and instructions, can be found on the TRIP website at *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program/annual-data-collection.*

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 622–2922; or Lindsey Baldwin, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 622–3220. Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

TRIA [1] created the Program within the U.S. Department of the Treasury (Treasury) to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private market to stabilize and build insurance capacity to absorb any future losses for terrorism events. The Program has been reauthorized on a number of occasions, and was most recently extended until December 31, 2027.[2] TRIA requires the Secretary of the Treasury (Secretary) to collect certain insurance data and information from insurers on an annual basis regarding their participation in the Program.[3] TRIA also requires the Secretary to prepare a biennial study on the competitiveness of small insurers in the terrorism risk insurance marketplace (Small Insurer Study).[4] The next Small Insurer Study must be submitted to Congress by June 30, 2021. The Federal Insurance Office (FIO) is authorized to assist the

Secretary in the administration of the Program,[5] including conducting the annual data call and preparing reports and studies required under TRIA.

FIO will be using the same data collection forms, without material changes, that were used during the 2020 TRIP Data Call. FIO solicited public comment concerning these forms, after their use during the 2020 TRIP Data Call,[6] and received no comments objecting to the continued use of these forms or proposing further revisions to the forms. The forms were then submitted for approval to the Office of Management and Budget (OMB), pursuant to the requirements of the Paperwork Reduction Act. The data collection forms have now been approved for use by OMB under Control Number 1505–0257 for a period ending November 30, 2023.[7]

II. Elements of 2021 TRIP Data Call

For purposes of the 2021 TRIP Data Call, FIO, state insurance regulators, and the National Association of Insurance Commissioners (NAIC) will again use the consolidated data call mechanism first developed for use in the 2018 TRIP Data Call. This approach relies on four joint reporting templates, to be completed by Small Insurers, Non-Small Insurers, Captive Insurers, and Alien Surplus Lines Insurers, each as defined below. The use of joint reporting templates is designed to satisfy the objectives of both Treasury and state insurance regulators, while also reducing burden on participating insurers. State insurance regulators or the NAIC will provide separate notification regarding the reporting of information into the state reporting portal, including any reporting requirements to state insurance regulators that are distinct from the Treasury requirements. Insurers subject to the consolidated data call that are part of a group will report on a group basis, while those that are not part of a group will report on an individual company basis.

A. Reporting of Workers' Compensation Information

The TRIP Data Calls request certain information relating to workers' compensation insurance. For the 2021 TRIP Data Call, Treasury will again work with the National Council on Compensation Insurance (NCCI), the California Workers' Compensation Insurance Rating Bureau (California WCIRB), and the New York Compensation Insurance Rating Board (NYCIRB) to provide workers' compensation data relating to premium and payroll information on behalf of participating insurers, either directly or through other workers' compensation rating bureaus. The data aggregator used by Treasury will provide such insurers with reporting templates that do not require them to report this workers' compensation data. Reporting insurers that write only workers' compensation policies are still required to register for the 2021 TRIP Data Call and provide general company information and data

[1] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701, note. Because the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified by the sections of the law.

[2] Terrorism Risk Insurance Program Reauthorization Act of 2019, Public Law 116–94, 133 Stat. 2534.

[3] TRIA, sec. 104(h)(1). Treasury regulations also address the annual data collection requirement. *See* 31 CFR 50.51, 50.54.

[4] TRIA, sec.108(h).

[5] 31 U.S.C. 313(c)(1)(D).

[6] 85 FR 41676 (July 10, 2020).

[7] Office of Information and Regulatory Affairs, Office of Management & Budget, OMB Control No. 1505–0257, *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202009-1505-002.*

related to private reinsurance. The data received from NCCI, the California WCIRB, and the NYCIRB will be merged with the information provided by the insurers.

B. Reporting Templates

There are no material changes to the reporting templates used in the 2020 TRIP Data Call.[8] Each category of insurer is required to complete the same worksheets that they completed in the 2020 TRIP Data Call. The same reporting exceptions apply this year as applied in the 2020 TRIP Data Call, as specified further below in the discussions for each category of insurer.

Various worksheets used in the 2021 TRIP Data Call seek certain information relating to workers' compensation insurance. NCCI, the California WCIRB, and the NYCIRB will complete the workers' compensation elements of these worksheets on behalf of reporting insurers. Further information concerning the reporting templates for each category of insurer, and the individual worksheets contained within each, can be found in the instructions for the reporting templates for each category of insurer. The individual reporting templates and worksheets will also be addressed in the training webinars discussed below.

For the 2021 TRIP Data Call, an insurer will qualify as a Small Insurer if it had both 2019 policyholder surplus of less than $1 billion and 2019 direct earned premiums in TRIP- eligible lines of insurance of less than $1 billion.[9] Of this group, Small Insurers with TRIP-eligible direct earned premiums of less than $10 million in 2020 will be exempt from the 2021 TRIP Data Call.[10] Neither Captive Insurers nor Alien Surplus Lines Insurers are eligible for this reporting exemption. Insurers defined as Small Insurers for the 2021 TRIP Data Call will report the same information to Treasury and to state insurance regulators (in each case on a group basis), except as state insurance regulators may separately direct for purposes of the state data call.

The Non-Small Insurer template will be completed by insurance groups (or individual insurers not affiliated with a group) that are not subject to reporting on the Captive Insurer or Alien Surplus Lines Insurer reporting templates, and had either a 2019 policyholder surplus of greater than $1 billion or 2019 direct earned premiums in TRIP-eligible lines of insurance equal to or greater than $1 billion. Insurers defined as Non-Small Insurers for the 2021 TRIP Data Call will report the same information to Treasury and to state insurance regulators (in each case on a group basis), except as state insurance regulators may separately direct for purposes of the state data call.

Captive Insurers are defined in 31 CFR 50.4(g) as insurers licensed under the captive insurance laws or regulations of any state. Captive Insurers that wrote policies in TRIP-eligible lines of insurance during the reporting period (January 1, 2020 to December 31, 2020) are required to register and submit data to Treasury, unless they did not provide their insureds with any terrorism risk insurance subject to the Program.

Alien Surplus Lines Insurers are defined in 31 CFR 50.4(o)(1)(i)(B) as insurers not licensed or admitted to engage in the business of providing primary or excess insurance in any state, but that are eligible surplus line insurers listed on the NAIC Quarterly Listing of Alien Insurers. Alien Surplus Lines Insurers that are part of a larger group classified as a Non-Small Insurer or a Small Insurer should report to Treasury as part of the group, using the appropriate template. Therefore, the Alien Surplus Lines Insurer template should be used only by an Alien Surplus Lines Insurer that is not part of a larger group subject to the 2021 TRIP Data Call.

C. Supplemental Reference Documents

Treasury will continue to make available on the TRIP data collection website[11] documents providing a complete ZIP code listing for areas subject to reporting on the Geographic Exposures (Nationwide) Worksheet, as well as several hypothetical policy reporting scenarios.

D. Training Webinars

As in prior years, Treasury will hold four separate training sessions corresponding to the four reporting templates that will be used by insurers (Small Insurers, Non-Small Insurers, Captive Insurers, and Alien Surplus Lines Insurers). The webinars will be held on April 15 and April 16, 2021 to assist reporting insurers in responding to the 2021 TRIP Data Call, with each webinar focusing on a specific reporting template. Specific times and details concerning participation in the webinars will be made available on the TRIP data collection website, and recordings of each webinar will be made available on the website following each training session.

III. 2021 TRIP Data Call

Treasury, through an insurance statistical aggregator, will accept group or insurer registration forms through *https://tripsection111data.com.* Registration is mandatory for all insurers participating in the 2021 TRIP Data Call. Upon registration, the aggregator will transmit individualized data collection forms (in Excel format) to the reporting group or insurer via a secure file transfer portal. The reporting group or insurer may transmit a complete data submission via the same portal using either the provided Excel forms or a .csv file.[12]

Copies of the instructions and data collection forms are available on Treasury's website in read-only format. Reporting insurers will obtain the fillable reporting forms directly from the data aggregator only after registering for the data collection process.

Reporting insurers are required to register and submit complete data to Treasury no later than May 15, 2021. Because of the statutory reporting deadline for Treasury's 2021 Small Insurer Study to Congress, no extensions will be granted. Reporting insurers can ask the data aggregator questions about registration, form completion, and submission at *tripsection111data@iso.com.* Reporting insurers may also submit questions to the Treasury contacts listed above. Questions regarding submission of data to state insurance regulators should be directed to the appropriate state insurance regulator or the NAIC.

[8] There is a new modeled loss scenario identified in the Reinsurance Worksheet that will be used in connection with the modeled loss questions (which have not changed from those posed in prior data collections). The modeled loss questions must be completed by Non-Small Insurers, Alien Surplus Lines Insurers, and Captive Insurers. As in prior years, Small Insurers complete a separate Reinsurance Worksheet that does not contain modeled loss questions.

[9] Small Insurers are defined in 31 CFR 50.4(z) as insurers (or an affiliated group of insurers) whose policyholder surplus for the immediately preceding year is less than five times the Program Trigger for the current year, and whose direct earned premiums in TRIP-eligible lines for the preceding year are also less than five times the Program Trigger for the current year. Accordingly, for the 2021 TRIP Data Call (covering the 2020 calendar year), an insurer qualifies as a Small Insurer if its 2019 policyholder surplus and 2019 direct earned premiums are less than five times the 2020 Program Trigger of $200 million.

[10] Individual insurers with less than $10 million in direct earned premiums in TRIP-eligible lines that are part of a larger group must still report as part of the group as a whole if the group's direct earned premiums in these lines are over $10 million.

[11] See *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program/annual-data-collection.*

[12] Specifications for submission of data using a .csv file will be provided to the insurer by the aggregator.

All data submitted to the aggregator is subject to the confidentiality and data protection provisions of TRIA and the Program Rules, as well as to section 552 of title 5, United States Code, including any exceptions thereunder. In accordance with the Paperwork Reduction Act (44 U.S.C. 3501–3521), the information collected through the web portal has been approved by OMB under Control Number 1505–0257. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Dated: March 9, 2021.

Steven E. Seitz,

Director, Federal Insurance Office.

[FR Doc. 2021–05171 Filed 3–11–21; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0510]

Agency Information Collection Activity: Application for Exclusion of Children's Income

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veteran's Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 11, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0510'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0510'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 103.

Title: Application for Exclusion of Children's Income (VA Form 21P–0571).

OMB Control Number: 2900–0510.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21P–0571, Application for Exclusion of Children's Income is used for the sole purpose of collecting the information needed to determine if the children's income is available to the beneficiary, and if it would cause a hardship to consider their income.

Affected Public: Individuals and households.

Estimated Annual Burden: 2,025 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,700.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–05109 Filed 3–11–21; 8:45 am]

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Part II

Department of Homeland Security

Coast Guard

46 CFR Parts 401 and 404

Great Lakes Pilotage Rates—2021 Annual Review and Revisions to Methodology; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401 and 404

[Docket No. USCG–2020–0457]

RIN 1625–AC67

Great Lakes Pilotage Rates—2021 Annual Review and Revisions to Methodology

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: In accordance with the Great Lakes Pilotage Act of 1960, the Coast Guard is establishing new base pilotage rates for the 2021 shipping season. This final rule will adjust the pilotage rates to account for changes in district operating expenses, an increase in the number of pilots, and anticipated inflation. The rule makes one change to the ratemaking methodology to account for actual inflation in step 4. Additionally, the rule excludes legal fees incurred in litigation against the Coast Guard regarding ratemaking from necessary and reasonable pilot association operating expenses. When combined with the changes above, this results in a 7-percent net increase in pilotage costs compared to the 2020 season.

DATES: This final rule is effective April 12, 2021.

ADDRESSES: To view documents and comments mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0457 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. Brian Rogers, Commandant (CG–WWM–2), Coast Guard; telephone 202–372–1535, email *Brian.Rogers@uscg.mil,* or fax 202–372–1914.

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C. Step 3: Estimate Number of Working Pilots
D. Step 4: Determine Target Pilot Compensation Benchmark
E. Step 5: Project Working Capital Fund
F. Step 6: Project Needed Revenue
G. Step 7: Calculate Initial Base Rates
H. Step 8: Calculate Average Weighting Factors by Area
I. Step 9: Calculate Revised Base Rates
J. Step 10: Review and Finalize Rates
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A. Step 1: Recognize Previous Operating Expenses
B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation
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I. Abbreviations

APA American Pilots' Association
BLS Bureau of Labor Statistics
CFR Code of Federal Regulations
CPA Certified Public Accountant
CPI Consumer Price Index
DHS Department of Homeland Security
Director U.S. Coast Guard's Director of the Great Lakes Pilotage
EAJA Equal Access to Justice Act
ECI Employment Cost Index
FOMC Federal Open Market Committee
FR Federal Register
GLPA Great Lakes Pilotage Authority (Canadian)
GLPAC Great Lakes Pilotage Advisory Committee
GLPMS Great Lakes Pilotage Management System
I.R.C. Internal Revenue Code
LPA Lakes Pilots Association
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
PCE Personal Consumption Expenditures
Pilots Working Pilots
SBA Small Business Administration
SLSPA St. Lawrence Seaway Pilots' Association
§ Section
The Act Great Lakes Pilotage Act of 1960
The Coalition The Shipping Federation of Canada, the American Great Lakes Ports Association, and the United States Great Lakes Shipping Association
U.S.C. United States Code
User's Coalition The Shipping Federation of Canada, the American Great Lakes Ports Association, and the United States Great Lakes Shipping Association
WGLPA Western Great Lakes Pilot Association

II. Executive Summary

Pursuant to the Great Lakes Pilotage Act of 1960 (''the Act''),[1] the Coast Guard regulates pilotage for oceangoing vessels on the Great Lakes and St. Lawrence Seaway—including setting the rates for pilotage services and adjusting them on an annual basis for the upcoming shipping season. Shipping season begins when the locks are opened in the St. Lawrence Seaway, which allows traffic access to and from the Atlantic Ocean. The opening of the locks varies annually depending on the waterway conditions, but is generally in March or April. The rates, which for the 2020 season range from $337 to $758 per pilot hour (depending on which of the specific six areas pilotage service is provided), are paid by shippers to pilot associations. The three pilot associations, which are the exclusive U.S. source of registered pilots on the Great Lakes, use this revenue to cover operating expenses, maintain infrastructure, compensate applicant and registered pilots, acquire and implement technological advances, train new personnel, and allow partners to participate in professional development.

To compute the rate for pilotage services, we have been modifying our methodology, originally introduced in 2016, each year since then, in

[1] Title 46 of the United States Code (U.S.C.) Chapter 93; Public Law 86–555, 74 Stat. 259, as amended.

accordance with our statutory requirements and regulations. Our ratemaking methodology calculates the revenue needed for each pilotage association (operating expenses, compensation for the number of pilots, and anticipated inflation), and then divides that amount by the expected demand for pilotage services over the course of the coming year, to produce an hourly rate. This process is currently effected through a 10-step methodology, which is explained in detail in the Summary of Ratemaking Methodology in Section IV of the preamble to this final rule.

As part of our annual review, in this final rule we are implementing new pilotage rates for 2021 based on the existing methodology. The result is an increase in rates for two areas, a decrease for three areas, and no change in the remaining area when compared to the 2020 rates. In the 2021 ratemaking NPRM, we estimated a 4 percent increase in pilotage rates from the 2020 rates. In the 2021 ratemaking final rule, the pilotage rates for 2021 are about 7 percent more than the 2020 rates. These changes are due to a combination of five factors:

(1) A decrease in the amount of money needed for the working capital fund;

(2) adjusting pilot compensation for inflation;

(3) the net addition of two working pilots (''pilots'') at the beginning of the 2021 shipping season;

(4) an increase in total operating expenses for District One compared to the previous year; and

(5) an increase in the average hours of traffic for each area.

This increase in the average hours of traffic resulted in lower hourly rates despite a net increase in the amount of revenue needed by the pilot associations, because, when calculating the base hourly rates, the total revenue needed is divided by the average hours of traffic annually (see Step 7 of the ratemaking process). The Coast Guard uses a 10-year average when calculating traffic, to smooth out variations in traffic caused by global economic conditions, such as those caused by the COVID–19 pandemic.

In addition, the Coast Guard is implementing one methodological change to the inflation calculation for pilot compensation in step 4, to account for actual inflation. And, finally, this rule will disallow legal fees for litigation against the Coast Guard regarding the ratemakings as redeemable operating expenses. These changes are further discussed in Sections V and VI of this preamble.

Based on the ratemaking model discussed in this final rule, we are implementing the rates shown in Table 1.

TABLE 1—CURRENT, PROPOSED, AND FINAL PILOTAGE RATES ON THE GREAT LAKES

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate	Final 2021 pilotage rate
District One: Designated	St. Lawrence River	$758	$757	$800
District One: Undesignated	Lake Ontario	463	428	498
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	618	577	580
District Two: Undesignated	Lake Erie	586	566	566
District Three: Designated	St. Marys River	632	584	586
District Three: Undesignated	Lakes Huron, Michigan, and Superior	337	335	337

This rule will impact 54 United States registered pilots, 3 pilot associations, and the owners and operators of an average of 279 oceangoing vessels that transit the Great Lakes annually. This rule is not economically significant under Executive Order 12866 and does not affect the Coast Guard's budget or increase Federal spending. The overall annual regulatory economic impact of this rate change is a net increase of $2,064,622 in projected payments made by consumers of pilotage services during the 2020 shipping season. Because the Coast Guard must review, and, if necessary, adjust rates each year, we analyze these as single-year costs and do not annualize them over 10 years. Section VIII of this preamble provides the regulatory impact analyses of this rule.

III. Basis and Purpose

The legal basis of this rulemaking is the Great Lakes Pilotage Act of 1960,[2] which requires foreign merchant vessels and U.S. vessels operating ''on register,'' meaning U.S. vessels engaged in foreign trade, to use U.S. or Canadian pilots while transiting the U.S. waters of the St. Lawrence Seaway and the Great Lakes system.[3] For United States registered pilots, the Act requires the Secretary to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' [4] The Act requires that rates be established or reviewed and adjusted each year, not later than March 1.[5] The Act also requires that base rates be established by a full ratemaking at least once every 5 years, and, in years when base rates are not established, they must be reviewed and, if necessary, in consideration of the public interest and the costs of providing the services, adjusted.[6] The Secretary's duties and authority under the Act have been delegated to the Coast Guard.[7]

The purpose of this final rule is to establish new pilotage rates for the 2021 shipping season. The Coast Guard believes that the new rates will continue to promote our goals in title 46 of the Code of Federal Regulations (CFR), part 404.1, for pilot retention, to ensure safe, efficient, and reliable pilotage services in order to facilitate maritime commerce throughout the Great Lakes and Saint Lawrence River System, and to provide adequate funds to upgrade and maintain infrastructure.

IV. Background

Pursuant to the Act, the Coast Guard, in conjunction with the Canadian Great Lakes Pilotage Authority (GLPA), regulates shipping practices and rates on the Great Lakes. Under Coast Guard regulations, all vessels engaged in foreign trade (often referred to as ''salties'') are required to engage U.S. or Canadian pilots during their transit through the regulated waters.[8] United States and Canadian ''lakers,'' which account for most commercial shipping

[2] 46 U.S.C. Chapter 93; Public Law 86–555, 74 Stat. 259, as amended.

[3] 46 U.S.C. 9302(a)(1).

[4] 46 U.S.C. 9303(f).

[5] *Id.*

[6] *Id.*

[7] Department of Homeland Security (DHS) Delegation No. 0170.1, para. II (92.f).

[8] See 46 CFR 401.

on the Great Lakes, are not affected.[9] Generally, vessels are assigned a U.S. or Canadian registered pilot depending on the order in which they transit a particular area of the Great Lakes and do not choose the pilot they receive. If a vessel is assigned a U.S. pilot, that pilot will be assigned by the pilotage association responsible for the particular district in which the vessel is operating, and the vessel operator will pay the pilotage association for the pilotage services. The Canadian GLPA establishes the rates for Canadian working pilots.

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage districts. Pilotage in each district is provided by an association certified by the Coast Guard's Director of the Great Lakes Pilotage (''the Director'') to operate a pilotage pool. The Saint Lawrence Seaway Pilotage Association provides pilotage services in District One, which includes all U.S. waters of the St. Lawrence River and Lake Ontario. The Lakes Pilotage Association provides pilotage services in District Two, which includes all U.S. navigable waters from Southeast Shoal to Port Huron, MI, including all the U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. Finally, the Western Great Lakes Pilotage Association provides pilotage services in District Three, which includes all U.S. waters of the St. Marys River, including the Sault Ste. Marie Locks; and Lakes Huron, Michigan, and Superior.

Each pilotage district is further divided into ''designated'' and ''undesignated'' areas, which is depicted in Table 2 below. Designated areas, classified as such by Presidential Proclamation, are waters in which pilots must, at all times, be fully engaged in the navigation of vessels in their charge.[10] Undesignated areas, on the other hand, are open bodies of water not subject to the same pilotage requirements. While working in undesignated areas, pilots must ''be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master.'' [11] For these reasons, pilotage rates in designated areas can be significantly higher than those in undesignated areas.

TABLE 2—AREAS OF THE GREAT LAKES AND ST. LAWRENCE SEAWAY

District	Pilotage association	Designation	Area No.[12]	Area name[13]
One	Saint Lawrence Seaway Pilotage Association	Designated	1	St. Lawrence River.
		Undesignated	2	Lake Ontario.
Two	Lake Pilotage Association	Designated	5	Navigable waters from Southeast Shoal to Port Huron, MI.
		Undesignated	4	Lake Erie.
Three	Western Great Lakes Pilotage Association	Designated	7	St. Marys River.
		Undesignated	6	Lakes Huron and Michigan.
			8	Lake Superior.

Each pilot association is an independent business and is the sole provider of pilotage services in the district in which it operates. Each pilot association is responsible for funding its own operating expenses, maintaining infrastructure, compensating pilots and applicant pilots, acquiring and implementing technological advances, and training personnel and partners. The Coast Guard developed a 10-step ratemaking methodology to derive a pilotage rate, based on the estimated amount of traffic, which covers these expenses. The methodology is designed to measure how much revenue each pilotage association will need to cover expenses and provide compensation to working pilots. Since the Coast Guard cannot guarantee demand for pilotage services, target pilot compensation for working pilots is a goal. The actual demand for service dictates the actual compensation for the working pilots. We then divide that amount by the historic 10-year average for pilotage demand. We recognize that, in years where traffic is above average, pilot associations will accrue more revenue than projected, while in years where traffic is below average, they will take in less. We believe that over the long term, however, this system ensures that infrastructure will be maintained and that pilots will receive adequate compensation and work a reasonable number of hours, with adequate rest between assignments, to ensure retention of highly trained personnel.

Over the past 4 years, the Coast Guard has made adjustments to the Great Lakes pilotage ratemaking methodology. In 2016, we made significant changes to the methodology, moving to an hourly billing rate for pilotage services and changing the compensation benchmark to a more transparent model. In 2017, we added additional steps to the ratemaking methodology, including new steps that accurately account for the additional revenue produced by the application of weighting factors (discussed in detail in Steps 7 through 9 for each district, in Section VII of this preamble). In 2018, we revised the methodology by which we develop the compensation benchmark, based upon U.S. mariners rather than Canadian working pilots. The current methodology, which was finalized in the Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology final rule (Volume 85 of the **Federal Register** (FR) at Page 20088), published April 9, 2020, is designed to accurately capture all of the costs and revenues associated with Great Lakes pilotage requirements and produce an hourly rate that adequately and accurately compensates pilots and covers expenses. The current methodology is summarized in the section below.

Summary of Ratemaking Methodology

As stated above, the ratemaking methodology, outlined in 46 CFR 404.101 through 404.110, consists of 10 steps that are designed to account for the revenues needed and total traffic expected in each district. The result is an hourly rate, determined separately

[9] The Coast Guard uses the term ''laker'' to identify commercial cargo vessels especially designed for and generally limited to use on the Great Lakes. These vessels are excluded from the requirement to use a pilot in the Great Lakes in 46 U.S.C. 9302(f).

[10] Presidential Proclamation 3385, *Designation of restricted waters under the Great Lakes Pilotage Act of 1960,* December 22, 1960.

[11] 46 U.S.C. 9302(a)(1)(B).

[12] Area 3 is the Welland Canal, which is serviced exclusively by the Canadian GLPA and, accordingly, is not included in the U.S. pilotage rate structure.

[13] The areas are listed by name at 46 CFR 401.405.

for each of the areas administered by the Coast Guard.

In Step 1, ''Recognize previous operating expenses,'' (§ 404.101) the Director reviews audited operating expenses from each of the three pilotage associations. Operating expenses include all allowable expenses minus wages and benefits. This number forms the baseline amount that each association is budgeted. Because of the time delay between when the association submits raw numbers and the Coast Guard receives audited numbers, this number is 3 years behind the projected year of expenses. So, in calculating the 2021 rates in this rule, we begin with the audited expenses from the 2018 shipping season.

While each pilotage association operates in an entire district, the Coast Guard tries to determine costs by area. Thus, with regard to operating expenses, we allocate certain operating expenses to designated areas, and certain operating expenses to undesignated areas. In some cases, we can allocate the costs based on where they are actually accrued. For example, we can allocate the costs for insurance for applicant pilots who operate in undesignated areas only. In other situations, such as general legal expenses, expenses are distributed between designated and undesignated waters on a *pro rata* basis, based upon the proportion of income forecasted from the respective portions of the district.

In Step 2, ''Project operating expenses, adjusting for inflation or deflation,'' (§ 404.102) the Director develops the 2021 projected operating expenses. To do this, we apply inflation adjustors for 3 years to the operating expense baseline received in Step 1. The inflation factors are from the Bureau of Labor Statistics' (BLS) Consumer Price Index (CPI) for the Midwest Region, or, if not available, the Federal Open Market Committee (FOMC) median economic projections for Personal Consumption Expenditures (PCE) inflation. This step produces the total operating expenses for each area and district.

In Step 3, ''Estimate number of working pilots,'' (§ 404.103) the Director calculates how many pilots are needed for each district. To do this, we employ a ''staffing model,'' described in § 401.220, paragraphs (a)(1) through (a)(3), to estimate how many pilots will be needed to handle shipping during the beginning and close of the season. This number is helpful in providing guidance to the Director in approving an appropriate number of credentials for pilots.

For the purpose of the ratemaking calculation, we determine the number of pilots provided by the pilotage associations (see § 404.103), which is what we use to determine how many pilots need to be compensated via the pilotage fees collected.

In the first part of Step 4, ''Determine target pilot compensation benchmark,'' (§ 404.104) the Director determines the revenue needed for pilot compensation in each area and district. For the 2020 ratemaking, the Coast Guard updated the benchmark compensation model in accordance with § 404.104(b), switching from using the American Maritime Officers Union 2015 aggregated wage and benefit information to the 2019 compensation benchmark. Based on our experience over the past two ratemakings, the Coast Guard has determined that the level of target pilot compensation for those years provides an appropriate level of compensation for American Great Lakes pilots. The Coast Guard, therefore, will not seek alternative benchmarks for target compensation for future ratemakings at this time and will, instead, simply adjust the amount of target pilot compensation for inflation. This benchmark has advanced the Coast Guard's goals of safety through rate and compensation stability while also promoting recruitment and retention of qualified U.S. pilots.

In order to further this goal, for the 2021 ratemaking, the Coast Guard is also changing the way inflation is calculated in this step, to account for actual inflation instead of predicted inflation. See the Discussion of Methodological and Other Changes at Section V of this preamble for a detailed description of the changes.

In the second part of Step 4, set forth in § 404.104(c), the Director determines the total compensation figure for each district. To do this, the Director multiplies the compensation benchmark by the number of pilots for each area and district (from Step 3), producing a figure for total pilot compensation.

In Step 5, ''Project working capital fund,'' (§ 404.105) the Director calculates a value that is added to pay for needed capital improvements and other non-recurring expenses, such as technology investments and infrastructure maintenance. This value is calculated by adding the total operating expenses (derived in Step 2) to the total pilot compensation (derived in Step 4), and multiplying that figure by the preceding year's average annual rate of return for new issues of high-grade corporate securities. This figure constitutes the ''working capital fund'' for each area and district.

In Step 6, ''Project needed revenue,'' (§ 404.106) the Director simply adds up the totals produced by the preceding steps. The projected operating expense for each area and district (from Step 2) is added to the total pilot compensation (from Step 4) and the working capital fund contribution (from Step 5). The total figure, calculated separately for each area and district, is the ''needed revenue.''

In Step 7, ''Calculate initial base rates,'' (§ 404.107) the Director calculates an hourly pilotage rate to cover the needed revenue as calculated in Step 6. This step consists of first calculating the 10-year hours of traffic average for each area. Next, the revenue needed in each area (calculated in Step 6) is divided by the 10-year hours of traffic average to produce an initial base rate.

An additional element, the ''weighting factor,'' is required under § 401.400. Pursuant to that section, ships pay a multiple of the ''base rate,'' as calculated in Step 7, by a number ranging from 1.0 (for the smallest ships, or ''Class I'' vessels) to 1.45 (for the largest ships, or ''Class IV'' vessels). As this significantly increases the revenue collected, we need to account for the added revenue produced by the weighting factors to ensure that shippers are not overpaying for pilotage services. We do this in the next step.

In Step 8, ''Calculate average weighting factors by Area,'' (§ 404.108) the Director calculates how much extra revenue, as a percentage of total revenue, has historically been produced by the weighting factors in each area. We do this by using a historical average of the applied weighting factors for each year since 2014 (the first year the current weighting factors were applied).

In Step 9, ''Calculate revised base rates,'' (§ 404.109) the Director modifies the base rates by accounting for the extra revenue generated by the weighting factors. We do this by dividing the initial pilotage rate for each area (from Step 7) by the corresponding average weighting factor (from Step 8), to produce a revised rate.

In Step 10, ''Review and finalize rates,'' (§ 404.110) often referred to informally as ''Director's adjustment'' or ''Director's discretion,'' the Director reviews the revised base rates (from Step 9) to ensure that they meet the goals set forth in the Act and 46 CFR 404.1(a), which include promoting efficient, safe, and reliable pilotage service on the Great Lakes; generating sufficient revenue for each pilotage association to reimburse necessary and reasonable operating expenses; compensating trained and rested pilots

fairly; and providing appropriate profit for improvements.

After the base rates are set, § 401.401 permits the Coast Guard to apply surcharges. We did not propose any surcharges in the notice of proposed rulemaking (NPRM) (85 FR 68210, October 27, 2020), and the Coast Guard will not be imposing surcharges in the 2021 ratemaking.

V. Discussion of Methodological and Other Changes

In the 2021 ratemaking NPRM, the Coast Guard proposed one methodological change to Step 4 of the ratemaking model and two policy changes. In consideration of the comments, this final rule only adopts the change to the way we calculate inflation of pilot compensation in Step 4 and the exclusion of legal fees associated with lawsuits against the Coast Guard's ratemaking and oversight requirements from pilot association operating expenses. Additionally, this final rule makes corrections to District One's operating expenses. This rule does not make any changes to the staffing model, for the reasons discussed in Section VI, Discussion of Comments.

A. Inflation of Pilot Compensation Calculation in Step 4

As proposed in the NPRM, this rule changes the inflation calculation in § 404.104(b) for interim ratemakings so that the previous year's target compensation value will first be adjusted by actual inflation using the Employment Cost Index (ECI) inflation value. With this change, we will update the previous year's target compensation value for actual inflation using ECI inflation values in each ratemaking. This ensures that any differences between the predicted inflation rate and the actual inflation rate will not be compounded with each ratemaking when the predicted PCE value is higher or lower than actual inflation. We will then multiply the ECI-adjusted target compensation for past years by the predicted future inflation value from the PCE to account for future inflation.

The BLS ECI only provides historic data; consequently, we use PCE data, in accordance with § 404.104(b), as the PCE provides estimates of future inflation for the upcoming shipping season. The PCE is a reflection of the Government's best prediction of what will happen, and the Coast Guard will continue to use it as our predicted inflation value in Step 4 of the ratemaking.

For 2020, the actual ECI inflation is 3.5 percent, which is 1.5 percent greater than the predicted PCE inflation of 2 percent.[14] The difference between using the 2020 predicted PCE inflation rates and historic ECI actual inflation data in § 401.104(b) results in a 1.5 percent increase for 2021 target pilot compensation versus continuing to use the predicted PCE inflation value. In some years, however, it is possible that the actual ECI inflation will be lower than the predicted PCE inflation, resulting in a lower value for target pilot compensation than if we had continued to use the PCE inflation.

B. Exclusion of Legal Fees Incurred in Lawsuits Against the Coast Guard Related to Ratemaking and Regulating From Pilot Associations' Approved Operating Expenses

This final rule excludes legal fees incurred in litigation against the Coast Guard in relation to the ratemaking and oversight requirements in 46 U.S.C. 9303, 9304, and 9305 from approved pilot associations' operating expenses used in the calculation of pilotage rates. As we proposed in the NPRM, this exclusion will be added to § 404.2, ''Procedure and criteria for recognizing association expenses,'' in paragraph (b)(6).

Excluding these legal fees from operating expenses in the ratemaking and regulatory function is consistent with ''giving consideration to the public interest and the costs of providing the services,'' [15] because it places the burden of paying the legal fees on the Coast Guard, as the responsible party, when the pilots prevail on the merits, rather than the shipping companies that have no choice but to pay the set rate for pilotage services. Our reasoning is discussed further in Section VI of this preamble, Discussion of Comments.

Our process to exclude the legal fees in our annual ratemaking will be as follows. First, the unreimbursed pilot associations' legal fees incurred in litigation against the Coast Guard will be identified as an individual line item in the operating expenses. Second, we will remove the same amount by way of a Director's adjustment in a later step. To clarify, any pilot association's legal fees associated with intervening on the Coast Guard's defense in a ratemaking lawsuit will continue to be included as an approved operating expense and will not be removed by way of a Director's adjustment.

When a pilot association's legal fees are reimbursed fully or partially by way of the Equal Access to Justice Act (EAJA) or settlement, then the operating expense amount will be reduced to represent only the unreimbursed dollar amount, and that same dollar amount will be excluded by a Director's adjustment. Only the outstanding cost of legal fees incurred in litigation against the Coast Guard related to ratemaking and oversight will be listed, representing the true cost to the association. Listing the dollar amount of unreimbursed legal expenses and removing it from the operating expenses will provide transparency to the pilot associations of the exact amount of legal fees excluded by this change.

C. Operation Expenses in Table 3—2018 Recognized Expenses for District One

The St. Lawrence Seaway Pilots' Association (SLSPA), District One, comment from Captain Boyce,[16] Association President, described several errors in the NPRM's Table 3—2018 Recognized Expenses For District One.[17] He commented that the rate calculation did not include 2018 operating expenses for the following allowable items: (1) Applicant pilot salaries, (2) a down payment for a pilot boat, (3) loan payments for the new pilot boat, and (4) dock repairs. Per our requirements in § 404.101, the Coast Guard uses a third-party auditing firm to produce financial reports for the pilot associations. We contracted CohnReznick (a professional services firm that specializes in accounting, taxes, and advising) to create the 2018 financial reports, and used them to establish the rates in the 2021 NPRM. We asked CohnReznick to review the District One 2018 expense report and SLSPA comment to verify the four missing operating expenses raised by the commenter and provide us with updated numbers.

The commenter asserted that applicant salaries were improperly excluded from expenses and makes the following points: (1) For apprentice pilots, as K–1 partners, compensation is not recorded as an expense by generally accepted accounting principles (GAAP) accounting standards, although it clearly fits within what is, and has been, recognized as an allowable expense in the ratemaking; (2) the NPRM shows the applicant salary amount by adding then

[14] U.S. BLS ECI Q3 2020 data for Total Compensation for Private Industry Workers in the Transportation and Material Moving Sector (Series ID: CIU2010000520000A). The third quarter data was the most recently available data at the time of analysis for this final rule, available at *https://www.bls.gov/news.release/archives/eci_10302020.pdf* in Table 5 on page 10. The NPRM used the Q1 value of 3.4 percent, which is available at *https://www.bls.gov/news.release/archives/eci_04302020.pdf* in Table 5 on page 10.

[15] 46 U.S.C. 9303(f).

[16] *https://www.regulations.gov/document?D=USCG-2020-0457-0005.*

[17] Table 3 can be found in the proposed rule published at 85 FR 68219 (October 27, 2020).

subtracting them from the expenses in the Director's adjustments in Table 3, which, in itself, has no net effect; and (3) the net result is that $594,521 needs to be added to the expenses.

The Coast Guard agrees with the commenter that applicant pilot salaries are necessary expenses that we should have included in the operating expense base of the NPRM. However, we would have adjusted them to reasonable amounts. As the commenter notes, in Table 3 of the NPRM, the salaries were added in but immediately deducted. The applicant salaries were not otherwise included in the expense base, so we should not have deducted them from the ratemaking. Applicant salaries are considered reasonable and necessary expenses, subject to Director's adjustments, under our existing ratemaking process and per § 404.2(a). CohnReznick provided an updated applicant salary expense of $594,331 for the total applicant salaries for District One. We will use the value verified by the auditor, per our requirement in § 404.101. In this rule, we are removing the deduction for applicant pilot salaries in the District One expenses, thus allowing $594,331 for applicant pilot salaries as operating expenses, before any Director's adjustments, to ensure the amount included in the total operating expenses is reasonable. The Director's adjustments to the applicant salaries, originally proposed in the NPRM and adopted in this final rule, include a deduction to bring the total salaries down to an amount determined reasonable by the Director, and a deduction for the amount of applicant salary surcharges the association received in 2018 under that year's ratemaking (see Section VII of this preamble).

In addition, the SLSPA comment noted that District One had operating expenses in 2018 related to the purchase of a new pilot boat, a dock project, and pilot boat loan expenses. The commenter included a spreadsheet detailing the expenses and errors in District One's operating expenses and asserted that the NPRM's Table 3—2018 Recognized Expenses for District One did not cover their mortgaged infrastructure and dock project. We inquired with CohnReznick, and they confirmed that the pilot boat, the loan on the pilot boat, and the dock project were not included in the original report used to develop the NPRM; therefore, they were not included in the operational expenses in Table 3.

It is within our regulatory authority to consider these infrastructure costs as operating expenses. The regulations in 46 CFR 404.1(a) state that the goal of the ratemaking is to reimburse pilot associations' ''necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide an appropriate profit to use for improvements.'' Additionally, § 404.2(a) requires the Director to review all reported expenses and determine if they are both necessary for providing pilotage service and reasonable in amount. Under § 404.2(b) criteria for determining if an expense is necessary and reasonable, these capital expenses are not otherwise excluded from being considered necessary and reasonable operating expenses in this rule. The costs for purchasing a new pilot boat, loan costs associated with the new pilot boat, and dock maintenance are necessary for pilotage services because the pilots use the pilot boats and docks in their daily business. It is necessary to maintain their infrastructure to be able to perform their duties efficiently. For the same reasons, these infrastructure expenses are also necessary and reasonable in amount when compared to similar expenses paid by others in the maritime or other comparable industry. Therefore, our regulatory framework requires the Coast Guard to allow these expenses in the year they were paid.

Additionally, current Coast Guard regulations do not require these costs be paid out of the pilot association's working capital fund. The section covering the working capital fund is 46 CFR 403.110, which states that pilot associations may only spend the working capital funds on items such as infrastructure improvements, major pilot boat repairs, and property acquisition. There is no requirement that they must use the working capital fund for these expenses. The commenter and district reported these as expenses for 2018, not working capital funds. As such, we do not have the regulatory authority to require District One to use the working capital fund to pay for these purchases rather than including them as operational expenses.

This final rule includes the infrastructure costs in District One's operational expenses for 2018. These updated numbers are reflected in Table 3 in this preamble under ''Capital Expenses.'' CohnReznick, our auditor, provided us verified numbers for these expenses.

The SLSPA comment also stated that in the NPRM's Table 3—2018 Recognized Expenses for District One,[18] the CPA deduction for dues and subscriptions of $6,600 is incorrect and should be added back into total operating expenses. In their inspection of the CPA's report for 2018, the SLSPA found that the CPA did not deduct $6,600 for dues and subscriptions, meaning this is an allowable expense, in their opinion. The Coast Guard verified that this CPA deduction was not in the audit report and, therefore, the deduction in the NPRM was unsupported. In Table 3 of this rule's preamble, we removed the $6,600 CPA deduction, thus allowing the $6,600 operating expense for dues and subscriptions for District 1. However, in future rulemakings the Coast Guard will be working with the auditors to identify which dues and subscriptions fees should be counted as necessary and reasonable operating expenses and which should be considered pilot compensation.

[18] Table 3 can be found in the proposed rule published at 85 FR 68219 (October 27, 2020).

VI. Discussion of Comments

In response to the October 27, 2020 NPRM (85 FR 68210), the Coast Guard received seven comment letters as well as a duplicate comment submission. These letters included one comment from the Great Lakes Pilots, which represents the interests of the three Great Lake pilot associations (''Great Lakes Pilots' comment''); a comment from the Shipping Federation of Canada, the American Great Lakes Ports Association, and the United States Great Lakes Shipping Association (''the User's Coalition'' or ''the Coalition''); a comment from the American Pilots' Association (''APA''); a comment from the president of the St. Lawrence Seaway Pilots' Association (''SLSPA''); a comment from the president of the Lakes Pilots Association (''LPA''); a comment from the president of the Western Great Lakes Pilot Association (''WGLPA''); and a comment made by Captain John Swartout, a pilot working for District Three. As each of these commenters touched on numerous issues, for each response below we note which commenter raised the specific points addressed. In situations where multiple commenters raised similar issues, we attempt to provide one response to those issues.

1. Inflation of Pilot Compensation Calculation in Step 4

We received several comments on the proposed changes in the 2021 NPRM to Step 4 of the ratemaking, which adjusts target pilot compensation to account for inflation. In prior ratemakings, the Coast Guard adjusted the existing target pilot compensation to account for inflation, following the procedures outlined in § 404.104(b), which requires that the U.S. Federal Reserve's PCE price index be used when data from the U.S. BLS

ECI data is not available. In the 2021 NPRM, the Coast Guard proposed that the previous year's target compensation value would first be adjusted by the difference between predicted PCE inflation value and actual ECI inflation value, to ensure that the target compensation value accounts for actual inflation. We would then multiply this adjusted target compensation value by the predicted future inflation value from the PCE to account for future inflation.

Comments from Captain Swartout,[19] WGLPA,[20] and the Great Lakes Pilots' comment [21] stated that they agreed with Coast Guard's approach to adjust the 2020 target compensation (the previous year's target compensation) adjusted by the difference between predicted PCE inflation value and actual ECI inflation value. However, they believed that the Coast Guard should also adjust the 2018 and 2019 target compensation values by the ECI inflation index. The Great Lakes Pilots' comment went on to state that the ''correct'' target pilot compensation figures can be calculated by applying the ECI inflation value to the 2018 and 2019 rates, and calculates a target compensation value of $388,900. They stated that, in the 2018 final rule, the Coast Guard ''promised'' to use the ECI but instead used the PCE, causing incorrect numbers.

The Coast Guard disagrees with the implication that the target compensation values were incorrectly or illogically calculated. These values were calculated following the methodology outlined in § 404.104(b), which states that, when ECI data is not available, the Coast Guard will use the PCE. The Coast Guard followed this approach in the 2018, 2019, and 2020 ratemakings, using the method that was codified in the CFR at the time. Based on comments provided in the 2020 proposed ratemaking, the Coast Guard reviewed the methodology used to inflate target pilot compensation and proposed a modified approach for the 2021 ratemaking. This modified approach is consistent with our past approach of updating the previous year's target compensations in our ratemakings. Therefore, this final rule does not adjust the previous years' target compensations, because they were set according to the regulations in place at the time, and changing them now would be akin to retroactive rulemaking. We would have had to propose regulations allowing us to adjust target compensations from multiple prior years in order to update the 2018 and 2019 target compensations. The Coast Guard does not plan to recalculate target compensation for previous years, as it has been our consistent approach to only update the previous year's target compensation when calculating the next year's target compensation.

The Coast Guard received a comment from the User's Coalition on the inflation rate of 3.4 percent, which was used to calculate the inflation adjustment for target pilot compensation in the NPRM. The commenter stated that the highest inflation rate they could find was 1.4 percent and suggested that the Coast Guard follow the Bureau of Labor Statistics' recommended guidelines for ''use of the consumer price index for escalation.'' These guidelines include identifying the CPI series, reference period, frequency, and establishing and adjustment formula.

The Coast Guard believes this commenter misunderstands the BLS's CPI, which measures inflation of consumer prices for goods and services, for the ECI, which measures the cost of employment and includes factors such as employee wages and benefits. The Coast Guard currently uses the CPI in Step 2 of the ratemaking, where we use the annual change in average inflation, which was 1.5 percent in 2019. While we cite this data in footnote 32 of the NPRM (and footnote 30 of this final rule), including a link where the user may download the data themselves, we do agree with the commenter that we could provide more citation information. Therefore, in this rule, we added the BLS series ID to that footnote, as well as additional clarification on which numbers we are using. With regards to the 3.4 percent inflation rate in Step 4, that data was first-quarter data from the ECI index for private industry workers in the transportation and moving materials sector. In this final rule, we use 3.5 percent, from third-quarter data. The information for this series, including the series ID and a link to download the data, is found in footnote 35 of the NPRM (and footnote 14 of this final rule). However, in an effort to increase transparency, we have also added more information on the reference period covered by this data.

2. Always Rounding Up in the Staffing Model

In the NPRM, we proposed to always round up the final number in the staffing model, in § 401.220(a)(2), rather than round to the nearest integer when determining the maximum number of pilots. Our justification for this proposed change was based on previous comments and submissions from members of Great Lakes Pilotage Advisory Committee (GLPAC) stating that, due to the nature of associations' presidential duties, the president is expected to spend less time engaged in piloting vessels. None of the commenters who commented on this change agreed that rounding up in the staffing model was the best way to fill the staffing problem. In response, we will forego making any changes to the staffing model in this final rule to gather more information on the best way to address this issue, based on concerns raised by the commenters.

Commenter Captain Swartout [22] suggested that rounding up in the staffing model is not sufficient because the result is random, inconsistent, and a matter of chance whether a district gets an additional pilot or not. For example, there is a significant difference between rounding 15.1 up to 16 and rounding 15.9 up to 16. In both cases, 16 pilots are authorized, but in the first instance, nine-tenths of a pilot is authorized for assisting in administrative work, and in the second instance, only one-tenth of a pilot is. Captain Swartout also noted his continued concern with pilots being expected to work more hours than industry standards and noted that the rounding will not solve this. He suggested, as an alternative, to add one additional pilot to the staffing model for administrative work, even after rounding up. The Coast Guard agrees that we need to consider other alternatives to better the staffing model. As stated above, we will not be implementing the change in this ratemaking in order to conduct more research.

The APA comment [23] affirmed that there is always one pilot ''off the roles'' in each association. Similarly, the SLSPA [24] emphasized it is impossible to operate as a president and pilot a vessel at the same time and with no opportunity to rest. The APA urged the Coast Guard to consider authorizing an additional pilot for each district, whose principal duties would be to serve as an ''operations pilot.'' They said pilots on ships, as well as dispatchers and transportation coordinators, need operational support readily available in real time from a seasoned and experienced piloting professional. This professional is currently the association president or the suggested extra

[19] *https://www.regulations.gov/document?D=USCG-2020-0457-0005.*

[20] *https://www.regulations.gov/document?D=USCG-2020-0457-0006.*

[21] *https://www.regulations.gov/document?D=USCG-2020-0457-0012.*

[22] *https://www.regulations.gov/document?D=USCG-2020-0457-0005.*

[23] *https://www.regulations.gov/document?D=USCG-2020-0457-0007.*

[24] *https://www.regulations.gov/document?D=USCG-2020-0457-0010.*

''operations pilot.'' The APA comment explained that piloting expertise is necessary to perform these duties, and that the president pilot should be replaced with a pilot, not administrative staff. The president is unable to delegate certain administrative duties that keep him from piloting a vessel.

The Coast Guard is considering these suggestions and additional information on the duties that an operational pilot and association president typically perform. Based on this information, we understand that having a ''pilot off the roles'' is a best practice in the state and local pilots' associations. Since we did not propose this, we will plan to address it during a future GLPAC meeting before we consider proposing it in a subsequent rule.

The Great Lakes Pilots' comment asserted that providing only a fractional pilot authorization, rather than a full pilot authorization to handle these administrative and other operational duties, while helpful, does not accord with the reality of the time spent on these functions. They explained that rounding up one year will be of no help in future years if that pilot is, for example, eliminated the next year due to differences in rounding results. The commenter proposed that the operations pilot slot added this year should be made permanent, so that pilots can be added as needed in the future without concern that application of the rounding approach could limit the pilots' ability to efficiently administer their operations. For some of the reasons mentioned by the commenter, we agree that the rounding up method in the staffing model needs more consideration before we adopt a change. The Coast Guard did not propose making the rounding up permanent in the NPRM, but we may consider this option and its effects on the ratemaking in a future rulemaking.

The User's Coalition comment claimed that rounding up in the staffing model was an arbitrary change to increase pilot counts. The commenter suggested that an administrative position could be filled at a much lower cost than an additional pilot, thus freeing up the president's time. We know that pilot association presidents are often pulled away from their pilotage duties by tasks they cannot delegate, leaving less time for them to engage in piloting a vessel. The Coast Guard does not possess sufficient qualitative data to determine this estimated amount of time. However, the Coast Guard will take this suggestion into consideration when determining a way forward.

The SLSPA comment described a throttling effect on traffic flow caused by the Great Lakes Pilotage Association's ability to handle traffic, and requested eight pilots in area one and five pilots in area two on the assignment list during the season. The commenter noted that this number will be higher depending on Canadian GLPA staffing. In order to accommodate 10 days restorative rest per month, the SLSPA stated it needs to have 19.5, rounded up to 20, fully registered pilots. They also requested one additional operations pilot, bringing the total to 21.

As per 46 CFR 401.220, the Director determines the base number of pilots needed by dividing each area's peak pilotage demand data by its pilot work cycle. The pilot work cycle standard includes any time that the Director finds to be a necessary and reasonable component of ensuring that a pilotage assignment is carried out safely, efficiently, and reliably for each area. These components may include, but are not limited to: (1) The amount of time a pilot provides pilotage service; (2) the amount of time available to a vessel's master to provide pilotage service; (3) the pilot's travel time, measured from the pilot's base to and from an assignment's starting and ending points; (4) administrative time for a pilot who serves as a pilot association's president; (5) rest between assignments, as required by § 401.451; (6) the 10 days' recuperative rest per month from April 15 through November 15 each year, provided that lesser rest allowances are approved by the Director at the pilotage association's request, if necessary to provide pilotage without interruption through that period; and (7) time for pilotage-related training.

The Coast Guard is willing to bring up this staffing issue during a future GLPAC meeting. The additional operational pilot requested appears to be the SLSPA's suggested alternative in lieu of the NPRM's proposed rounding up in the staffing model. We will consider this alternative in developing a future rulemaking, but are not adopting any changes to the staffing model at this time, in order to conduct more research. Additionally, the Coast Guard plans to reconsider the recuperative rest requirements in a future ratemaking, but we did not propose any rest requirement-related changes in the NPRM that preceded this final rule.

3. Legal Fees Incurred in Lawsuits Against the Coast Guard's Ratemaking and Oversight Requirements

The Coast Guard received several comments on the exclusion of these legal fees. Comments from Captain John Swartout and the APA mentioned that they successfully sued the Coast Guard for being arbitrary and capricious in the regulatory exclusion of legal fees incurred in litigation against the U.S. Government in our 2016 final rule. Comments from these pilots requested that we explain the difference between the 2016 rulemaking attempt and this year's exclusion of legal fees against the Coast Guard, and explain why we are no longer recognizing litigation expenses for actions against the Coast Guard as an allowable and recognizable expense. The APA comment also referenced the preamble of our proposed rule for the 2003 Great Lakes pilotage ratemaking. The relevant part of the 2003 ratemaking said this: ''The Coast Guard reviewed all legal fees using the guidelines of necessity and reasonableness in 46 CFR 404.5. Only reasonable and necessary legal fees were approved as part of the expense base. No legal fees were allowed in connection with lobbying. Legal fees for litigation against the Government were allowed as long as there was no court proceeding in which there had been a finding of bad faith on the part of the pilot organizations.'' 68 FR 69566, Dec. 12, 2003. In addition, the APA requested that we continue to use the bad faith test for deciding whether to recognize legal fees for litigation against the Coast Guard.

In 2016, we excluded legal expenses incurred in litigation against the U.S. Government from approved operating expenses (81 FR 11908, 11914, Mar. 7, 2016). However, the change in this final rule is limited to litigation against the Coast Guard and its agents as related to the Great Lakes pilotage ratemaking and oversight requirements. We narrowed the language from the 2016 final rule because we do not want to capture legal fees incurred against other agencies, states, or local governments in this exclusion. The procedural error in the 2016 ratemaking was that we did not acknowledge or explain the proposed change in the NPRM or properly respond to comments in the 2016 final rule. The decision in the 2019 case stated, ''The Court takes no position on the relative wisdom of the policy. A rule excluding legal fees incurred against the U.S. government may well be a rational policy. But the process by which the Coast Guard enacted it was arbitrary and capricious.'' *St. Lawrence Seaway Pilots Association* v. *U.S. Coast Guard,* 357 F.Supp.3d 30, 38 (D.D.C. 2019).

The NPRM to this final rule explains the reason for the change, and we elaborate further in this preamble in our response to the comments received. Legal fees incurred in litigation against the Coast Guard are reasonable and

necessary if the pilot association prevails in its litigation. In addition, the reasonableness of legal fees depends on the amount of those fees. The Coast Guard believes that fees awarded as reimbursement for pilots and pilots' associations under the EAJA, or by terms of settlement by the party responsible for the error, will provide reasonable reimbursements for the pilot associations when they prevail. Excluding legal expenses incurred in litigation against the Coast Guard and its agents, as related to the ratemaking and oversight requirements, from the ratemaking equation ensures that the shippers do not have to pay for either non-prevailing lawsuits or the Coast Guard's potential errors. By not allowing these legal fees to be recovered in the ratemaking operating expenses, pilot associations' will have the option to seek recuperation of legal fees under the EAJA and settlement negotiations, where a judge or the limits of the EAJA can determine fair legal fee reimbursement. We believe this is a more equitable approach to ensuring that the necessary costs of providing services are covered than the Coast Guard allowing any and all legal fees to be included, without regard to whether the pilots prevailed on any of the merits of the lawsuit.

We agree with the APA comment that pilots' legal fees should be excluded from expenses where there is a finding of bad faith, but the bad faith exclusion mentioned in the 2003 ratemaking NPRM preamble was not written into our regulations. Before the changes made by this 2021 ratemaking, all legal fees incurred in litigation against the Coast Guard were included as operational expenses in the ratemaking, regardless of bad faith. The Coast Guard does not have the explicit authority that the APA suggests, to exclude bad faith proceedings from operating expenses. We did not propose a bad faith legal fee exclusion because it could be seen as an arbitrary exclusion and also as an unattainable administrative burden for the Coast Guard. We review the legal fees incurred in litigation against the Coast Guard as a lump sum for each district 3 years after the fees are paid. If only part of a case is determined to be in bad faith, we would be in the impossible position of determining what portion of the legal costs would count toward a bad faith exclusion. Additionally, we would have no way to exclude legal fees in cases when the pilots do not prevail on some or any of the merits of the case, or where the ratemaking is determined to be legally sound. This alternative would leave the Coast Guard open to the same concerns we raised in the NPRM, such as the policy against charging a party not responsible for the ratemaking and charging the ratepayers even if the pilots do not prevail on the merits. Therefore, in this final rule, we are excluding this legal fee category altogether, leaving the determination of legal fee reimbursement to the courts.

Captain John Swartout commented that his district, WGLPA (District Three), is fast approaching the $7 million threshold of being eligible for the EAJA, and the other districts will not be far behind, meaning they would not be eligible for reimbursement once they reach that threshold. He acknowledges, however, that all three districts are currently eligible for reimbursement under the EAJA. As mentioned previously, pilots may continue to seek reimbursement under settlement negotiations if they do not qualify under the EAJA for any reason.

Captain Swartout also argued that the ratepayers—not the taxpayers—benefit when the pilots sue over the Coast Guard's occasional failure to make rates with due regard to the public interest and the cost of providing service, in accordance with the Administrative Procedure Act, so it is reasonable that the ratepayers, not the taxpayers, should be ''on the hook'' for the cost. However, the commenter fails to acknowledge that the pilot associations usually first seek reimbursement from the Coast Guard for their legal fees when they prevail on the merits. In other words, the taxpayers were already footing that bill, by way of the Coast Guard paying through terms set by the court or settlement, before the changes made by this final rule. The EAJA is intended to benefit taxpayers, like the pilots and their associations, by helping them cover legal expenses to challenge unlawful government actions.

The Great Lakes Pilots' comment assert that the EAJA cap on reimbursement of legal fees is much lower than their actual legal expenses, estimating their reimbursement to be 25 cents for every dollar. This comment, as well as comments from the APA and John Swartout, claimed that we aim to erect barriers to disincentivize pilots from suing the Coast Guard on meritorious claims.

As we noted in the NPRM, traditional jurisprudence and case law says that a party shall bear its own litigation costs. Generally, there is no right to be fully reconstituted for legal expenses, especially by someone who is not responsible for the injury. The purpose of excluding these legal fees from the ratemaking is to move the financial responsibility of meritorious claims onto the Coast Guard and off the shippers. The Coast Guard agrees that litigation is a legitimate way to ensure agency compliance with mandates and statutes. The exclusion of legal fees does not take away any rights of action that pilots have against the Coast Guard related to the ratemaking or oversight requirements. The Coast Guard can continue to be held accountable via judicial review. There are remedies to recover legal fees from the Coast Guard for meritorious claims, which pilots have pursued in the past. Forcing the shippers to incur legal fees above what the EAJA or settlement covers, or when pilots do not prevail on the merits, is not in the public interest or necessary for the costs of providing services.

In his comment, Captain Swartout further asserted that the rate is the proper funding source for all costs of pilotage, including necessary legal fees, arguing that litigation is necessary to ensure the financial viability of service providers. He contended that the legal fees incurred in a year ''doesn't permanently inflate the rate, paying dividends on past expenses, as the Coast Guard seems to imply'' because rates are based on expenses that are 3 years old.

The legal fee exclusion in this final rule simply repositions the legal fees to be reimbursed by the party responsible, via the EAJA or terms of settlement, when the pilots prevail. The amount of legal fees we exclude in the 2021 ratemaking is approximately 0.1 percent of the total revenue generated each year by the pilot associations. Therefore, when the operating expense adjustment is factored into the ratemaking methodology, it has a very small effect on the final rates. We do not assert that there is a permanent inflation, or dividend, as a result of the legal expenses incurred by pilot associations in a given year. The Coast Guard believes that a 0.1 percent operational expense adjustment for legal fees eligible for reimbursement by the Coast Guard when pilots prevail on some of the merits will not have any adverse impact on future funding for pilot associations and pilot recruitment and retention. The reimbursement of eligible legal fees under the EAJA and settlement negotiations are often available as soon as the parties prevail on the merits, whereas, under the previous scheme, it took 3 years for the expended legal fees to factor into the ratemaking.

The Great Lakes Pilots' comment contested our exclusion of the legal fees by noting that business entities regularly recover legal expenses from their customers by including them in the prices and rates they charge for their

products and services. The comment recited the Director's requirement in § 404.2(a) to recognize pilot association expenses that are ''both necessary for providing pilotage service, and reasonable as to its amount when compared to similar expenses paid by others in the maritime or other comparable industry, or when compared with Internal Revenue Service guidelines.'' The commenter requested that the Coast Guard address the deductibility of legal fees under § 404.2(a) and the Internal Revenue Code (I.R.C.), which says that professional fees are deductible if they qualify as ''ordinary and necessary'' expenses under § 162 I.R.C. (26 U.S.C. 165), covering business expenses, or § 212 I.R.C. (26 U.S.C. 212), covering expenses related to the production of income.

The main reason the legal fee expense is not necessary or reasonable to include in operational expenses is that the costs are reimbursable when the pilots prevail by the responsible party—the Coast Guard. As noted in this preamble, the EAJA and settlement terms often reimburse the pilots' legal fees when the pilots prevail. In those cases, a court can determine a reasonable amount of legal fees to include. Traditional jurisprudence also says that the litigant is the bearer of his or her own legal expenses. ''In the United States, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser.'' *Alyeska Pipeline Service Co.* v. *Wilderness Soc'y,* 421 U.S. 240, 247 (1975). Additionally, when the pilot association does not prevail on the merits, the legal fees associated with that lawsuit are, arguably, per the court's determination, not necessary for the safeguarding or production of their income. If pilots are not victorious on any of the merits, those legal fees inflate the shipper's rates. Unlike other businesses and jurisdictions, shippers on the Great Lakes cannot choose to purchase from another firm or choose not to purchase the service at all when they disagree with a firm's business practices. Among these and the other reasons cited in this preamble, the legal fees incurred in lawsuits against the Coast Guard are distinguishable from the I.R.C. provisions provided by the commenter.

The User's Coalition supported the legal fee exclusion but urged the Coast Guard to go further and exclude all pilot associations' legal fees related to ratesetting, including instances where pilots intervene as defendants in support of the Coast Guard in a shipper-initiated lawsuit. In cases where shippers initiate litigation against the Coast Guard, the pilots often have a legitimate interest in, and will likely be affected by, the outcome of the lawsuit. Thus, the court typically allows the pilots to intervene in the case to protect their own interests. However, the Coast Guard does not have the same justification to exclude these intervener legal expenses because they are not eligible for reimbursement under the EAJA or settlement from the Coast Guard. These legal fees incurred by pilot associations are not otherwise reimbursed by a more responsible party, so we must consider these costs of providing services in the rates, per our statutory mandate.

The Coalition also suggested that allowing intervener pilot legal fees would force vessel operators to finance legal advocacy in support of the Coast Guard's position on any future ratemaking challenge, incentivizing pilot associations to come to the Coast Guard's aid without financial constraint. The Coalition also alleged that the Coast Guard is creating a financial disincentive for our policies to be challenged by industry stakeholders, impeding stakeholders' legitimate rights to participate in the rulemaking process and go to court to resolve disagreements. The User's Coalition will have all the same legal causes of action against the Coast Guard as before. The exclusion of legal fees is intended to be a small benefit to the shippers by taking that financial responsibility out of the rates and placing it on the responsible regulatory agency; it is not intended nor predicted to be an incentive for pilots to come to the Coast Guard's defense.

The Great Lakes Pilots' comment requested we include all the legal expenses the pilots incurred in the 2016 ratemaking lawsuit where they successfully intervened on the Coast Guard's side in a shipper-initiated lawsuit. The comment stated that we need to correct the legal fee amounts disallowed for Districts One and Three's 2018 legal expenses. In District One, $12,905 was disallowed per Table 3—Recognized Expenses for District One,[25] but the comment asserted that District One only paid $9,988 in 2018 for the pilot-initiated litigation on the 2016 ratemaking. The commenter asked where the Coast Guard obtained the higher number of $12,905. The comment further stated that District Three was disallowed $18,321 per Table 28—Recognized Expenses for District Three,[26] but paid only $9,227 for the 2017 litigation against the Coast Guard in the pilot-initiated suit. The commenter stated the higher disallowance was because the Coast Guard improperly disallowed $9,093 for 2017 intervener litigation fees that District Three paid on the shipper-initiated lawsuit. The comment asserted that the Director's adjustment disallowance should be limited to $9,988 for District One and $9,227 for District Three, even if the rule is validly adopted.

Per our regulations, a third-party auditor provided the amounts of legal fees incurred in litigation against the Coast Guard for use in the NPRM. Our auditor reviewed the operating expenses in response to this comment and did not identify any allowable intervener litigation fees for District One. For that reason, for 2018 operating expenses in District One, the final rule will continue to remove $12,905 in Coast Guard litigation fees via Director's adjustment, which is the same number used in the NPRM.

The commenter is correct that, with this change, pilot intervener legal fees incurred in the 2016 ratemaking shipper-initiated lawsuit should be included as approved operating expenses in the year they were incurred. In this case, District Three incurred intervener legal fees in 2018 which should not have been excluded in the NPRM. The 2018 operating expenses of $18,321 reported to us during the NPRM stage did not distinguish between intervener legal fees and ratemaking lawsuits initiated by the pilots against the Coast Guard. We are correcting the Director's adjustments in the NPRM's District Three's 2018 expense table to only exclude litigation fees against the Coast Guard in this final rule. For 2018 operating expenses in District Three, the final rule will remove $9,227 in Coast Guard litigation fees by Director's adjustment, which allows intervener legal fees in the amount of $9,094 ($18,321–$9,227). These updated numbers are reflected in Table 28 in this preamble.

4. Applicant Pilot Compensation Request for Comments for Consideration in a Future Ratemaking

The Coast Guard received many helpful comments in response to our request for comments on setting the reimbursable cost associated with apprentice pilot salaries at a set amount based on a percentage of the previous year's target pilot compensation. As we stated in the NPRM, we will consider these comments and suggestions in a future rulemaking. This final rule does not make any methodological changes to

[25] Table 3 in the proposed rule is published at 85 FR 68219 (October 27, 2020).

[26] Table 28 in the proposed rule is published at 85 FR 68229–68230 (October 27, 2020).

the ratemaking for apprentice pilot compensation from what we proposed in the NPRM.

5. Coast Guard's Authority To Remedy Harms From Past Ratemakings in Response to 2020 D.C. Appellate Court Opinion

In the NPRM, we responded to the D.C. Circuit Court's request to ''consider if it [the Coast Guard] has the statutory authority to remedy the harms from the 2016 Rule and if doing so would comport with its mandate to consider 'the public interest and the costs of providing services' 46 U.S.C. 9303(f).'' [27] We concluded that, while we may have the authority to do so, it does not comport with our mandate to make the adjustment in this ratemaking, for three main reasons discussed in the NPRM. The Great Lakes Pilots' comment was in general agreement with the agency's approach to the Court of Appeals' opinion and did not believe any adjustment going forward was warranted.

Based on our response in the NPRM, Captain John Swartout opined that when the pilots sue the Coast Guard and win, no matter how long pilotage rates are impaired before the court makes a final ruling, the Coast Guard is certainly not going to make the pilots whole. The commenter makes an improper assumption that we would never attempt to remedy past ratemakings. The Coast Guard explained in the NPRM that our decision is limited to the case of the 2016 ratemaking, where we had no operative rate from which to make a correction in the 2021 proposed rule. We believe we have the authority to remedy errors from past ratemakings when we have reliable information and there is a continuing extraordinary and unjust circumstance.

The User's Coalition comment did not propose that the Coast Guard retroactively recalculate rates but asked for a flexible path forward to achieve full repayment over time, through credits in this rule and in future ratemaking procedures or such other methodology. The Coalition asserted the weighting factor is known and the amounts billed by the pilot associations and the money collected are available, and included an Exhibit detailing one method to calculate the overpayment of pilotage fees for 2016.

However, in addition to omitting the weighting factors, the Coast Guard erred in the 2016 ratemaking calculation of target pilot compensation, and the correct number could have been higher or lower than the target pilot compensation used. Consequently, adjusting the rates merely to correct for weighting factors, without a 2016 target pilot compensation, would not provide a ''correct'' operative rate for 2016, as the commenter suggests. Therefore, adjusting rates through a Director's adjustment now is not in accordance with our mandate to consider the costs of providing services for 2021. Neither the Coast Guard nor commenters have identified a continuing unjust circumstance caused by the 2016 ratemaking warranting a remedy at this stage.

The Coalition also challenged our assertion that it is difficult to identify those advantaged by the ratemaking by stating that 80 percent of the traffic is produced by 20 percent of the system users, and all major clients continue to send ships to the area. The User's Coalition noted that the St. Lawrence Seaway keeps records of every ship and its owner sailing in the area for at least 10 years, including 2016 and 2017. The Coalition asked us how the fact that some of the potential recipients of the unlawfully paid funds cannot be determined renders all of the monies unrecoverable, including by those who are identified and able to seek recovery.

Despite the fact that some of the shippers may be identifiable for remedy, the Coast Guard does not plan to pursue a remedy at this time for other reasons, also cited in the NPRM. We do not have an operative rate for the 2016 shipping season to determine a proper remedy to return to the identifiable shippers. Nor could we also give full consideration to the costs of providing pilotage services if we modify the rates according to the User's Coalition's request. We believe the risk of underfunding pilotage rates for years to come would have a negative impact on the Great Lake's pilot associations' abilities to safely meet the shipping demands and maintain their infrastructure. Therefore, the fact that we can identify some users of the 2016 rate is not sufficient to overcome our mandate to consider the public interest and covering the costs of services.

In response to the Coast Guard's assertion that we do not want to risk underfunding pilots for upcoming rates through a potential remedy, the User's Coalition asked what happened to the millions of dollars collected by the pilot associations, over and above those operational expenses incurred in 2016 and 2017, as a result of the agency's remanded ratemaking. The Coast Guard is not able to answer the commenter's question because we do not require pilot associations to report the source of funds they use to pay for certain items or services. Because we do not have an operative rate to use for 2016, we do not know exactly how much the pilots collected over operational expenses. Without a clear way to determine that number, a remedy now would be arbitrary. In addition, the Coast Guard made errors in calculating pilotage rates for the 2013, 2014, and 2015, all of which resulted in the pilots receiving less revenue than was required by the methodology in place at the time. Reducing future rates to account for alleged over-generation of revenue based on the 2016 rates without also correcting those errors would be inconsistent with our mandate to consider the public interest and covering the costs of services.

6. Other Pilot Staffing and Compensation Comments Unrelated to Proposed Changes

The Great Lakes Pilots requested that the Coast Guard undertake a more comprehensive assessment of compensation, as opposed to interim ratemakings, to align Great Lakes pilots' compensation with pilots of other jurisdictions. The Great Lakes Pilots also requested information about the compensation study the Coast Guard initiated but did not have completed. The Coast Guard commissioned a study to analyze methodologies to determine pilot compensation, but decided not to finalize this study. The compensation study was a backup in the event that we failed to identify a compensation standard that remedied the recruitment and retention issues identified in previous rulemakings, and discussed during previous GLPAC meetings. The current compensation benchmark addresses our goals of promoting the recruitment and retention of highly qualified mariners and experienced United States registered pilots.

The LPA requested only 16 pilots, as per the existing staffing model, without rounding up, to keep up with pilotage demand. Since the Coast Guard is no longer adopting the rounding-up method in the staffing model, the LPA's district, District Two, will be authorized a maximum of 15 pilots for the 2021 shipping season under this rule. In the NPRM, District Two was authorized a maximum of 16 pilots instead of 15, primarily because of the proposed rounding up in the staffing model. The comments were generally unsupportive of the rounding up in the staffing model; many commenters suggested alternative changes to the staffing model, which we will consider in a future rulemaking. The LPA also provided suggestions for calculating apprentice pilot compensation, urging us to adopt a

[27] *Am. Great Lakes Ports Ass'n.* v. *Shultz,* 962 F.3d 510, 520 (D.C. Cir. June 16, 2020).

consistent approach. We will consider those suggestions when developing a future rulemaking.

The comment from the WGLPA provided information on how many registered pilots and apprentice pilots on limited registrations they have, as well as estimates on how many pilots they expect to hire in 2021. The WGLPA stated they have 17 fully registered pilots and 7 apprentice pilots operating on limited registrations because they had 3 unexpected retirements in 2020. The WGLPA expects to hire 2-to-4 apprentice pilots in 2021, in line with the 3 they hired in 2020, and the 4 in 2019. The WGLPA comment also noted that if a pilot in their district logs approximately 1,000 hours per year as ''bridge hours,'' and if the level of traffic in 2021 matches the traffic level in 2019, they will need 3 more pilots. To offset unavoidable attrition or retirement, they believe that 27 is the appropriate number for the ''Proposed Maximum Number of Pilots'' for District Three.

The information provided by the commenter will be helpful in considering alternatives to always rounding up in the staffing model. In the NPRM, we authorized 22 fully registered pilots for the WGLPA, with the maximum number of allowed pilots capped at 23 fully registered pilots. Without adopting the proposed change to always round up in the staffing model, District Three is still authorized 22 pilots in this rule, and the cap will remain at 22 pilots. These pilot numbers represent the maximum for fully registered pilots and temporary registrations, but do not include limited registrations for apprentice pilots. If the District only has 17 fully registered pilots, they will be able to hire 5 additional fully registered pilots in the 2021 season. District Three may have additional apprentice pilots on the roles and continue to hire new apprentice pilots, as approved by the Director.

The WGLPA comment also contained information contrary to our statement in the 2021 NPRM, Summary of Ratemaking Methodology, Step 10, where we said: ''As stated in the 2020 rulemaking, as the vast majority of working pilots are not anticipated to reach the regulatory required retirement age of 70 in the next 20 years, we continue to believe that the pilot associations are now able to plan for the costs associated with retirements without relying on the Coast Guard to impose surcharges.'' [28] The WGLPA asserted that 65 percent of their fully registered pilots will reach 70 in the next 20 years, and it is unrealistic to expect them all to work until 70. We anticipate that, with the ability to hire up to 5 more fully registered pilots in 2021, the WGLPA will have a lower rate of planned retirement in the upcoming years.

The SLSPA asserted that the current staffing model is based on old traffic patterns, with a rush at the beginning and the end of each season, but now, due to cruise ships and tankers, shipping is linear throughout the year, with a rush at the end. The comment suggested that pilots lack meaningful rest as a result of the November 15 end of the restorative rest requirement. We thank the commenter for raising this issue. The Coast Guard believes that this is a valid concern and requests more information on this point. The current staffing model is based on the historic increased need for pilots at the start and close of the season, and that, by staffing to meet that need, it allows pilots to take approximately 10 days of restorative rest each month during the 7-month mid-season period.

We are currently monitoring traffic patterns. If the commenter's assertion proves accurate, this would cause us to reevaluate the staffing model. While, at this time, we are still gathering data, we welcome additional data and suggestions for alternative staffing models in light of changes in traffic patterns. We also welcome more information and suggestions at a GLPAC meeting on how to improve our recuperative rest requirements to better serve current traffic patterns. We may consider this information in a future rulemaking.

The SLSPA requested that bridge hours associated with voluntary or non-compulsory vessels should be removed from the ratemaking methodology because additional revenues generated from servicing this traffic has associated bridge hours with it. The commenter asserted that these hours go into the ratemaking methodology as part of the 10-year traffic average, in the denominator of the hourly rate equation, thereby reducing the rates for the next 10 years, benefitting foreign shipping. Our use of historical traffic figures was unanimously recommended by the GLPAC in 2014, without distinction between voluntary and required pilotage services. If there is interest and additional information for why the current methodology is not producing sufficient revenue for the associations, the Coast Guard is willing to bring this issue up at the next GLPAC meeting in 2021.

The User's Coalition comment noted that Canadian lakers have been hiring U.S. and Canadian registered pilots to assist with navigation due to a lack of crew expertise, but expected this to be temporary and eventually resolve itself. The Coalition asked the Coast Guard to: (1) Work with the three U.S. Great Lakes pilot associations to identify and bring on part-time contract pilots, if possible; and (2) initiate a dialogue with the GLPA and Canadian-flagged vessel operators to assess their staffing situation and better predict future pilot demand. As the commenter noted, this is expected to be temporary and eventually resolve itself. The Coast Guard welcomes additional information from the commenter as to the exact amount of voluntary pilotage demand each year from Canada, as well as a reasonable way to address it in the ratemaking. In order to better predict future pilot demand, the Coast Guard would need to predict the demand for global commodities (steel and grain), tankers shipping petroleum products, cruise ships, and winter demand (ordering pilots while the locks are closed for maintenance) on Lakes Erie, Huron, and Michigan. The Coast Guard has no control or influence over any of these activities, and the variables in global commodities are complex and difficult to predict even if we do discuss the matter with Canadian operators. However, we desire to increase our dialogue with all parties involved to address the potential issues identified by the commenter.

Additionally, the User's Coalition requested we make individual pilot compensation available to the public, as it was prior to 2016, as a way to review our progress toward pilot recruitment and retention, reportedly caused by inadequate pilot compensation. The Coast Guard previously cited substantial privacy concerns and being unaware of where individual pilot compensation is made public, but the commenter does not think that these are supportable concerns. This comment did not request any changes to the ratemaking methodology and is not related to changes proposed in the NPRM. The Coast Guard is not inclined to add a regulatory requirement for pilot associations to publicly report the compensation of their pilots, because that number is not included in the expense base or methodology. Because those values are not used in the ratemaking, we believe that a requirement to report pilot compensation is not in the public interest or necessary to provide for the costs of services. Progress toward pilot retention can be reviewed through other means, such as pilot turnover and the

[28] 85 FR 68210 at 68214, October 27, 2020.

ability to fill pilot vacancies for fully registered pilots and apprentice pilots.

7. Other Ratemaking Comments Unrelated to Proposed Changes

The User's Coalition comment asserted that it is unfair to spread the unusual costs associated with pilotage demand in winter months over all users in the annual ratemaking process. The Coalition suggested that winter operators should be allowed to enter into their own financial arrangement with the pilot associations for off-season service. The costs of providing services in the winter months may be higher than the typical shipping season, but they are necessary costs to provide pilotage service on the Great Lakes. Per 46 U.S.C. 9303(f), the Coast Guard is required to set the rates for U.S. pilots operating in the Great Lakes considering the costs of providing services. We did not propose this course of action; therefore, we do not plan to implement it in this final rule. We will include this on the agenda for discussion during a future GLPAC meeting before determining the merits of such a proposal.

VII. Discussion of Rate Adjustments

In this final rule, based on the two changes to the existing methodology described in Section V of this preamble, we are implementing new pilotage rates for 2021. We are conducting this 2021 ratemaking as an ''interim year,'' as was done in 2020, rather than a full ratemaking, as was conducted in 2018. Thus, the Coast Guard will adjust the compensation benchmark pursuant to § 404.104(b) for this purpose, rather than § 404.104(a).

This section discusses the rate changes using the ratemaking steps provided in 46 CFR part 404, incorporating the changes discussed in Section V. We will detail all 10 steps of the ratemaking procedure for each of the 3 districts to show how we arrive at the new rates.

District One

A. Step 1: Recognize Previous Operating Expenses

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2018 expenses and revenues.[29] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a *pro rata* basis.

As noted above, in 2016 the Coast Guard began authorizing surcharges to cover the training costs of applicant pilots. The surcharges were intended to reimburse pilot associations for training applicants in a more timely fashion than if those costs were listed as operating expenses, which would have required 3 years to reimburse. The rationale for using surcharges to cover these expenses, rather than including the costs as operating expenses, was to allow these non-recurring costs to be recovered in a more timely fashion and prevent retiring pilots from having to cover the costs of training their replacements. Because operating expenses incurred are not actually recouped for a period of 3 years, the Coast Guard added a $150,000 surcharge per applicant pilot, beginning in 2016, to recoup those costs in the year incurred. Although the districts did not collect any surcharges for the 2020 shipping season, they did collect a surcharge for the 2018 season, which is deducted by Director's adjustments reflected in the operating expenses of the districts.

For District One, we finalized several Director's adjustments. District One had two applicant pilots during the 2018 season. In total, the District paid these two pilots $594,331, or $297,166 each. The Coast Guard believes this amount is above what is necessary and reasonable for retention and recruitment. In the 2019 NPRM, the Coast Guard proposed to make an adjustment to District Two's request for reimbursement of $571,248 for two applicant pilots ($285,624 per applicant). Instead of permitting $571,248 for two applicant pilots, we proposed allowing $257,566, or $128,783 per applicant pilot, based on discussions with other pilot associations at the time. This standard was utilized in the final rule for 2019 and was not opposed. To determine this percentage, we reached out to several of the pilot associations throughout the United States to see what percentage they pay their applicant pilots, then factored in the sea time and experience required to become an applicant pilot on the Great Lakes. Finally, we discussed the percentage with the president of each association to determine if it was fair and reasonable. The Coast Guard will continue to use the same ratio of applicant-to-target compensation for all districts. For 2019, this was approximately 36 percent of $359,887 which was the target pilot compensation value for 2019 ($128,783 ÷ $359,887 = 35.78 percent). The Coast Guard is using the rounded-up value of 36.0 percent of target compensation as the benchmark for applicant pilot compensation, for a 2021 target pilot compensation of $132,151 ($367,085 × .36). This allows adjustments to applicant pilot compensation to fluctuate in line with target compensation.

The other Director's adjustments to expenses occurred because District One did not break out any costs associated with applicant pilots after the audit, and included these costs as part of pilotage costs. For transparency, the Coast Guard has included the applicant pilot costs as Director's adjustments. We then deducted the same amount to avoid any double counting of these costs, with the exception of the applicant salary costs. We did not deduct applicant salary costs, as these costs were reported in the audit as part of pilot salaries, which are not included in operating expenses. Therefore, these costs are included as a Director's adjustment. The costs associated with applicant expenses are necessary and reasonable for district operations and are, therefore, implemented in the rate.

A Director's adjustment has also been finalized for the amount collected using the 2018 surcharge. A final Director's adjustment is made for the amount of Coast Guard litigation legal fees. Other adjustments have been made by the auditors and are explained in the auditor's reports, which are available in the docket for this rulemaking where indicated under the **ADDRESSES** section of the preamble.

[29] These reports are available in the docket for this rulemaking (see Docket # USCG–2019–0736).

TABLE 3—2018 RECOGNIZED EXPENSES FOR DISTRICT ONE

Reported operating expenses for 2018	District One		
	Designated	Undesignated	Total
	St. Lawrence River	Lake Ontario	
Pilotage Costs:			
Subsistence/travel—Pilot	$799,507	$533,005	$1,332,512
License insurance—Pilots	45,859	30,573	76,432
Payroll taxes—Pilots	202,848	135,232	338,080
Other	15,474	10,316	25,790
Total Other Pilotage Costs	1,063,688	709,126	1,772,814
Pilot Boat and Dispatch Costs:			
Pilot Boat Expense (Operational)	267,420	178,280	445,700
Dispatch Expense	55,280	36,853	92,133
Payroll Taxes	19,100	12,733	31,833
Total Pilot and Dispatch Costs	341,800	227,866	569,666
Administrative Expenses:			
Legal—general counsel	8,550	5,700	14,250
Legal—shared counsel (K&L Gates)	34,607	23,071	57,678
Legal—USCG Litigation	7,743	5,162	12,905
Office Rent	0	0	0
Insurance	24,423	16,282	40,705
Employee benefits	8,064	5,376	13,440
Other taxes	50,963	33,976	84,939
Real Estate taxes	22,280	14,853	37,133
Depreciation/auto leasing/other	101,140	67,426	168,566
Interest	28,270	18,846	47,116
APA Dues	26,416	17,610	44,026
Dues and subscriptions	3,960	2,640	6,600
Utilities	21,887	14,591	36,478
Travel	4,314	2,876	7,190
Salaries	74,763	49,842	124,605
Payroll Tax	7,323	4,882	12,205
Accounting/Professional fees	7,800	5,200	13,000
Pilot Training	0	0	0
Other	21,276	14,184	35,460
Total Administrative Expenses	453,779	302,517	756,296
Capital Expenses:			
Dock	128,749	85,832	214,581
Pilot Boat	128,911	85,941	214,852
Infrastructure Loan Payment	106,458	70,972	177,430
Total Capital Expenses	364,118	242,745	606,863
Total Operating Expenses (Other Costs + Pilot Boats + Admin + Capital Expenses)	2,223,385	1,482,254	3,705,639
Adjustments (Director):			
Director's Adjustment (Applicant Salaries)	356,599	237,732	594,331
Director's Adjustment (Applicant Salaries) *Deduction (Salary Adjustment)*	(198,018)	(132,012)	(330,030)
Director's Adjustment (Applicant License insurance)	8,093	5,395	13,488
Director's Adjustment (Applicant License insurance) *Deduction*	(8,093)	(5,395)	(13,488)
Director's Adjustment (Applicant Health insurance)	10,336	6,891	17,227
Director's Adjustment (Applicant Health insurance) *Deduction*	(10,336)	(6,891)	(17,227)
Director's Adjustment (Applicant Expenses)	94,989	63,326	158,315
Director's Adjustment (Applicant Expenses) *Deduction*	(94,989)	(63,326)	(158,315)
Director's Adjustment (Applicant payroll tax)	29,694	19,796	49,490
Director's Adjustment (Applicant payroll tax) *Deduction*	(29,694)	(19,796)	(49,490)
Director's Adjustment Surcharge Collected in 2018	(144,770)	(144,770)	(289,540)
Director's Adjustment Legal—USCG Litigation	(7,743)	(5,162)	(12,905)
Total Director's Adjustments	6,068	(44,212)	(38,144)
Total Operating Expenses (OpEx + Adjustments)	2,229,453	1,438,042	3,667,495

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

Having identified the recognized 2018 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2019

inflation rate.[30] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2019 and 2020 inflation modification.[31] Based on that information, the calculations for Step 2 are as follows:

TABLE 4—ADJUSTED OPERATING EXPENSES FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Total Operating Expenses (Step 1)	$2,229,453	$1,438,042	$3,667,495
2019 Inflation Modification (@1.5%)	33,442	21,571	55,013
2020 Inflation Modification (@1.2%)	27,155	17,515	44,670
2021 Inflation Modification (@1.7%)	38,931	25,111	64,042
Adjusted 2021 Operating Expenses	2,328,981	1,502,239	3,831,220

C. Step 3: Estimate Number of Working Pilots

In accordance with the text in § 404.103, we estimate the number of registered pilots in each district. We determine the number of registered pilots based on data provided by the Saint Lawrence Seaway Pilots Association. Using these numbers, we estimate that there will be 17 registered pilots in 2021 in District One. Based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in Table 5. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 5—AUTHORIZED PILOTS

Item	District One
Maximum number of pilots (per § 401.220(a)) [32]	17
2021 Authorized pilots (total)	17
Pilots assigned to designated areas	10
Pilots assigned to undesignated areas	7

D. Step 4: Determine Target Pilot Compensation Benchmark

In this step, we determine the total pilot compensation for each area. As we are conducting an ''interim'' ratemaking this year, we will follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. As stated in Section V.A of the preamble, we are using a two-step process to adjust target pilot compensation for inflation. The first step adjusts the 2019 target compensation benchmark of $367,085 by 1.5 percent, for a total adjusted value of $372,591. This adjustment accounts for the difference between the predicted 2020 Median PCE inflation value of 2 percent and the actual 2020 ECI inflation value of 3.5 percent.[33] [34] Because we do not have a value for the ECI for 2021, we multiply the adjusted 2020 compensation benchmark of $372,591 by the Median PCE inflation value of 1.70 percent.[35] Based on the projected 2021 inflation estimate, the compensation benchmark for 2021 is $378,925 per pilot.

TABLE 6—TARGET PILOT COMPENSATION

2020 Target Compensation	$367,085
Difference between Q1 2020 ECI Inflation Rate (3.5%) and the 2020 PCE Predicted Inflation Rate (2.0%)	1.500%
Adjusted 2020 Compensation	$372,591
2020 to 2021 Inflation Factor	1.70%
2021 Target Compensation	$378,925

[30] The 2019 inflation rate is available at *https://www.bls.gov/regions/midwest/data/consumerpriceindexhistorical_midwest_table.pdf.* For this analysis we use the average to average percentage change as presented in the table on page 1. Specifically, the CPI is defined as ''All Urban Consumers (CPI–U), All Items, 1982–4=100'' (BLS Series ID CUUR0200SA0). Downloaded June 11, 2020.

[31] The 2020 and 2021 inflation rates are available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20200916.pdf. We used the PCE median inflation value found in table 1,* Downloaded December 11, 2020.

[32] For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

[33] U.S. Bureau of Labor Statistics Employment Cost Index (ECI) Q3 2020 data for Total Compensation for Private Industry Workers in the Transportation and Material Moving Sector (Series ID: CIU2010000520000A). The third quarter data was the most recently available data at the time of analysis for this final rule. The data is also available at *https://www.bls.gov/news.release/archives/eci_10302020.pdf* in Table 5 on page 10. The Coast Guard is using the 12 month percentage change for the month ending in Sept 2020.

[34] In Step 2 of the ratemaking, the Coast Guard uses the Federal Reserve's predicted PCE inflation rate of 1.2 percent to inflate operating expenses to 2020 dollars. This value differs from the ECI Q3 inflation rate of 3.5 percent. The reason for the deviation between the values is what is included in each dataset. The PCE is a measure of the Federal Reserve's best prediction of future inflation for all goods and services in the U.S. economy, whereas the ECI is a measure of historic employment costs. When making their economic predictions, the Federal Reserve may be considering economic factors that were not relevant at the time the ECI data was captured, or that have not yet impacted labor costs. It is also important to note that labor costs may be slower to respond to changes in supply and demand than other commercial goods and services.

[35] The Federal Reserve, Table 1. Economic projections of Federal Reserve Board members and Federal Reserve Bank presidents, under their individual assumptions of projected appropriate monetary policy, *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20200916.pdf.* Downloaded December 11, 2020.

Next, we certify that the number of pilots estimated for 2021 is less than or equal to the number permitted under the changes to the staffing model in § 401.220(a). The number of pilots needed is 17 pilots for District One, which is equal to the number of registered pilots provided by the pilot associations. In accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District One, as shown in Table 7.

TABLE 7—TARGET COMPENSATION FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Target Pilot Compensation	$378,925	$378,925	$378,925
Number of Pilots	10	7	17
Total Target Pilot Compensation	$3,789,250	$2,652,475	$6,441,725

E. Step 5: Project Working Capital Fund

Next, we calculate the working capital fund revenues needed for each area. First, we add the figures for projected operating expenses and total pilot compensation for each area. Next, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 3.3875 percent.[36] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in Table 8.

TABLE 8—WORKING CAPITAL FUND CALCULATION FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2)	$2,328,981	$1,502,239	$3,831,220
Total Target Pilot Compensation (Step 4)	3,789,250	2,652,475	6,441,725
Total 2021 Expenses	6,118,231	4,154,714	10,272,945
Working Capital Fund (3.3875%)	207,255	140,741	347,996

F. Step 6: Project Needed Revenue

In this step, we add all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). We show these calculations in Table 9.

TABLE 9—REVENUE NEEDED FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2, see table 4)	$2,328,981	$1,502,239	$3,831,220
Total Target Pilot Compensation (Step 4, see table 6)	3,789,250	2,652,475	6,441,725
Working Capital Fund (Step 5, see table 8)	207,255	140,741	347,996
Total Revenue Needed	6,325,486	4,295,455	10,620,941

G. Step 7: Calculate Initial Base Rates

Having determined the revenue needed for each area in the previous six steps, to develop an hourly rate we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the 10-year average of traffic in District One, using the total time on task or pilot bridge hours.[37] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in Table 10.

[36] Moody's Seasoned Aaa Corporate Bond Yield, average of 2019 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA*. (June 11, 2020).

[37] To calculate the time on task for each district, the Coast Guard uses billing data from the Great Lakes Pilotage Management System (GLPMS). We pull the data from the system filtering by district, year, job status (we only include closed jobs), and flagging code (we only include U.S. jobs). After we have downloaded the data, we remove any overland transfers from the dataset, if necessary, and sum the total bridge hours, by area. We then subtract any non-billable delay hours from the total.

TABLE 10—TIME ON TASK FOR DISTRICT ONE

[Hours]

Year	District One	
	Designated	Undesignated
2019	8,232	8,405
2018	6,943	8,445
2017	7,605	8,679
2016	5,434	6,217
2015	5,743	6,667
2014	6,810	6,853
2013	5,864	5,529
2012	4,771	5,121
2011	5,045	5,377
2010	4,839	5,649
Average	6,129	6,694

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. We present the calculations for each area in Table 11.

TABLE 11—INITIAL RATE CALCULATIONS FOR DISTRICT ONE

	Designated	Undesignated
Needed revenue (Step 6)	$6,325,486	$4,295,455
Average time on task (hours)	6,129	6,694
Initial rate	$1,032	$642

H. Step 8: Calculate Average Weighting Factors by Area

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in Tables 12 and 13.[38]

TABLE 12—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	31	1	31
Class 1 (2015)	41	1	41
Class 1 (2016)	31	1	31
Class 1 (2017)	28	1	28
Class 1 (2018)	54	1	54
Class 1 (2019)	72	1	72
Class 2 (2014)	285	1.15	327.75
Class 2 (2015)	295	1.15	339.25
Class 2 (2016)	185	1.15	212.75
Class 2 (2017)	352	1.15	404.8
Class 2 (2018)	559	1.15	642.85
Class 2 (2019)	378	1.15	434.7
Class 3 (2014)	50	1.3	65
Class 3 (2015)	28	1.3	36.4
Class 3 (2016)	50	1.3	65
Class 3 (2017)	67	1.3	87.1
Class 3 (2018)	86	1.3	111.8
Class 3 (2019)	122	1.3	158.6
Class 4 (2014)	271	1.45	392.95
Class 4 (2015)	251	1.45	363.95
Class 4 (2016)	214	1.45	310.3
Class 4 (2017)	285	1.45	413.25
Class 4 (2018)	393	1.45	569.85
Class 4 (2019)	730	1.45	1058.5
Total	4,858	.....	6,252

[38] To calculate the number of transits by vessel class, we use the billing data from GLPMS, filtering by district, year, job status (we only include closed jobs), and flagging code (we only include U.S. jobs). We then count the number of jobs by vessel class and area.

TABLE 12—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Average weighting factor (weighted transits/number of transits)		1.29	

TABLE 13—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	25	1	25
Class 1 (2015)	28	1	28
Class 1 (2016)	18	1	18
Class 1 (2017)	19	1	19
Class 1 (2018)	22	1	22
Class 1 (2019)	30	1	30
Class 2 (2014)	238	1.15	273.7
Class 2 (2015)	263	1.15	302.45
Class 2 (2016)	169	1.15	194.35
Class 2 (2017)	290	1.15	333.5
Class 2 (2018)	352	1.15	404.8
Class 2 (2019)	366	1.15	420.9
Class 3 (2014)	60	1.3	78
Class 3 (2015)	42	1.3	54.6
Class 3 (2016)	28	1.3	36.4
Class 3 (2017)	45	1.3	58.5
Class 3 (2018)	63	1.3	81.9
Class 3 (2019)	58	1.3	75.4
Class 4 (2014)	289	1.45	419.05
Class 4 (2015)	269	1.45	390.05
Class 4 (2016)	222	1.45	321.9
Class 4 (2017)	285	1.45	413.25
Class 4 (2018)	382	1.45	553.9
Class 4 (2019)	326	1.45	472.7
Total	3,889		5,027
Average weighting factor (weighted transits/number of transits)		1.29	

I. Step 9: Calculate Revised Base Rates

In this step, we revise the base rates so that, once the impact of the weighting factors is considered; the total cost of pilotage will be equal to the revenue needed. To do this, we divide the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in Table 14.

TABLE 14—REVISED BASE RATES FOR DISTRICT ONE

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (Initial rate ÷ average weighting factor)
District One: Designated	$1,032	1.29	$800
District One: Undesignated	642	1.29	498

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the proposed rates incorporate appropriate compensation for pilots to handle heavy traffic periods and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating expenses and infrastructure costs, including average traffic and weighting factions. Based on the financial information submitted by the pilots, the Director is not making any alterations to the rates in this step. We will modify the text in § 401.405(a) to reflect the final rates shown in Table 15.

TABLE 15—FINAL RATES FOR DISTRICT ONE

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate	Final 2021 pilotage rate
District One: Designated	St. Lawrence River	$758	$757	$800
District One: Undesignated	Lake Ontario	463	428	498

District Two

A. Step 1: Recognize Previous Operating Expenses

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2018 expenses and revenues.[39] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District Two are shown in Table 16.

For District Two, we finalized three Director's adjustments: (1) For the amount collected from the 2018 surcharge; (2) for the amount in Coast Guard litigation legal fees (allowing intervener fees); and (3) for the amount paid to the District's applicant pilot. District Two had one applicant pilot during the 2018 season and paid $334,659 in salary. The Coast Guard believes this amount is above what is necessary and reasonable for retention and recruitment. In the 2019 NPRM, the Coast Guard proposed to make an adjustment to District Two's request for reimbursement of $571,248 for two applicant pilots ($285,624 per applicant). Instead of permitting $571,248 for two applicant pilots, we proposed allowing $257,566, or $128,783 per applicant pilot. This proposal went into the final rule for 2019 and was not opposed. Going forward, the Coast Guard will continue to use the same ratio of applicant to target compensation. For 2019, this was approximately 36 percent of $359,887, which was the target pilot compensation value for 2019 ($128,783 ÷ $359,887 = 35.78 percent). The Coast Guard is using the rounded-up value of 36.0 percent of target compensation as the benchmark for applicant pilot compensation, for a 2021 target pilot compensation of $132,151 ($367,085 × .36). This allows adjustments to applicant pilot compensation to fluctuate in line with target compensation. Other adjustments made by the auditors are explained in the auditors' reports (available in the docket where indicated under the **ADDRESSES** portion of this document).

TABLE 16—2018 RECOGNIZED EXPENSES FOR DISTRICT TWO

Reported operating expenses for 2018	District Two		
	Undesignated	Designated	Total
	Lake Erie	Southeast Shoal to Port Huron	
Other Pilotage Costs:			
Subsistence/Travel—Pilots	$115,073	$172,608	$287,681
CPA DEDUCTION	(3,457)	(5,185)	(8,642)
Hotel/Lodging Cost	50,464	75,696	126,160
License Insurance	138	207	345
Payroll taxes	82,960	124,441	207,401
Other	860	1,291	2,151
Total Other Pilotage Costs	246,038	369,058	615,096
Applicant Pilot Costs:			
Applicant Salaries	133,864	200,795	334,659
Applicant Health Insurance	18,691	28,036	46,727
Applicant Payroll Tax	4,496	6,745	11,241
Applicant Subsistence	9,872	14,807	24,679
Total Applicant Pilot Cost	166,923	250,383	417,306
Pilot Boat and Dispatch Costs:			
Pilot Boat Cost	206,998	310,496	517,494
Employee Benefits	80,906	121,358	202,264
Payroll Taxes	12,523	18,785	31,308
Total Pilot and Dispatch Costs	300,427	450,639	751,066
Administrative Expenses:			
Legal—general counsel	35,711	53,567	89,278
Legal—shared counsel (K&L Gates)	17,037	25,555	42,592
Legal—USCG litigation	2,185	3,277	5,462
Office rent	33,326	49,988	83,314
Insurance	20,357	30,536	50,893

[39] These reports are available in the docket for this rulemaking (see Docket No. USCG–2019–0736).

TABLE 16—2018 RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

Reported operating expenses for 2018	District Two		
	Undesignated	Designated	Total
	Lake Erie	Southeast Shoal to Port Huron	
Employee Benefits	89,999	134,999	224,998
Other taxes	25,620	38,430	64,050
Real Estate taxes	6,066	9,099	15,165
Depreciation/Auto lease/Other	29,392	44,087	73,479
Interest	586	880	1,466
APA dues	13,703	20,554	34,257
Dues and Subscriptions	676	1,015	1,691
Utilities	19,413	29,119	48,532
Salaries—Admin employees	53,170	79,755	132,925
Payroll taxes	5,558	8,338	13,896
Accounting	14,276	21,414	35,690
Pilot Training	14,434	21,414	35,848
Other	15,310	22,966	38,276
Total Administrative Expenses	396,819	594,993	991,812
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	1,110,207	1,665,073	2,775,280
Adjustments (Director):			
Director's Adjustment Surcharge Collected in 2018	(65,962)	(65,962)	(131,924)
Director's Adjustment Applicant Pilot Salary	(81,003)	(121,505)	(202,508)
Legal Fee Removal—USCG Litigation	(2,185)	(3,277)	(5,462)
Total Director's Adjustments	(149,150)	(190,744)	(339,894)
Total Operating Expenses (OpEx + Adjustments)	961,057	1,474,329	2,435,386

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

Having identified the recognized 2019 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2019 inflation rate.[40] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2020 and 2021 inflation modification.[41] Based on that information, the calculations for Step 1 are as follows:

TABLE 17—ADJUSTED OPERATING EXPENSES FOR DISTRICT TWO

Item	District Two		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$961,057	$1,474,329	$2,435,386
2019 Inflation Modification (@1.5%)	14,416	22,115	36,531
2020 Inflation Modification (@1.2%)	11,706	17,957	29,663
2021 Inflation Modification (@1.7%)	16,782	25,745	42,527
Adjusted 2021 Operating Expenses	1,003,961	1,540,146	2,544,107

C. Step 3: Estimate Number of Working Pilots

In accordance with the text in § 404.103, we estimate the number of working pilots in each district. We determine the number of registered pilots based on data provided by the Lakes Pilots Association. Using these numbers, we estimate that there will be 15 registered pilots in 2021 in District Two. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in Table 18. These numbers are used to determine the amount of revenue needed in their respective areas.

[40] See footnote 30.

[41] See footnote 31.

TABLE 18—AUTHORIZED PILOTS

Item	District Two
Maximum number of pilots (per § 401.220(a)) [42]	15
2021 Authorized pilots (total)	15
Pilots assigned to designated areas	7
Pilots assigned to undesignated areas	8

D. Step 4: Determine Target Pilot Compensation Benchmark

In this step, we determine the total pilot compensation for each area. As we are conducting an ''interim'' ratemaking this year, we will follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. As stated in Section V.A of the preamble, we are using a two-step process to adjust target pilot compensation for inflation. The first step adjusts the 2019 target compensation benchmark of $367,085 by 1.5 percent, for a total adjusted value of $372,591. This adjustment accounts for the difference between the predicted 2020 Median PCE inflation value of 2 percent and the actual 2020 ECI inflation value of 3.5 percent.[43] [44] Because we do not have a value for the employment cost index for 2021, we multiply the adjusted 2020 compensation benchmark of $372,591 by the Median PCE inflation value of 1.70 percent.[45] Based on the projected 2021 inflation estimate, the compensation benchmark for 2021 is $378,925 per pilot (see Table 6 for calculations).

Next, we certify that the number of pilots estimated for 2021 is less than or equal to the number permitted under the changes to the staffing model in § 401.220(a). The number of pilots needed is 15 pilots for District Two, which is more than or equal to 15, the number of registered pilots provided by the pilot associations.[46]

Thus, in accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District Two, as shown in Table 19.

TABLE 19—TARGET COMPENSATION FOR DISTRICT TWO

	Undesignated	Designated	Total
Target Pilot Compensation	$378,925	$378,925	$378,925
Number of Pilots	8	7	15
Total Target Pilot Compensation	$3,031,400	$2,652,475	$5,683,875

E. Step 5: Project Working Capital Fund

Next, we calculate the working capital fund revenues needed for each area. First, we add the figures for projected operating expenses and total pilot compensation for each area. Next, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 3.3875 percent.[47] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in Table 20.

TABLE 20—WORKING CAPITAL FUND CALCULATION FOR DISTRICT TWO

Item	District Two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,003,961	$1,540,146	$2,544,107
Total Target Pilot Compensation (Step 4)	3,031,400	2,652,475	5,683,875
Total Expenses	4,035,361	4,192,621	8,227,982
Working Capital Fund (3.3875%)	136,698	142,025	278,723

F. Step 6: Project Needed Revenue

In this step, we add all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). We show these calculations in Table 21.

[42] For a detailed calculation refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

[43] See footnote 33.

[44] See footnote 34.

[45] See footnote 35.

[46] See table 6 of the Great Lakes Pilotage Rates—2017 Annual Review final rule, 82 FR 41466 at 41480 (August 31, 2017). The methodology of the staffing model is discussed at length in the final rule (see pages 41476–41480 for a detailed analysis of the calculations).

[47] *See footnote 36.*

TABLE 21—REVENUE NEEDED FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2, see Table 17)	$1,003,961	$1,540,146	$2,544,107
Total Target Pilot Compensation (Step 4, see Table 19)	3,031,400	2,652,475	5,683,875
Working Capital Fund (Step 5, see Table 20)	136,698	142,025	278,723
Total Revenue Needed	4,172,059	4,334,646	8,506,705

G. Step 7: Calculate Initial Base Rates

Having determined the needed revenue for each area in the previous six steps, to develop an hourly rate, we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the 10-year average of traffic in District Two, using the total time on task or pilot bridge hours.[48] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in Table 22.

TABLE 22—TIME ON TASK FOR DISTRICT TWO

[Hours]

Year	Undesignated	Designated
2019	6,512	7,715
2018	6,150	6,655
2017	5,139	6,074
2016	6,425	5,615
2015	6,535	5,967
2014	7,856	7,001
2013	4,603	4,750
2012	3,848	3,922
2011	3,708	3,680
2010	5,565	5,235
Average	5,634	5,661

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for each area are set forth in Table 23.

TABLE 23—INITIAL RATE CALCULATIONS FOR DISTRICT TWO

Item	Undesignated	Designated
Needed revenue (Step 6)	$4,172,059	$4,334,646
Average time on task (hours)	5,634	5,661
Initial rate	$741	$766

H. Step 8: Calculate Average Weighting Factors by Area

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in Tables 24 and 25.[49]

TABLE 24—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	31	1	31
Class 1 (2015)	35	1	35
Class 1 (2016)	32	1	32
Class 1 (2017)	21	1	21
Class 1 (2018)	37	1	37
Class 1 (2019)	54	1	54
Class 2 (2014)	356	1.15	409.4
Class 2 (2015)	354	1.15	407.1
Class 2 (2016)	380	1.15	437

[48] See footnote 37.

[49] See footnote 38.

TABLE 24—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 2 (2017)	222	1.15	255.3
Class 2 (2018)	123	1.15	141.45
Class 2 (2019)	127	1.15	146.05
Class 3 (2014)	20	1.3	26
Class 3 (2015)	0	1.3	0
Class 3 (2016)	9	1.3	11.7
Class 3 (2017)	12	1.3	15.6
Class 3 (2018)	3	1.3	3.9
Class 3 (2019)	1	1.3	1.3
Class 4 (2014)	636	1.45	922.2
Class 4 (2015)	560	1.45	812
Class 4 (2016)	468	1.45	678.6
Class 4 (2017)	319	1.45	462.55
Class 4 (2018)	196	1.45	284.20
Class 4 (2019)	210	1.45	304.5
Total	4,206		5,529
Average weighting factor (weighted transits/number of transits)		1.31	

TABLE 25—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	20	1	20
Class 1 (2015)	15	1	15
Class 1 (2016)	28	1	28
Class 1 (2017)	15	1	15
Class 1 (2018)	42	1	42
Class 1 (2019)	48	1	48
Class 2 (2014)	237	1.15	272.55
Class 2 (2015)	217	1.15	249.55
Class 2 (2016)	224	1.15	257.6
Class 2 (2017)	127	1.15	146.05
Class 2 (2018)	153	1.15	175.95
Class 2 (2019)	281	1.15	323.15
Class 3 (2014)	8	1.3	10.4
Class 3 (2015)	8	1.3	10.4
Class 3 (2016)	4	1.3	5.2
Class 3 (2017)	4	1.3	5.2
Class 3 (2018)	14	1.3	18.2
Class 3 (2019)	1	1.3	1.3
Class 4 (2014)	359	1.45	520.55
Class 4 (2015)	340	1.45	493
Class 4 (2016)	281	1.45	407.45
Class 4 (2017)	185	1.45	268.25
Class 4 (2018)	379	1.45	549.55
Class 4 (2019)	403	1.45	584.35
Total	3,393		4,467
Average weighting factor (weighted transits/number of transits)		1.32	

I. Step 9: Calculate Revised Base Rates

In this step, we revise the base rates so that, once the impact of the weighting factors are considered, the total cost of pilotage will be equal to the revenue needed. To do this, we divide the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in Table 26.

TABLE 26—REVISED BASE RATES FOR DISTRICT TWO

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (Initial rate ÷ Average weighting factor)
District Two: Designated	$766	1.32	$580

TABLE 26—REVISED BASE RATES FOR DISTRICT TWO—Continued

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (Initial rate ÷ Average weighting factor)
District Two: Undesignated	741	1.31	566

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the proposed rates incorporate appropriate compensation for pilots to handle heavy traffic periods, and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not making any alterations to the rates in this step. We will modify the text in § 401.405(a) to reflect the final rates shown in Table 27.

TABLE 27—FINAL RATES FOR DISTRICT TWO

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate	Final 2021 pilotage rate
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	$618	$577	$580
District Two: Undesignated	Lake Erie	586	566	566

District Three

A. Step 1: Recognize Previous Operating Expenses

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2018 expenses and revenues.[50] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District Three are shown in Table 28.

For District Three, we finalized two Director's adjustments. One is for the amount collected from the 2018 surcharge, and the other for $9,277, which was the amount the district spent on litigation legal fees against the Coast Guard. The other $9,094 spent by District Three on Coast Guard litigation was for intervener fees, which are allowable expenses. Other adjustments made by the auditors are explained in the auditors' reports (available in the docket where indicated in the **ADDRESSES** portion of this document).

We make no adjustments to the District Three compensation for applicant pilots. In the 2019 NPRM, the Coast Guard proposed to make an adjustment to District Three's request for reimbursement of $571,248 for two applicant pilots ($285,624 per applicant). Instead of permitting $571,248 for two applicant pilots, we proposed allowing $257,566, or $128,783 per applicant pilot. This proposal went into the final rule for 2019 and was not opposed. Going forward, the Coast Guard will continue to use the same ratio of applicant to target compensation for all districts. For 2019, this was approximately 36 percent of $359,887, which was the target pilot compensation value for 2019 ($128,783 ÷ $359,887 = 35.78 percent). The Coast Guard is using 36.0 percent of target compensation as the benchmark for applicant pilot compensation, for a 2021 target pilot compensation of $132,151 ($367,085 × .36). This allows adjustments to applicant pilot compensation to fluctuate in line with target compensation.

TABLE 28—2018 RECOGNIZED EXPENSES FOR DISTRICT THREE

Reported expenses for 2018	District Three			
	Undesignated[51] (Area 6)	Designated (Area 7)	Undesignated (Area 8)	Total
	Lakes Huron and Michigan	St. Marys River	Lake Superior	
Operating Expenses:				
Other Pilotage Costs.				
Pilot subsistence/travel	$208,110	$110,697	$123,980	$442,787
Hotel/Lodging Cost	88,982	47,331	53,011	189,324
License Insurance—Pilots	13,516	7,189	8,052	28,757

[50] These reports are available in the docket for this rulemaking (see Docket No. USCG–2019–0736).

TABLE 28—2018 RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

Reported expenses for 2018	District Three			
	Undesignated [51] (Area 6)	Designated (Area 7)	Undesignated (Area 8)	Total
	Lakes Huron and Michigan	St. Marys River	Lake Superior	
Payroll taxes	122,954	65,401	73,249	261,604
Other	19,521	10,383	11,629	41,533
Total Other Pilotage Costs	453,083	241,001	269,921	964,005
Applicant Pilot Costs:				
Applicant Salaries	183,485	97,598	109,310	390,393
Applicant pilot subsistence/travel	16,411	8,729	9,777	34,917
Applicant Insurance	38,312	20,379	22,823	81,514
Applicant Payroll Tax	16,411	8,729	9,777	34,917
Applicant Total Cost	254,619	135,435	151,687	541,741
Pilot Boat and Dispatch Costs:				
Pilot boat costs	346,160	184,127	206,223	736,510
Dispatch costs	99,982	53,182	59,563	212,727
Payroll taxes	13,609	7,239	8,108	28,956
Total Pilot and Dispatch Costs	459,751	244,548	273,894	978,193
Administrative Expenses:				
Legal—general counsel	22,766	12,109	13,563	48,438
Legal—shared counsel (K&L Gates)	19,426	10,333	11,573	41,332
Legal—USCG litigation	8,611	4,580	5,130	18,321
Office rent	4,020	2,138	2,395	8,553
Insurance	11,354	6,040	6,764	24,158
Employee benefits	68,303	36,331	40,691	145,325
Other taxes	131	70	78	279
Depreciation/Auto leasing/Other	57,315	30,487	34,145	121,947
Interest	7	4	4	15
APA Dues	20,628	10,973	12,289	43,890
Dues and subscriptions	3,290	1,750	1,960	7,000
Utilities	31,860	16,947	18,980	67,787
Salaries	60,876	32,381	36,267	129,524
Payroll taxes	5,406	2,875	3,220	11,501
Accounting/Professional fees	8,069	4,292	4,807	17,168
Pilot training	18,586	9,886	11,073	39,545
Other expenses (D3–18–01)	8,907	4,738	5,306	18,951
(D3–18–01) CPA Deduction	(2,030)	(1,080)	(1,210)	(4,320)
Total Administrative Expenses	347,525	184,854	207,035	739,414
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	1,514,978	805,838	902,537	3,223,353
Adjustments (Director):				
Director's Adjustment Surcharge Collected in 2018	(273,168)	(273,168)	(273,168)	(819,504)
Legal Fee Removal—USCG Litigation	(4,337)	(2,307)	(2,584)	(9,227)
Total Director's Adjustments	(277,505)	(275,475)	(275,752)	(828,731)
Total Operating Expenses (OpEx + Adjustments)	1,237,473	530,363	626,785	2,394,622

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

Having identified the recognized 2018 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2019 inflation rate.[52] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2020 and 2021 inflation modification.[53] Based on that information, the calculations for Step 1 are as follows:

[51] The undesignated areas in District Three (areas 6 and 8) are treated separately in table 28. In table 29 and subsequent tables, both undesignated areas are combined and analyzed as a single undesignated area.

[52] See footnote 30.

[53] See footnote 31.

TABLE 29—ADJUSTED OPERATING EXPENSES FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$1,864,259	$530,363	$2,394,622
2019 Inflation Modification (@1.5%)	27,964	7,955	35,919
2020 Inflation Modification (@1.2%)	22,707	6,460	29,167
2021 Inflation Modification (@1.7%)	32,554	9,261	41,815
Adjusted 2021 Operating Expenses	1,947,484	554,039	2,501,523

C. Step 3: Estimate Number of Working Pilots

In accordance with the text in § 404.104(c), we estimate the number of working pilots in each district. We determine the number of registered pilots based on data provided by the Western Great Lakes Pilots Association. Using these numbers, we estimate that there will be 22 registered pilots in 2021 in District Three. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in Table 30. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 30—AUTHORIZED PILOTS

	District Three
Maximum number of pilots (per § 401.220(a)) [54]	22
2021 Authorized pilots (total)	22
Pilots assigned to designated areas	4

TABLE 30—AUTHORIZED PILOTS—Continued

	District Three
Pilots assigned to undesignated areas	18

D. Step 4: Determine Target Pilot Compensation Benchmark

In this step, we determine the total pilot compensation for each area. As we are conducting an ''interim'' ratemaking this year, we will follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. As stated in Section V.A of the preamble, we are using a two-step process to adjust target pilot compensation for inflation. The first step adjusts the 2019 target compensation benchmark of $367,085 by 15 percent, for a total adjusted value of $372,591. This adjustment accounts for the difference between the predicted 2020 Median PCE inflation value of 2 percent and the actual 2020 ECI inflation value of 3.3 percent.[55] [56] Because we do not have a value for the ECI for 2021, we multiply the adjusted 2020 compensation benchmark of $372,591 by the Median PCE inflation value of 1.70 percent.[57] Based on the projected 2020 inflation estimate, the compensation benchmark for 2021 is $378,925 per pilot (see Table 6 for calculations).

Next, we certify that the number of pilots estimated for 2021 is less than or equal to the number permitted under the changes to the staffing model in § 401.220(a). The number of pilots needed is 22 pilots for District Three,[58] which is more than or equal to 22, the number of registered pilots provided by the pilot associations.

Thus, in accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District Three, as shown in Table 31.

TABLE 31—TARGET COMPENSATION FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Target Pilot Compensation	$378,925	$378,925	$378,925
Number of Pilots	18	4	22
Total Target Pilot Compensation	6,820,650	1,515,700	8,336,350

E. Step 5: Project Working Capital Fund

Next, we calculate the working capital fund revenues needed for each area. First, we add the figures for projected operating expenses and total pilot compensation for each area. Next, we find the preceding year's average annual rate of return for new issues of high grade corporate securities. Using Moody's data, the number is 3.3875 percent.[59] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in Table 32.

[54] For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

[55] See footnote 33.

[56] See footnote 34.

[57] See footnote 35.

[58] See Table 6 of the Great Lakes Pilotage Rates—2017 Annual Review final rule, 82 FR 41466 at 41480 (August 31, 2017). The methodology of the staffing model is discussed at length in the final rule (see pages 41476–41480 for a detailed analysis of the calculations).

[59] See footnote 36.

TABLE 32—WORKING CAPITAL FUND CALCULATION FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,947,484	$554,039	$2,501,523
Total Target Pilot Compensation (Step 4)	6,820,650	1,515,700	8,336,350
Total Expenses	8,768,134	2,069,739	10,837,873
Working Capital Fund (3.3875)	297,021	70,112	367,133

F. Step 6: Project Needed Revenue

In this step, we add all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). The calculations are shown in Table 33.

TABLE 33—REVENUE NEEDED FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2, see Table 29)	$1,947,484	$554,039	$2,501,523
Total Target Pilot Compensation (Step 4, see Table 31)	6,820,650	1,515,700	8,336,350
Working Capital Fund (Step 5, see Table 32)	297,021	70,112	367,133
Total Revenue Needed	9,065,155	2,139,851	11,205,006

G. Step 7: Calculate Initial Base Rates

Having determined the revenue needed for each area in the previous six steps, to develop an hourly rate, we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the 10-year average of traffic in District Three, using the total time on task or pilot bridge hours.[60] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in Table 34.

TABLE 34—TIME ON TASK FOR DISTRICT THREE

[Hours]

Year	District Three	
	Undesignated	Designated
2019	24,851	3,395
2018	19,967	3,455
2017	20,955	2,997
2016	23,421	2,769
2015	22,824	2,696
2014	25,833	3,835
2013	17,115	2,631
2012	15,906	2,163
2011	16,012	1,678
2010	20,211	2,461
Average	20,710	2,808

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for each area are set forth in Table 35.

TABLE 35—INITIAL RATE CALCULATIONS FOR DISTRICT THREE

	Undesignated	Designated
Revenue needed (Step 6)	$9,065,155	$2,139,851
Average time on task (hours)	20,710	2,808
Initial rate	$438	$762

[60] See footnote 37.

H. Step 8: Calculate Average Weighting Factors by Area

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in Tables 36 and 37.[61]

TABLE 36—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Area 6			
Class 1 (2014)	45	1	45
Class 1 (2015)	56	1	56
Class 1 (2016)	136	1	136
Class 1 (2017)	148	1	148
Class 1 (2018)	103	1	103
Class 1 (2019)	173	1	173
Class 2 (2014)	274	1.15	315.1
Class 2 (2015)	207	1.15	238.05
Class 2 (2016)	236	1.15	271.4
Class 2 (2017)	264	1.15	303.6
Class 2 (2018)	169	1.15	194.35
Class 2 (2019)	279	1.15	320.85
Class 3 (2014)	15	1.3	19.5
Class 3 (2015)	8	1.3	10.4
Class 3 (2016)	10	1.3	13
Class 3 (2017)	19	1.3	24.7
Class 3 (2018)	9	1.3	11.7
Class 3 (2019)	9	1.3	11.7
Class 4 (2014)	394	1.45	571.3
Class 4 (2015)	375	1.45	543.75
Class 4 (2016)	332	1.45	481.4
Class 4 (2017)	367	1.45	532.15
Class 4 (2018)	337	1.45	488.65
Class 4 (2019)	334	1.45	484.3
Total for Area 6	4,299	.....	5,497
Area 8			
Class 1 (2014)	3	1	3
Class 1 (2015)	0	1	0
Class 1 (2016)	4	1	4
Class 1 (2017)	4	1	4
Class 1 (2018)	0	1	0
Class 1 (2019)	0	1	0
Class 2 (2014)	177	1.15	203.55
Class 2 (2015)	169	1.15	194.35
Class 2 (2016)	174	1.15	200.1
Class 2 (2017)	151	1.15	173.65
Class 2 (2018)	102	1.15	117.3
Class 2 (2019)	120	1.15	138
Class 3 (2014)	3	1.3	3.9
Class 3 (2015)	0	1.3	0
Class 3 (2016)	7	1.3	9.1
Class 3 (2017)	18	1.3	23.4
Class 3 (2018)	7	1.3	9.1
Class 3 (2019)	6	1.3	7.8
Class 4 (2014)	243	1.45	352.35
Class 4 (2015)	253	1.45	366.85
Class 4 (2016)	204	1.45	295.8
Class 4 (2017)	269	1.45	390.05
Class 4 (2018)	188	1.45	272.6
Class 4 (2019)	254	1.45	368.3
Total for Area 8	2,356	.....	3,137
Combined total	6,655	.....	8,634.10
Average weighting factor (weighted transits/number of transits)	.....	1.30	.....

[61] See footnote 38.

TABLE 37—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS

Vessel class per year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	27	1	27
Class 1 (2015)	23	1	23
Class 1 (2016)	55	1	55
Class 1 (2017)	62	1	62
Class 1 (2018)	47	1	47
Class 1 (2019)	45	1	45
Class 2 (2014)	221	1.15	254.15
Class 2 (2015)	145	1.15	166.75
Class 2 (2016)	174	1.15	200.1
Class 2 (2017)	170	1.15	195.5
Class 2 (2018)	126	1.15	144.9
Class 2 (2019)	162	1.15	186.3
Class 3 (2014)	4	1.3	5.2
Class 3 (2015)	0	1.3	0
Class 3 (2016)	6	1.3	7.8
Class 3 (2017)	14	1.3	18.2
Class 3 (2018)	6	1.3	7.8
Class 3 (2019)	3	1.3	3.9
Class 4 (2014)	321	1.45	465.45
Class 4 (2015)	245	1.45	355.25
Class 4 (2016)	191	1.45	276.95
Class 4 (2017)	234	1.45	339.3
Class 4 (2018)	225	1.45	326.25
Class 4 (2019)	308	1.45	446.6
Total	2,814		3,659
Average weighting factor (weighted transits per number of transits)		1.30	

I. Step 9: Calculate Revised Base Rates

In this step, we revise the base rates so that, once the impact of the weighting factors are considered, the total cost of pilotage will be equal to the revenue needed. To do this, we divide the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in Table 38.

TABLE 38—REVISED BASE RATES FOR DISTRICT THREE

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (Initial rate ÷ average weighting factor)
District Three: Designated	$762	1.30	$586
District Three: Undesignated	438	1.30	337

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the proposed rates incorporate appropriate compensation for pilots to handle heavy traffic periods and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not making any alterations to the rates in this step. We will modify the text in § 401.405(a) to reflect the final rates shown in Table 39.

TABLE 39—FINAL RATES FOR DISTRICT THREE

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate	Final 2021 pilotage rate
District Three: Designated	St. Marys River	$632	$584	$586
District Three: Undesignated	Lakes Huron, Michigan, and Superior	337	335	337

VIII. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below, we summarize our analyses based on these statutes or Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. A regulatory analysis (RA) follows.

The purpose of this rule is to establish new base pilotage rates. The Great Lakes Pilotage Act of 1960 requires that rates be established or reviewed and adjusted each year. The Act requires that base rates be established by a full ratemaking at least once every five years, and in years when base rates are not established, they must be reviewed and, if necessary, adjusted. The last full ratemaking was concluded in June of 2018.[62] For this ratemaking, the Coast Guard estimates an increase in cost of approximately $2.06 million to industry as a result of the change in revenue needed in 2021 compared to the revenue needed in 2020.

Table 40 summarizes changes with no cost impacts or where the cost impacts are captured in the rate change. Table 41 summarizes the affected population, costs, and benefits of the rate change.

TABLE 40—CHANGES WITH NO COSTS OR COST CAPTURED IN THE FINAL RATE CHANGE

Change	Description	Affected population	Basis for no cost or cost captured in the final rate	Benefits
Legal expenses for lawsuits against the Coast Guard in relation to the ratemaking are not allowable operating expenses.	The Coast Guard is excluding legal fees for litigation against the Coast Guard from operating expenses for calculation of pilotage rates. This exclusion only applies to legal fees when pilots associations sue the Coast Guard in relation to the ratemaking and oversight requirement in 46 U.S.C. 9303, 9304 and 9305. As part of this change, the Coast Guard is also creating a new paragraph 46 CFR 404.2(b)(6), which defines legal expenses.	Owners and operators of 279 vessels journeying the Great Lakes system annually, 54 United States registered pilots, and 3 pilotage associations.	Changes in operating expenses are accounted for in the base pilotage rates. For the 2021 ratemaking, these legal fees total $27,594 for all three districts. After adjusting for inflation and the working capital fund, these expenses are $29,802, or 0.10% of the total revenue needed for 2021. The pilot associations may still be reimbursed for these expenses by the Coast Guard under the EAJA.	The change will remove the undue cost to shippers of effectively paying for the pilots' litigation expenses to sue the Coast Guard.
Inflation of target pilot compensation.	The Coast Guard is modifying 46 CFR 404.104(b) to change how inflation of pilot compensation is calculated by accounting for the difference between the predicted PCE inflation rated and the actual ECI inflation rate.	Owners and operators of 279 vessels journeying the Great Lakes system annually, 54 United States registered Great Lakes pilots, and 3 pilotage associations.	Pilot compensation costs are accounted for in the base pilotage rates.	This change ensures the Coast Guard will be able to correct any under- or over-estimates in inflation, rather than keeping these errors continuously in the rate.

TABLE 41—ECONOMIC IMPACTS DUE TO CHANGES

Change	Description	Affected population	Costs	Benefits
Rate and surcharge changes.	Under the Great Lakes Pilotage Act of 1960, the Coast Guard is required to review and adjust base pilotage rates annually.	Owners and operators of 279 vessels transiting the Great Lakes system annually, 54 United States registered Great Lakes pilots, and 3 pilotage associations.	Increase of $2,064,622 due to change in revenue needed for 2021 ($30,332,652) from revenue needed for 2020 ($28,268,030), as shown in Table 43 below.	New rates cover an association's necessary and reasonable operating expenses. Promotes safe, efficient, and reliable pilotage service on the Great Lakes. Provides fair compensation, adequate training, and sufficient rest periods for pilots. Ensures the association receives sufficient revenues to fund future improvements.

The Coast Guard did not receive any comments on the regulatory analysis itself, but we did receive comments on the operating expenses that affected the calculation of projected revenues. In this final rule, the Coast Guard made six adjustments to the operating expenses (Step 1):

(1) We included intervener legal fees paid by District Three in their operating expenses. These fees were incorrectly deducted via Directors adjustment in the NPRM.

(2) We removed the Director's adjustment deducting District One's applicant pilot salaries.

(3) We removed a CPA deduction of $6,600 for District One's dues and subscriptions, as this deduction was not included in the auditor's report.

(4) We added capital expenses to District One for dock repairs, loan repayment, and the down payment of a new pilot boat.

(5) We adjusted District One's applicant expenses based on new information provided by the CohnReznick.

(6) We redistributed the applicant pilot salary deduction for District Two between the designated and undesignated areas.

[62] Great Lakes Pilotage Rates-2018 Annual Review and Revisions to Methodology (83 FR 26162), published June 5, 2018.

In addition to the adjustments made to the operating expenses, we made two other changes that impacted the calculation of projected revenues:

(1) We updated the PCE and ECI inflation data to use the most recently available information.

(2) Based on public comment, we decided not to incorporate the proposed rounding changes to the staffing model in this final rule. As a result of this change, District One will have one less working pilot than was proposed.

Table 42 summarizes the changes in the regulatory analysis from the NPRM to this final rule. The Coast Guard made these changes as a result of public comments received after publication of the NPRM and a review of each district's operating expenses by the Coast Guard and CohnReznick. In addition, the Coast Guard updated the ECI and PCE inflation data to use more recent published datasets, and removed one working pilot from District One. An in-depth discussion of the public comments is located in Section VI of the preamble, Discussion of Comments.

TABLE 42—SUMMARY OF CHANGES FROM NPRM TO FINAL RULE

Element of the analysis	NPRM	Final rule	Impact	Resulting change in RA
Operating Expenses (Step 1).	The Coast Guard deducted $36,688 from total operating expenses for legal fees for litigation against the Coast Guard.	Based on public comment, the Coast Guard realized that $9,094 worth of intervener legal fees paid by District Three were erroneously deducted as litigation expenses. We added that amount back into the operating expenses and are deducting $27,594 in this final rule for litigation fees against the Coast Guard.	Increased District Three's total operating expenses by $9,094 before inflation and accounting for the working capital fund adjustments.	Data affects the calculation of projected revenues.
Operating Expenses (Step 1).	The Coast Guard deducted $594,521 from District One's total operating expenses for applicant pilot salaries.	Based on public comment, the Coast Guard removed the Director's adjustment that removed applicant salaries from District One's operating expenses. In addition, based on information provided by CohnReznick, the Coast Guard modified the applicant salary amount from $594,521 to $594,331.	Increased District One's total operating expenses by $594,331 before inflation and accounting for the working capital fund adjustments.	Data affects the calculation of projected revenues.
Operating Expenses (Step 1).	The Coast Guard deducted $6,600 from District One's total operating expenses for dues and subscriptions.	Based on public comment, the Coast Guard removed an erroneous CPA adjustment of $6,600 from District One's operating expenses.	Increased District One's total operating expenses by $6,600 before inflation and accounting for the working capital fund adjustments.	Data affects the calculation of projected revenues.
Operating Expenses (Step 1).	The NPRM did not include expenses incurred by District One for infrastructure expenditures made in 2018.	Based on public comment, the Coast Guard added $606,836 for infrastructure costs to District One's total operating expenses.	Increased District One's total operating expenses by $606,836 before inflation and accounting for the working capital fund adjustments.	Data affects the calculation of projected revenues.
Operating Expenses (Step 1).	The Coast Guard calculated that District One spent a total of $228,526 on applicant pilot expenses, excluding salaries. To increase transparency, we presented these expenses as Director's adjustments in Table 3 of the NPRM and then deducted them to avoid double counting.	The Coast Guard calculated that District One spent a total of $238,520 on applicant pilot expenses, excluding salaries, based on new information from CohnReznick. To increase transparency, we presented these expenses as director's adjustments in Table 3 of this final rule and then deducted them to avoid double counting.	No impact. Because these expenses are not included in the final operating costs for District One, modifying these amounts does not impact District One's total operating costs.	None. There is no impact on projected revenues or the RA.
Operating Expenses (Step 1).	In the NPRM, the Coast Guard attributed 40% of District Two's applicant salary costs to the undesignated area and 60% to the designated area. However, the Director's adjustment for applicant salaries used a 33/67% spilt between the undesignated and designated areas.	The Coast Guard modified the way the Director's adjustment for applicant salaries was allocated to a 40/60 split, with 40% of the Director's adjustment attributed to the undesignated area and 60% attributed to the designated area.	This change reduced the operating expenses for the undesignated area by $14,175 and increased them for the designated area by $14,175. Therefore, this change had no net impact on District Two's total operating expenses.	None. There is no impact on projected revenues or the RA.
Inflation of Operating Expenses (Step 2).	The Coast Guard used a PCE inflation value of 0.8% for 2020 and 1.6% for 2021, based on the most recent PCE data available at the time the NPRM was completed. (June 2020 data).	The Coast Guard updated PCE inflation value to 1.2% for 2020 and 1.7% for 2021, based on the most recently published PCE data (September 2020).	Increased total inflated operating expenses for all three districts by $43,779.	Data affects the calculation of projected revenues.
Estimate of Total Number of Working Pilots (Step 3).	Estimated that there would be a net addition of three additional working pilots.	There will be a net addition of two additional working pilots.	Decreased the amount of revenue needed for pilot compensation by $378,925.	Data affects the calculation of projected revenues.

TABLE 42—SUMMARY OF CHANGES FROM NPRM TO FINAL RULE—Continued

Element of the analysis	NPRM	Final rule	Impact	Resulting change in RA
Target Pilot Compensation (Step 4).	To calculate target pilot compensation, the Coast Guard used a Q1 ECI inflation value of 3.4% and a 2021 PCE value of 1.6% for 2021, based on the most recently available data at the time the NPRM was completed.	To calculate target pilot compensation, the Coast Guard used a Q3 ECI inflation value of 3.5% and a 2021 PCE value of 1.7% for 2021, based on the most recently available data.	Target pilot compensation decreased by $745 per pilot, from $378,180 to $378,925.	Data affects the calculation of projected revenues.

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See Sections III and IV of this preamble for detailed discussions of the legal basis and purpose for this rulemaking and for background information on Great Lakes pilotage ratemaking. Based on our annual review for this rulemaking, we are adjusting the pilotage rates for the 2021 shipping season to generate sufficient revenues for each district to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide an appropriate working capital fund to use for improvements. The rate changes in this final rule will increase the rates for District One and decrease them for District Two and the designated area of District Three. The rate for District Three's undesignated area will not change from 2020. In addition, the rule will not implement a surcharge for the training of apprentice pilots as was last implemented in the 2019 ratemaking.[63] These changes lead to a net increase in the cost of service to shippers. However, because the rates will increase for some areas and decrease for others, the change in per unit cost to each individual shipper would be dependent on their area of operation, and if they previously paid a surcharge.

A detailed discussion of our economic impact analysis follows.

Affected Population

This rule will impact United States registered Great Lakes pilots, the 3 pilot associations, and the owners and operators of 279 oceangoing vessels that transit the Great Lakes annually. We estimate that there will be 54 pilots registered during the 2021 shipping season. The shippers affected by these rate changes are those owners and operators of domestic vessels operating ''on register'' (engaged in foreign trade) and owners and operators of non-Canadian foreign vessels on routes within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The statute applies only to commercial vessels and not to recreational vessels. United States-flagged vessels not operating on register and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not required by 46 U.S.C. 9302 to have pilots. However, these U.S. and Canadian-flagged lakers may voluntarily choose to engage a Great Lakes registered pilot. Vessels that are U.S.-flagged may opt to have a pilot for varying reasons, such as unfamiliarity with designated waters and ports, or for insurance purposes.

The Coast Guard used billing information from the years 2017 through 2019 from the Great Lakes Pilotage Management System (GLPMS) to estimate the average annual number of vessels affected by the rate adjustment. The GLPMS tracks data related to managing and coordinating the dispatch of pilots on the Great Lakes, and billing in accordance with the services. As described in Step 7 of the methodology, we use a 10-year average to estimate the traffic. We used 3 years of the most recent billing data to estimate the affected population. When we reviewed 10 years of the most recent billing data, we found the data included vessels that have not used pilotage services in recent years. We believe using 3 years of billing data is a better representation of the vessel population that is currently using pilotage services and will be impacted by this rulemaking. We found that 474 unique vessels used pilotage services during the years 2017 through 2019. That is, these vessels had a pilot dispatched to the vessel and billing information was recorded in the GLPMS. Of these vessels, 434 were foreign-flagged vessels and 40 were U.S.-flagged vessels. As previously stated, U.S.-flagged vessels not operating on register are not required to have a registered pilot per 46 U.S.C. 9302, but they can voluntarily choose to have one.

Numerous factors affect vessel traffic, which varies from year to year. Therefore, rather than using the total number of vessels over the time period, we took an average of the unique vessels using pilotage services from the years 2017 through 2019 as the best representation of vessels estimated to be affected by the rates in this rulemaking. From 2017 through 2019, an average of 279 vessels used pilotage services annually.[64] On average, 261 of these vessels were foreign-flagged vessels and 18 were U.S.-flagged vessels that voluntarily opted into the pilotage service.

Total Cost to Shippers

The rate changes resulting from this adjustment to the rates will result in a net increase in the cost of service to shippers. However, the change in per unit cost to each individual shipper would be dependent on their area of operation.

The Coast Guard estimates the effect of the rate changes on shippers by comparing the total projected revenues needed to cover costs in 2020 with the total projected revenues to cover costs in 2021, including any temporary surcharges we have authorized.[65] We set pilotage rates so pilot associations receive enough revenue to cover their necessary and reasonable expenses. Shippers pay these rates when they have a pilot as required by 46 U.S.C. 9302. Therefore, the aggregate payments of shippers to pilot associations are equal to the projected necessary revenues for pilot associations. The revenues each year represent the total costs that shippers must pay for pilotage services. The change in revenue from the previous year is the additional cost to shippers discussed in this rule.

The impacts of the rate changes on shippers are estimated from the district pilotage projected revenues (shown in Tables 9, 21, and 33 of this preamble). The Coast Guard estimates that for the 2021 shipping season, the projected

[63] See, 84 FR 20551 (May 10, 2019).

[64] Some vessels entered the Great Lakes multiple times in a single year, affecting the average number of unique vessels utilizing pilotage services in any given year.

[65] While the Coast Guard implemented a surcharge in 2019, we are not implementing any surcharges for 2021.

revenue needed for all three districts is $30,332,652.

To estimate the change in cost to shippers from this rule, the Coast Guard compared the 2021 total projected revenues to the 2020 projected revenues. Because we review and prescribe rates for the Great Lakes Pilotage annually, the effects are estimated as a single-year cost rather than annualized over a 10-year period. In the 2020 rulemaking, we estimated the total projected revenue needed for 2020 as $28,268,030.[66] This is the best approximation of 2020 revenues, as, at the time of this publication, the Coast Guard does not have enough audited data available for the 2020 shipping season to revise these projections.[67] Table 43 shows the revenue projections for 2020 and 2021 and details the additional cost increases to shippers by area and district as a result of the rate changes on traffic in Districts One, Two, and Three.

TABLE 43—EFFECT OF THE RULE BY AREA AND DISTRICT

[$U.S.; non-discounted]

Area	Revenue needed in 2020	Revenue needed in 2021	Change in costs of this rule
Total, District One	$9,210,888	$10,620,941	$1,410,053
Total, District Two	8,345,871	8,506,705	160,834
Total, District Three	10,711,271	11,205,006	493,735
System Total	28,268,030	30,332,652	2,064,622

The resulting difference between the projected revenue in 2020 and the projected revenue in 2021 is the annual change in payments from shippers to pilots as a result of the rate change imposed by this rule. The effect of the rate change to shippers varies by area and district. After taking into account the change in pilotage rates, the rate changes will lead to affected shippers operating in District One experiencing an increase in payments of $1,410,053 over the previous year. District Two and District Three will experience an increase in payments of $160,834 and $493,735, respectively, when compared with 2020. The overall adjustment in payments will be an increase in payments by shippers of $2,064,622 across all three districts (a 7-percent increase when compared with 2020). Again, because the Coast Guard reviews and sets rates for Great Lakes Pilotage annually, we estimate the impacts as single-year costs rather than annualizing them over a 10-year period.

Table 44 shows the difference in revenue-by-revenue-component from 2020 to 2021 and presents each revenue-component as a percentage of the total revenue needed. In both 2020 and 2021, the largest revenue-component was pilot compensation (68 percent of total revenue needed in 2020 and 67 percent of total revenue needed in 2021), followed by operating expenses (29 percent of total revenue needed in both 2020 and 2021).

TABLE 44—DIFFERENCE IN REVENUE BY COMPONENT

Revenue-component	Revenue needed in 2020	Percentage of total revenue needed in 2020 (percent)	Revenue needed in 2021	Percentage of total revenue needed in 2021 (percent)	Difference (2021 revenue − 2020 revenue)	Percentage change from previous year (percent)
Adjusted Operating Expenses	$8,110,685	29	$8,876,850	29	$766,165	9
Total Target Pilot Compensation	19,088,420	68	20,461,950	67	1,373,530	7
Working Capital Fund	1,068,925	4	993,852	3	(75,073)	(7)
Total Revenue Needed	28,268,030	100	30,332,652	100	2,064,622	7

Note: Totals may not sum due to rounding.

As stated above, we estimate that there will be a total increase in revenue needed by the pilot associations of $2,064,622. This represents an increase in revenue needed for target pilot compensation and adjusted operating expenses of $1,373,530 and $766,165, respectively, and a decrease in the revenue needed for the working capital fund of $75,073. The removal of legal fees associated with litigation against the Coast Guard will reduce the revenue needed in 2021 by $29,802. This number includes adjustments made to the base legal fee amount of $27,594 for inflation and the working capital fund. While the shippers will no longer reimburse the legal fees associated with litigation via the rate under the rule, the pilot associations may still be reimbursed for these expenses by the Coast Guard under the EAJA.

The majority of the increase in revenue needed, $1,373,530, is the result of changes to target pilot compensation. These changes are due to three factors: (1) The changes to adjust 2020 pilotage compensation to account for the difference between actual and predicted inflation; (2) the net addition of two additional pilots; and (3) inflation of pilotage compensation to adjust target compensation values from 2020 dollars to 2021 dollars.

The target compensation is $378,925 per pilot in 2021, compared to $367,085 in 2020. The changes to modify the 2020 pilot compensation to account for the difference between predicted and actual inflation will increase the 2020 target compensation value by 1.5 percent. As shown in Table 45, this inflation

[66] 85 FR 20088, see table 41.

[67] The rates for 2021 do not account for the impacts COVID–19 may have on shipping traffic and subsequently pilotage revenue, as we do not have complete data for 2020. The rates for 2022 will take into account the impact of COVID–19 on shipping traffic, because that future ratemaking will include 2020 traffic data. However, the Coast Guard uses 10-year average when calculating traffic in order to smooth out variations in traffic caused by global economic conditions, such as those caused by the COVID–19 pandemic.

adjustment will increase total compensation by $5,506 per pilot, and the total revenue needed by $297,339, when accounting for all 54 pilots.

TABLE 45—CHANGE IN REVENUE RESULTING FROM THE CHANGE TO INFLATION OF PILOT COMPENSATION CALCULATION IN STEP 4

2020 Target Compensation	$367,085
Adjusted 2020 Compensation ($367,085 × 1.015)	372,591
Difference between Adjusted Target 2020 Compensation and Target 2020 Compensation ($372,591 − $367,085)	5,506
Increase in total Revenue for 54 Pilots ($5,506 × 54)	297,339

The addition of two pilots to full registered status accounts for $746,837 of the increase in needed revenue. As shown in Table 46, to avoid double counting, this value excludes the change in revenue resulting from the change to adjust 2020 pilotage compensation to account for the difference between actual and predicted inflation.

TABLE 46—CHANGE IN REVENUE RESULTING FROM ADDING TWO ADDITIONAL PILOTS

2021 Target Compensation	$378,925
Total Number of New Pilots	2
Total Cost of new Pilots ($378,925 × 2)	$757,850
Difference between Adjusted Target 2020 Compensation and Target 2020 Compensation ($372,591 − $367,085)	$5,506
Increase in total Revenue for 2 Pilots ($5,506 × 2)	$11,013
Net Increase in total Revenue 2 Pilots ($757,850 − $11,013)	$746,837

Finally, the remainder of the increase, $329,354, is the result of increasing compensation for the other 52 pilots to account for future inflation of 1.7 percent in 2021. This will increase total compensation by $6,334 per pilot.

TABLE 47— CHANGE IN REVENUE RESULTING FROM INFLATING 2020 COMPENSATION TO 2021

Adjusted 2020 Compensation	$372,591
2021 Target Compensation ($372,591 × 1.017)	378,925
Difference between Target 2020 Compensation and Target 2020 Compensation ($378,925 − $372,591)	6,334
Increase in total Revenue for 52 Pilots ($6,334 × 52)	329,354

Table 48 presents the percentage change in revenue by area and revenue-component, excluding surcharges, as they are applied at the district level.[68]

TABLE 48—DIFFERENCE IN REVENUE BY COMPONENT AND AREA

Area	Adjusted operating expenses			Total target pilot compensation			Working capital fund			Total revenue needed		
	2020	2021	Percentage change	2020	2021	Percentage change	2020	2021	Percentage change	2020	2021	Percentage change
District One: Designated	$1,573,286	$2,328,981	32%	$3,670,850	$3,789,250	3%	$206,095	$207,255	1%	$5,450,231	$6,325,486	14%
District One: Undesignated	1,048,857	1,502,239	30%	2,569,595	2,652,475	3%	142,205	140,741	(1%)	3,760,657	4,295,455	12%
District Two: Undesignated	1,019,371	1,003,961	–2%	2,936,680	3,031,400	3%	155,473	136,698	(14%)	4,111,524	4,172,059	1%
District Two: Designated	1,504,635	1,540,146	2%	2,569,595	2,652,475	3%	160,117	142,025	(13%)	4,234,347	4,334,646	2%
District Three: Undesignated	2,336,354	1,947,484	–20%	5,873,360	6,820,650	14%	322,642	297,021	(9%)	8,532,356	9,065,155	6%
District Three: Designated	628,182	554,039	–13%	1,468,340	1,515,700	3%	82,393	70,112	(18%)	2,178,915	2,139,851	(2%)

Benefits

This rule will allow the Coast Guard to meet requirements in 46 U.S.C. 9303 to review the rates for pilotage services on the Great Lakes. The rate changes will promote safe, efficient, and reliable pilotage service on the Great Lakes by (1) ensuring that rates cover an association's operating expenses; (2) providing fair pilot compensation, adequate training, and sufficient rest periods for pilots; and (3) ensuring pilot associations produce enough revenue to fund future improvements. The rate changes will also help recruit and retain pilots, which will ensure a sufficient number of pilots to meet peak shipping demand, helping to reduce delays caused by pilot shortages.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule will have a significant economic impact on a substantial number of small entities. 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.

For this rule, the Coast Guard reviewed recent company size and ownership data for the vessels identified in the GLPMS, and we reviewed

[68] The 2020 projected revenues are from the Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology final rule (85 FR 20088) Tables 8, 20, and 32. The 2021 projected revenues are from Tables 9, 21, and 33 of this rule.

business revenue and size data provided by publicly available sources such as Manta [69] and ReferenceUSA.[70] As described in Section VIII.A of this preamble, Regulatory Planning and Review, we found that a total of 474 unique vessels used pilotage services from 2017 through 2019. These vessels are owned by 49 entities. We found that of the 49 entities that own or operate vessels engaged in trade on the Great Lakes that will be affected by this rule, 38 are foreign entities that operate primarily outside the United States, and the remaining 11 entities are U.S. entities. We compared the revenue and employee data found in the company search to the Small Business Administration's (SBA) small business threshold as defined in the SBA's ''Table of Size Standards'' for small businesses to determine how many of these companies are considered small entities.[71] Table 49 shows the North American Industry Classification System (NAICS) codes of the U.S. entities and the small entity standard size established by the SBA.

TABLE 49—NAICS CODES AND SMALL ENTITIES SIZE STANDARDS

NAICS	Description	Small entity size standard
211120	Crude Petroleum Extraction	1,250 employees
237990	Other Heavy and Civil Engineering Construction	$39.5 million
238910	Site Preparation Contractors	$16.5 million
483212	Inland Water Passenger Transportation	500 employees
487210	Scenic and Sightseeing Transportation, Water	$8.0 million
488330	Navigational Services to Shipping	$41.5 million
523910	Miscellaneous Intermediation	$41.5 million
561599	All Other Travel Arrangement and Reservation Services	$22.0 million
982100	National Security	Population of <= 50,000 People

Of the 11 U.S. entities, 8 exceed the SBA's small business standards for small entities. To estimate the potential impact on the 3 small entities, the Coast Guard used their 2019 invoice data to estimate their pilotage costs in 2021. We increased their 2019 costs to account for the changes in pilotage rates resulting from this rule and the Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology final rule (85 FR 20088). We estimated the change in cost to these entities resulting from this rule by subtracting their estimated 2020 costs from their estimated 2021 costs, and found the average costs to small firms will be approximately $2,146. We then compared the estimated change in pilotage costs between 2020 and 2021 with each firm's annual revenue. In all cases, their estimated pilotage expenses were below 1 percent of their annual revenue.

In addition to the owners and operators discussed above, three U.S. entities that receive revenue from pilotage services will be affected by this rule. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships, and one operates as a corporation. These associations are designated with the same NAICS code and small-entity size standards described above, but have fewer than 500 employees. Combined, they have approximately 65 employees in total and, therefore, are designated as small entities. The Coast Guard expects no adverse effect on these entities from this rule because the three pilot associations will receive enough revenue to balance the projected expenses associated with the projected number of bridge hours (time on task) and pilots.

Finally, the Coast Guard did not find any small not-for-profit organizations that are independently owned and operated and are not dominant in their fields that will be impacted by this rule. We did not find any small governmental jurisdictions with populations of fewer than 50,000 people that will be impacted by this rule. Based on this analysis, we conclude this rule will not affect a substantial number of small entities, nor have a significant economic impact on any of the affected entities.

Based on our analysis, this rule will have a less than 1 percent annual impact on 3 small entities; therefore, 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.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

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).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, and will not alter or adjust any existing collection of information.

E. Federalism

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 Executive Order 13132 and have determined that it is consistent with the fundamental

[69] See *https://www.manta.com/.*

[70] See *http://resource.referenceusa.com/.*

[71] See: *https://www.sba.gov/document/support--table-size-standards.* SBA has established a ''Table of Size Standards'' for small businesses that sets small business size standards by NAICS code. A size standard, which is usually stated in number of employees or average annual receipts (''revenues''), represents the largest size that a business (including its subsidiaries and affiliates) may be in order to remain classified as a small business for SBA and Federal contracting programs.

federalism principles and preemption requirements as described in Executive Order 13132. Our analysis follows.

Congress directed the Coast Guard to establish ''rates and charges for pilotage services''. See 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of State law as specified in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a ''State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.'' As a result, States or local governments are expressly prohibited from regulating within this category. Therefore, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process.

F. Unfunded Mandates

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 million (adjusted for inflation) or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) and have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this final rule under Department of Homeland Security Management Directive 023–01, Rev. 1 (DHS Directive 023–01), associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under the **ADDRESSES** portion of this preamble.

This final rule meets the criteria for categorical exclusion (CATEX) under paragraphs A3 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023–001–01, Rev. 1.[72] Paragraph A3 pertains to the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature: (a) Those of a strictly administrative or procedural nature; (b) those that implement, without substantive change, statutory or regulatory requirements; or (c) those that implement, without substantive change, procedures, manuals, and other guidance documents; and (d) those that interpret or amend an existing regulation without changing its environmental effect. Paragraph L54 pertains to regulations, which are editorial or procedural.

This rule involves adjusting the pilotage rates to account for changes in district operating expenses, an increase in the number of pilots, and anticipated inflation. Additionally, this rule makes one change to the ratemaking methodology to account for actual inflation and excludes certain legal fees incurred in litigation against the Coast Guard related to ratemaking and oversight requirements. All of these changes are consistent with the Coast Guard's maritime safety missions. We did not receive any comments related to the environmental impact of this rule.

List of Subjects

46 CFR Part 401

Administrative practice and procedure, Great Lakes; Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 404

Great Lakes, Navigation (water), Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 401 and 404 as follows:

[72] *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.*

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.d), (92.e), (92.f).

■ 2. Amend § 401.405 by revising paragraphs (a)(1) through (6) to read as follows:

§ 401.405 Pilotage Rates and Charges

(a) * * *

(1) The St. Lawrence River is $800;

(2) Lake Ontario is $498;

(3) Lake Erie is $566;

(4) The navigable waters from Southeast Shoal to Port Huron, MI is $580;

(5) Lakes Huron, Michigan, and Superior is $337; and

(6) The St. Marys River is $586.

* * * * *

PART 404—GREAT LAKES PILOTAGE RATEMAKING

■ 3. The authority citation for part 404 continues to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.f).

■ 4. Amend § 404.2 by adding paragraph (b)(6) to read as follows:

§ 404.2 Procedure and criteria for recognizing association expenses.

* * * * *

(b) * * *

(6) *Legal Expenses.* These association expenses are recognizable except for any and all expenses associated with legal action against the U.S. Coast Guard or its agents in relation to the ratemaking and oversight requirements in 46 U.S.C. 9303, 9304 and 9305.

* * * * *

■ 5. Amend § 404.104 by revising paragraph (b) to read as follows:

§ 404.104 Ratemaking step 4: Determine target pilot compensation benchmark.

* * * * *

(b) In an interim year, the Director adjusts the previous year's individual target pilot compensation level by the Bureau of Labor Statistics' Employment Cost Index for the Transportation and Materials sector, or if that is unavailable, the Director adjusts the previous year's individual target pilot compensation level using a two-step process:

(1) First, the Director adjusts the previous year's individual target pilot compensation by the difference between the previous year's Bureau of Labor Statistics' Employment Cost Index for the Transportation and Materials sector and the Federal Open Market Committee median economic projections for Personal Consumption Expenditures inflation value used to inflate the previous year's target pilot compensation.

(2) Second, the Director then adjusts that value by the Federal Open Market Committee median economic projections for Personal Consumption Expenditures inflation for the upcoming year.

* * * * *

Dated: March 8, 2021.

R.V. Timme,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

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